THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 379

Record Number: 2016/440

Peart J.
Irvine J.
Whelan J

BETWEEN:

IN THE MATTER OF SECTION 11 OF THE AGRICULTURE APPEALS ACT 2001

BETWEEN:

MICHAEL O'CONNOR

APPELLANT

- AND -

MINISTER FOR AGRICULTURE, FOOD AND THE MARINE,

JIM BYRNE AND MIRIAM CADWELL

RESPONDENTS

JUDGMENT OF MR. JUSTICE MICHAEL PEART DELIVERED ON THE 29TH DAY OF NOVEMBER 2018

1. The defendant Minister is appealing against an order of the High Court (White J.) made on the 28th July 2016 whereby, for reasons stated in a written judgment delivered on the 2nd June 2016, it was ordered that the Minister pay to the respondent the sum of €124,431.00 together with interest thereon at the rate of 2% from the 20th April 2012 to date of payment. That order followed a conclusion reached by the trial judge that the Minister had erred in the manner in which certain EU regulations related to the Single Payment Scheme for farmers were applied, and that an appeals officer within the Minister's department had erred when delivering his written determination in relation to the respondent's application for Single Payment under the scheme for 2010.

2. The plaintiff (hereinafter referred to as Mr O'Connor or 'the respondent') has brought a cross-appeal in relation to certain matters found by the trial judge. He considers that the trial judge ought to have found him entitled to a full Single Payment for the year 2010 based on the illegality of certain inspections of the land, and of certain breaches of Commission Regulation (E.C.) 1122/2009, particularly Art. 32 thereof in relation to the keeping of control reports, and not providing the respondent with an opportunity to sign the control report, as well as by reference to the Farmers' Charter and the Department's Helpsheet/Terms and Conditions for the 2010 EU Single Payment Scheme. I will come to these issues in due course.

3. A brief description of the factual and legal background will suffice, given the very extensive and detailed nature of the trial judge's judgment.

4. The respondent to this appeal is a farmer who farms lands at Nenagh, Co. Tipperary. In 2010 he prepared a written application to the Minister for a Single Payment under EU Council Regulation (E.C.) 73/2009 which, as part of the EU Common Agricultural Policy, rewards farmers who conduct their farming activities to a minimum standard. As noted by the trial judge, while it is an EU scheme, its implementation is left to the Member State, which in turn is answerable to the EU pursuant to Article 258 of the Treaty.

5. Following certain inspections of the lands the respondent's application was found to have significantly overstated the area of land eligible for the Single Payment, having failed to make adequate deductions in relation to some parcels, and having included an area of commonage even though no farming activity was found to have taken place thereon, and furthermore, in the opinion of the inspectors, it was not maintained in Good Agricultural Condition (GAEC) as required for the purposes of the scheme.

6. On the 21st September 2010 the respondent was served with a notice of non- compliance bringing to his attention certain issues in relation to animal tagging, and also informing him that there may be a reduction in the areas allowed for certain plots of land declared eligible by him in his application, and in relation to the area of commonage just referred to. On the 12th October 2010 he received a remedial action notice following two cross compliance inspections which took place on the 20th and the 21st September 2010, which referred to animal tagging issues in respect of a number of specified animals. He was required to have these matters remedied by 21st December 2010.

7. By letter dated the 21st November 2010 the respondent was informed that following a ground inspection carried out on his lands on the 16th September 2010 it was concluded that he had over-declared his lands for the purposes of his application, and that inadequate deductions had been made. He was informed of his right to seek a review. By further letter dated the 29th November 2010 the respondent was informed of the non-compliance issues that arose in relation to animal tagging, and that a 5% sanction would be imposed as provided for in the regulations. He was informed of his right to seek a review of that decision also.

8. The respondent sought a review of both decisions. Issues were raised by him in relation to the manner in which inspections had been unlawfully carried out, and in relation to the cross compliance checks, each being alleged to have been carried out otherwise

than in compliance with the regulations, the Farmers Charter, and the Department's own 2010 Terms and Conditions. These issues are raised in a very detailed manner in the respondent's solicitor's application for review which was sent by covering letter dated the 11th January 2011.

9. A review of these decisions was carried out by Mr Con O'Brien, a District Inspector. The outcome of his review was that the imposition of the 5% sanction and the decision in relation to the over-declaration of land eligibility were both upheld. However, in addition to upholding the 5% sanction, Mr O'Brien considered that an administrative fine was warranted, equalling the full amount of the Single Payment that would otherwise have been payable (i.e. €147,000) in respect of the over-declared lands. The reason for this fine being imposed was explained by Mr O'Brien as follows:

> *"Furthermore, Article 29 of Council Regulation 1782/2003 (outlined in Chapter 38 of the Schemes Terms and Conditions) states that "without prejudice to any specific provisions in individual support schemes, no payment shall be made in favour of beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to obtaining an advantage contrary to the objectives of that support scheme".* The land parcel rejected in full (V 13714061) did not make any contribution to the provisions of grazing or fodder crops for your animals in 2010. I consider that you did not farm these lands in 2010 and that you artificially enlarged your holding by including these rented lands (Map Acres) on your 2010 application for the sole purpose of drawing down entitlements which you would not otherwise be entitled to, and I consider this to be artificially creating the conditions. **As a consequence of the area over-declaration in this land parcel being greater than 20% and deemed to have been made intentionally, an administrative fine amounting to the value of the Single Payment on the number of hectares over-declared should have been applied as part of the original decision. This administrative fine is now being applied and it will be offset against any payment due to you made in the course of the three calendar years following the year in which the determination was made.**" [Italics and 'bold' in original*]*

10. For the sake of completeness, I should perhaps say that the reference in Mr O'Brien's letter to "Article 29 of Council Regulation 1782/2003" is clearly an error and he should have referred to Article 30 of the Council Regulation (E.C.) No. 73/2009 which repealed the 2003 Regulation. Nothing turns on that error since the old Article 29 and the new Article 30 are in identical terms.

11. The effect of this decision was that quite apart from the 5% sanction in respect of cross compliance breaches, the respondent not only failed to be awarded the 2010 Single Payment, but was fined an amount equivalent to the amount he would have been entitled to in 2010 (€147,000) in respect of the over-declared lands, the said sum being recoverable by deductions from any payments to which he may be entitled over the coming three years.

12. Mr O'Brien's letter went on to inform the respondent of his entitlement to appeal the decision to the Agriculture Appeals Office within 3 months of the date thereof. The respondent lodged such an appeal, and sought an oral hearing, which was permitted. The respondent was legally represented at the appeal hearing on the 23rd February 2012 before the appeals officer, Mr Jim Byrne. The result of the appeal was communicated to the respondent by Mr Byrne in a letter dated the 20th April 2012. The appeal was allowed in part only. While the 5% sanction was upheld in relation to the cross compliance breaches, the appeals officer concluded that while he could not overturn the department's decision to reject parcel V13714061 in its entirety for the reasons he explained, he was removing the administrative fine because he was unable "to conclusively conclude that you attempted to artificially create conditions to obtain payment and intentionally over-declared the land".

13. Following this decision, the respondent brought an appeal to the Director of the Agriculture Appeals Office pursuant to s. 10(2) of the Agriculture Appeals Act seeking a revision of the appeals officer's decision of the 20th April 2012. Section 10(2) of the 2001 Act provides:

> "The Director may, at any time, revise any decision of an appeals officer, if it appears to him or her that the decision was erroneous by reason of some mistake having been made in relation to the law or the facts."

14. In that appeal the respondent contended that there were mistakes both of law and of fact in the decision of the 20th April 2012. The mistakes of law went to the question of the lawfulness of the inspections that were conducted by the department inspectors in September 2010 both in relation to land eligibility and in relation to tagging. It was submitted, inter alia, that the appeals officer had failed to address these legal issues in his decision, as appears at page 4 of that decision, on the basis that they were outside his remit. It was contended that Mr Byrne had misconstrued what was referred to as "the 31st May rule" if his decision is to be read as meaning that the respondent had not grazed the commonage prior to the 31st May 2010. On the other hand, if it is to be read as meaning that the commonage was not grazed by *any* persons, and not just the respondent, by that date, then it was submitted that Mr Byrne erred by not having proper regard to statutory declarations by two farmers, P.J. Ryan and Raymond O'Brien, which had each stated that they grazed their cattle on the commonage prior to the relevant date. This was said to constitute a mistake both of fact and of law for the purpose of the appeal being sought.

15. By letter dated the 29th May 2013, the Director, Ms Cadwell, wrote to the respondent's solicitor giving her reasons for rejecting the submissions made by the respondent, and refusing to revise the decision.

16. Section 11 of the Act of 2011 provides:

> "Any person dissatisfied with (a) the decision of an appeals office, or (b) the revised decision of the Director, may appeal that decision or revised decision, as the case may be, to the High Court on any question of law."

17. On the 18th June 2013 the respondent commenced the present proceedings by way of special summons. In those proceedings the decisions of both the Appeals Officer, Mr Byrne, and the Director were challenged on the basis that there were errors of law contained therein, as detailed in the special summons. Those alleged errors largely mirror the issues raised on the various appeals already referred to. As the trial judge points out in his judgment, the proceedings were not correctly commenced by way of special summons, and in those circumstances he made an order on the 12th January 2015 amending the special summons so that it complied with the requirements for an originating notice of motion under Ord. 84C of the Rules of the Superior Courts, and made a further order extending the time for bringing the statutory appeal. Nothing turns on this.

18. At para. 7 of his judgment the trial judge stated that procedurally the respondent was incorrect to have challenged the decision of Appeals Director, Ms Cadwell, who had refused to revise the decision of Mr Byrne, and accordingly he would consider the challenge as being to Mr Byrne's decision. There is no cross-appeal by the respondent against that finding.

19. Having considered the submissions made to him in relation to the issues raised in the originating notice of motion, the trial judge

reached his overall conclusions by stating the following at paras. 90-92 of his judgment:

> "90. In its determination of 20th April, 2012, questions of law on notice [of inspections] should have been addressed by the appeals officer. The issue of notice and alleged breaches of the regulations were the most substantial legal issues before him, and were the subject of written legal submissions to him. This involved the interpretation of the regulations and having regard to the terms and conditions document, the farmer's Charter and principles of natural justice which the appeals officer had to have regard to and which were impliedly implicitly [sic] but also set out in s. 14 (1) of statutory instrument 193/2002, the Appeals Regulations, which states "14 (1) The decision of an appeals officer shall have regard to the principles of natural justice and comply with any relevant legislation and terms, conditions and guidelines of the Minister governing or relating to the scheme in question.
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> 91. The detailed legal submissions made to the appeals officer on the issue of interpretation of any relevant legislation on terms, conditions and guidelines of the Minister governing or relating to the scheme in question, should have been addressed. The appeals officer in his written determination did not address this issue which was raised specifically with him by way of legal submission.
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> 92. I accept the submission on behalf of the respondents that the written determination should be considered as a whole and that the specific extract relied on by the appellant to allege that the appeals officer did not address the legal issues is unfair to him. However, he did not, in his written determination, specifically address the legal issues which were the subject of both oral and written submissions to him. As evidenced in the extract of the judgment of Kearns P. of 5th June 2015, *Earagail Eisc Teoranta v. Doherty & ors*, that was his responsibility."

20. Having so stated, the trial judge then turned his mind to what discretion the Court had in relation to a remedy. In that regard he stated:

> "93. The Court is faced with the situation that the inspection that led to the imposition of the SPS penalty was procedurally flawed, and the legalities of this were not dealt with on review or on appeal. The respondents have submitted that procedural flaws should not lead to the exclusion of substantive evidence that the appellant was not entitled to include the commonage in his SPS application, and thus if his appeal was upheld, he would be getting a payment he was not entitled to which would not be in the public interest.
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> 94. Having decided question of laws that the first respondent erred in applying EU regulations, and that the Appeals Officer erred in law when delivering his written determination, what remedy is open to the court. It could remit the matter to the Appeals Officer, but as the substantial finding of the court is that the procedure followed in respect of the investigation of improper parcels of land being included in the application was flawed, that would be pointless.
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> 95. Another important matter is applying a remedy in the public interest. The court has found serious procedural flaws but is conscious that there was considerable evidence that the appellant should not have included parcel V13714061 in his application.
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> 96. *I am satisfied that this court even when deciding the case pursuant to the jurisdiction of statutory appeal, can provide a judicial remedy to meet the justice of the case.* [Emphasis provided]
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> 97. The appellant should be entitled to payment of the subsidy on the extent of the lands which qualified for payment, which I believe to be [160.57] hectares for 2010, but should not be paid any sum for the commonage. He is liable for the 5% sanction imposed on the cross compliance check."

21. Following further submissions the trial judge made an order that the Minister pay to the respondent the sum of €124,431.00 together with interest thereon at 2% from the 20th April 2012 to the date of payment.

The Minister's appeal

22. The Minister has addressed this appeal under five headings:

> (a) The ambit of the jurisdiction of the High Court in relation to the order made *i.e.* the payment by the Minister to the respondent of €124,431.00;
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> (b) The ambit of the jurisdiction of the High Court with regard to the point of law before it: *i.e. audi alteram partem* was not a point of law identified in the originating notice of motion;
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> (c) Whether the trial judge erred in determining that the respondent had not been afforded fair procedures;
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> (d) Whether the trial judge erred in finding that there was a failure to comply with EU regulations in relation to inspections and control reports;
>
> (e) Whether the trial judge erred in finding that the appeals officer did not adequately address the legal issues raised by the respondent.

(a) The ambit of the jurisdiction of the High Court in relation to the order made i.e. the payment by the Minister to the respondent of €124,431.00:

23. The Minister refers to the statement by the trial judge that he could "provide a remedy to meet the justice of the case", and submits that this a serious error since the ambit of the appeal against the decision of the appeals officer is confined to a point of law . It is submitted that once the High Court had upheld the conclusion that there was an over-declaration of eligible lands, the trial judge had no jurisdiction to put the respondent in the position that he would have been in had the commonage area not been included in the application for single payment, and therefore was not entitled to order the Minister to pay the respondent "on the extent of the lands which qualified for payment". In this regard, the Minister refers to the provisions of Article 30 of Council Regulation (EC) No. 73/2009 which provides:

> "Without prejudice to any specific provisions in individual support schemes, *no payment shall be made* to beneficiaries for whom it is established that they artificially created the conditions required for obtaining such payments with a view to

obtaining an advantage contrary to the objectives of that support scheme." [Emphasis provided]

24. The Minister has also referred to Article 58 of the Commission Regulation (E.C.) 1120/2009 which laid down rules for the implementation of Council Regulation (E.C.) 73/2009, and which provides:

> "… If the difference [*i.e.* over-declaration] is more than 20% of the area determined, no area-linked aid shall be granted for the crop group concerned".

25. The Minister submits that Art. 30 is mandatory in its terms, and that it precludes any power in the High Court on an appeal on a point of law under s. 11 of the Act to provide a remedy "to meet the justice of the case" as was done by the trial judge, and that its mandatory nature cannot be diluted by any fair procedures complaints or breaches of fundamental rights, given the primacy to be accorded to EU law, and Art. 29 of the Constitution (see *e.g.* Walsh J. in *Campus Oil v. Minister for Industry & Energy* [1983] 1 I.R. 82)

26. The Minister referred also to the judgment of Murray C.J. in *G. McG v. DW* [2000] 4 I.R. 1 in support of the submission that the trial judge had no power to make an order that he felt met the justice of the case, and in particular what was stated by Murray C.J. at p. 26:

> "The concept of inherent jurisdiction necessarily depends on a distinction between jurisdiction that is explicitly attributed to the courts by law and those that a court possesses implicitly whether owing to the very nature of its judicial function or its constitutional role in the administration of justice. The interaction between the express jurisdiction of the courts and their inherent jurisdiction will depend in each case according to the scope of the express jurisdiction, whether its source is common law, legislative or constitutional, and the ambit of the inherent jurisdiction which is being invoked. Inherent jurisdiction by its nature only arises in the absence of the express.
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> …
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> Where the jurisdiction of the courts is expressly and completely delineated by statute law it must, at least as a general rule, exclude the exercise by the courts of some of all the more extensive jurisdiction of an implied or inherent nature. To hold otherwise would undermine the normative value of the law and create uncertainty concerning the scope of judicial function and finality of court orders. It may indeed be otherwise where a fundamental principle of constitutional stature is invoked against a statutory or regulatory measure determining jurisdiction, but that is not the case here."

27. In these circumstances it is submitted that the High Court, in relation to possible remedies, was confined to those which were open to the appeals officer under the Act.

28. As to the limited function of the High Court when hearing an appeal confined to a point of law, the Minister has referred to the judgment of Clarke J. (as he then was) in *Fitzgibbon v. Law Society* [2014] 1 I.R. 516. at para. 7.4 thereof Clarke J. stated:

> "In one sense it may be said that two types of points of law can legitimately be raised in an appeal which is limited to points of law alone. First, there may be an error of law in the determination of the first instance body. Second, it may be the case that the way in which the first instance body has reached its conclusions on the facts involves an error which itself involves a point of law."

29. In *Fitzgibbon*, Clarke J. referred to an earlier judgment of McKechnie J. in *Deely v. Information Commissioner* [2001] 3 I.R. 439, where at p. 452 he summarised as follows the principles applicable to this question of the Court's powers in relation to findings of fact:

> "(a) it cannot set aside findings of primary fact unless there is no evidence to support such findings;
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> (b) it ought not to set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision making body could draw;
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> (c) it can, however, reverse such inferences, if the same were based on the interpretation of documents and should do so if incorrect; and finally
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> (d) if the conclusion reached by such bodies shows that they have taken an erroneous view of the law, then that also is a ground for setting aside the resulting decision …".

30. The Minister submits in the light of this case-law that the primary decision of the appeal officer as to the ineligibility of the commonage area declared by the respondent was binding upon the trial judge, and that in such circumstances he was not at large as to the remedy he could fashion "to meet the justice of the case", and was constrained by the mandatory provisions of the Council Regulation.

31. In addition on the question of remedy, it was submitted that the respondent himself had constrained the extent of the remedy he could achieve by reason of the fact that he chose to avail of the statutory appeal available under s. 11 of the Act, namely one confined to a point of law, and therefore not a rehearing, instead of perhaps seeking to proceed by way of judicial review to quash the decision on the basis that it was not lawfully made for the reasons he has submitted. In these circumstances the Minister has also submitted that the trial judge was not entitled to make what are essentially judicial review findings as to fair procedures, or failure to provide reasons since these are not points of law as such as that phrase must be properly understood (see: O'Flaherty J. in *Faulkner v. Minister for Industry and Commerce* [1997] E.L.R. 106 at p. 111)

32. As to the choice of remedy available to the respondent, the Minister has referred to the judgment of O'Higgins C.J. in *State (Abenglen Properties Ltd) v. Dublin Corporation* [1984] I.R. 381.

33. In response, the respondent has, as he must, accepted the primacy of EU law. He accepts also that the EU regulations have direct effect. He accepts that under Article 58 of the Commission Regulation a farmer may receive no single payment where he is found to have over-declared his eligible acreage by over 20%. However, he goes on to submit that such disentitlement may only be found following inspections of the lands in question which are carried out in accordance with the Council and Commission regulations. In that regard his complaint was that the inspection of the lands on the 16th September 2010 was an unannounced inspection, and was therefore unlawful, and accordingly could not lawfully ground a decision as to ineligibility for the single payment. He had also

complained that the inspector kept no control records of inspections and the reasons for the inspections, as required by the Commission regulation, and that no opportunity was provided for Mr O'Connor to sign the record and provide observations, as also provided for in the regulation. It is contended that these breaches vitiate the inspections carried out.

34. Where these breaches of regulations have been found to have occurred, and indeed are accepted by the Minister as having occurred, the respondent argues that it must follow that on the basis of a 'fruit of the poisoned tree' argument – to borrow a phrase from a criminal law context – the decision on eligibility was flawed, and the respondent was entitled not just to a reduced payment as awarded by the trial judge on the basis of land to which there was no controversy as to its eligibility (i.e. the 160 hectares already referred to), but to a full payment based on all of the lands declared. By such an argument he seeks to avoid the otherwise mandatory provision of Article 58 requiring that no payment whatsoever be made where there is an over-declaration by more than 20%.

35. The problem as I see it for the respondent is that he chose to proceed by way of the statutory appeal provided for in s. 11 of the Act of 2001, and not by way of judicial review of the decision made by Mr Byrne, the appeals officer. One of the remedies available to him had he gone by way of judicial review is that he might have sought and obtained an order quashing the decision of Mr Byrne on the basis that the unannounced inspections of the lands upon which the ineligibility decision was based were unlawful. He could have raised also the argument that Mr Byrne had failed to address and determine certain legal issues raised by him in relation to the keeping of control reports, and the failure to afford the respondent an opportunity to sign the reports and make observations upon them. Such a remedy by way of judicial review is not available to the respondent on a statutory appeal.

36. The statutory appeal is confined to questions of law arising from the decision being appealed. The Court will not be in a position to overturn findings of fact. Neither could it do that even on a judicial review. At least on a judicial review the Court may look at the process by which the decision was arrived at, and in an appropriate case, quash the decision on the basis, for example, that fair procedures were not afforded to the applicant. Here there is no question but that at the appeal hearing before Mr Byrne fair procedures were afforded. Indeed, it was never contended that they were not. The reference to fair procedures in the judgment of the trial judge was confined to whether the respondent was entitled to an opportunity to be heard before any sanction was imposed.

37. In these cases, the Oireachtas has provided a particular appeal mechanism and procedure. The merits appeal from the original decision consists of an appeal to the appeals officer, Mr Byrne, who held an oral appeal hearing for that purpose. He upheld the ineligibility of the over-declared lands having heard all the evidence offered and the legal submissions made. If the respondent wished to challenge the lawfulness of the inspections and seek to impugn the decision on that basis, and have the decision quashed, his remedy was judicial review. The present appeal is more confined. In any event, the trial judge found that there was evidence on which Mr Byrne could properly rely for his conclusion on eligibility. He correctly stated that eligibility for single payment is a question of fact to be decided by the specialist decision-maker, and that "there was ample factual evidence before the court to determine the eligibility of the excluded parcel of land". He was satisfied that the appeals officer did not misconstrue the law. I agree. There may be some question as to whether proper records were kept of the inspections, or whether the inspection ought properly to have been announced rather than unannounced, however these are not matters which are capable of successfully impugning the merits appeal decision on a s. 11 appeal to the High Court as opposed to a judicial review.

38. In my view given the limited confined nature of the statutory appeal, the trial judge was not at large as to the remedy he could provide to the respondent in the light of his conclusions in relation to fair procedures, and the failure to have kept proper control reports and provide an opportunity to the respondent to sign them and make observation – even if he was justified in so concluding. In my view, once the trial judge concluded that the finding as to over-declared lands was properly based on evidence before the appeals officer, the mandatory and directly effective provision of Article 58 of the Commission Regulation could not be varied as a matter of judicial discretion, even though he considered that it was merited in order "to meet the justice of the case" or in the public interest in view of the serious flaws that he found to have occurred in the procedures. The trial judge was not at large as he might have been in proceedings of a different nature. The regulation is mandatory in its terms, and must prevail over any such considerations. The trial judge could not fall back upon the Court's inherent jurisdiction in the face of a penalty mandated by EU regulation. In this respect I respectfully conclude that the trial judge fell into error, and that the decision of the appeal officer may not be interfered with on the basis found by the trial judge.

39. I should add that the other matters raised by the respondent in his originating notice of motion as points of law for the purpose of his s. 11 appeal should also not succeed. He complained that the appeals officer had not addressed the legal submissions made to him. In his decision of the 20th April 2012 the appeals officer stated that he noted the legal issues raised but that his function was "to decide on the decisions made by the Department following the inspection of your holding". In my view he was conducting a merits appeal. He was entitled to consider the evidence that he heard as a result of the inspections that were carried out, and to determine the question of fact arising as to the eligibility of lands declared in the application for single payment. If the respondent had wished to challenge that decision based on the inspections having been unannounced, he could have done so by way of judicial review.

40. Insofar as the trial judge concluded that if a penalty is to be imposed the person directly affected by the decision must be given an opportunity to make submissions as to why it should not be imposed, in my view he erred by entering upon that question. The appeal before him was on a point of law. The onus is upon the person availing of the statutory appeal to raise as points of law such questions as he considers arise for appeal purposes. None of the points of law identified in the originating notice of motion raise that question which the trial judge addressed at paras. 73 et seq. of his judgment. Indeed, he acknowledged that no submissions had been raised by the parties before him. It is not entirely clear if his conclusions in this respect fed into his ultimate decision to provide the remedy he did, but insofar as it may have, I would conclude that the trial judge fell into error by addressing a question that was not raised by the respondent.

41. In the light of my conclusions, I would therefore allow the appeal, and make the following orders:

> (a) to set aside the findings of the trial judge contained in the order dated the 28th July 2016, namely that the Minister erred in applying EU regulations, and that the appeals officer erred in law when delivering his written determination;
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> (b) to set aside the said order that the Minister pay to the plaintiff the sum of €124,431.00 together with interest thereon measured by the Court at 2% from the 20th April 2012 to the date of payment.

42. The Court will hear the parties in relation to the costs of the High Court proceedings and the costs of this appeal in the light of the Court's conclusions.