

BETWEEN

DAMIEN FAGAN

APPLICANT

AND

SEETEC EMPLOYMENT AND SKILLS IRELAND AND DEPARTMENT OF SOCIAL PROTECTION AND SOCIAL WELFARE APPEALS  
OFFICE AND THE MINISTER FOR SOCIAL PROTECTION

RESPONDENTS

**JUDGMENT of Ms. Justice Faherty delivered on the 26th day of January, 2018**

1. By order of Noonan J. dated 24th April, 2017, it was directed that the within application for leave be made on notice to the respondents.

2. As clarified by the applicant, in the within application the applicant seeks leave for judicial review to challenge the following decisions:

- (1) The decisions of the first respondent and second respondents dated 3rd July 2016 and 13th July, 2016, which, it is alleged, purported to force the applicant into signing a Personal Progression Plan ("PPP") in connection with a JobPath programme administered by the first respondent on behalf of the second respondent;
- (2) The decision of the second respondent dated 25th August, 2016, which reduced the applicant's Jobseeker's Allowance by a sum of €44 per week by reason of the applicant's refusal or failure to participate in or avail of an opportunity of participating in suitable education, training or development opportunity or a specified employment programme considered appropriate to his circumstances, in particular his failure to sign a PPP with the JobPath Programme;
- (3) The decision of the second respondent dated 15th September, 2016, disqualifying the applicant from receiving Jobseekers Allowance from 14th September, 2016, to 15th November, 2016;
- (4) The subsequent decision of the second respondent dated 26th September, 2016, refusing the applicant Supplementary Welfare Allowance;
- (5) The decision of the third respondent refusing the applicant the opportunity to record the appeals process which the applicant had initiated consequent on the decisions made by the second respondent, as referred to above.)

The leave application is grounded on the applicant's affidavit, sworn 20th April, 2017.

3. In their respective replying affidavits, Ms Joan Gordon and Mr. Rory Murphy, Chief Appeals Officer and Appeals Officer, respectively, with the third respondent aver that no specific decisions of the second to fourth respondents had been identified by the applicant. However, the Court is satisfied, having regard to the exhibits to the applicant's grounding affidavit, and to his submissions, that the aforementioned decisions are the decisions in respect of which the applicant seeks leave of the Court to judicially review.

4. The reliefs in respect of which leave is sought are set out in the statement of grounds as follows:

- "(i) An order of *certiorari* for the Respondents to inform the citizen of all the terms and conditions...required before [signing] any contract.
- (ii) An order of *certiorari* for the Respondents to inform the citizen of all the evidence and statements made against [him] before a decision is made and action is taken.
- (iii) An order of *mandamus* to the Respondents to fulfil their statutory and constitutional duties.
- (iv) An order of prohibition preventing the Respondents continuing this conduct when fulfilling their statutory and constitutional duties.
- (v) An order of damages and to return the property that was unlawfully taken."

**The factual backdrop**

5. The applicant is a jobseeker in receipt of Jobseekers Allowance. On 3rd July, 2016, he was referred to the first respondent by the second respondent for the purposes of his participation in a JobPath Programme. In her affidavit sworn 1st June, 2017, Ms. Mouna Prenty, CEO of the first respondent, describes the first respondent as "a private designated activity company" which was "awarded a contract to deliver the JobPath employment activation programme on behalf of the Department of Social Protection in 2015." She describes JobPath as a programme which caters mainly for the long term unemployed to assist them to secure and sustain full time paid employment or self employment.

6. On 4th July, 2016, the applicant was informed by the second respondent of this referral and that he had been allocated a "personal Employment Advisor" to assist him by way of job search support, access to work experience and further education/training opportunities. He was advised that a meeting was set with the first respondent for 13th July, 2016. He was also advised as follows:

"The purpose of the meeting is to explain how the personal advisory service, which we are calling JobPath, will work, to provide details of the supports available to you and to allow you to ask questions about the service.

You will meet representatives from Seetec Employment and Skills Ireland, a company contracted to deliver JobPath on

behalf of the Department of Social Protection. You will be invited to an individual meeting with an Employment Advisor from the company to discuss your employment objectives, to identify any supports needed to achieve your employment goal and to develop a [PPP]. As you know all jobseekers in receipt of a jobseeker payment are required to avail of any opportunity to improve their employment prospects and are expected to take up any offers of support including offers of group and individual meetings and any subsequent offers of training, education and development opportunities. Accordingly any refusal or failure, without good cause, to attend this information session or to subsequently participate in JobPath may result in a jobseeker payment being reduced."

7. The applicant duly attended the meeting with the first respondent. During the initial engagement on 13th July, 2016, a PPP was completed which the applicant was requested to sign. This PPP included details of the type of work sought by the applicant, his hours of availability and work/salary expectations. It is common case that when asked to sign the PPP the applicant refused. The basis of the applicant's refusal was because the PPP contained a statement that his jobseeker's payment may be reduced or stopped if he refused to cooperate with the first respondent in its efforts to arrange employment, training or education for him.
8. As submitted by the applicant in the course of the within hearing, his fundamental objection to signing the document was because the first respondent had no power to reduce or stop his social welfare payments, and that in any attempt to do so the first respondent would not be bound to the same statutory rules and procedures as bind the second to fourth respondents when deciding such matters. According to the applicant, before participating further in the JobPath Programme, he required clarification from the second respondent. Accordingly, on 14th July, 2016, he attended his local social welfare office in Navan where he advised officials of the second respondent that while he had no problem with the JobPath Programme and willingly participated in same, he was not prepared to sign away his rights to his to the first respondent. These concerns were set out in the applicant's hand written letter to the social welfare office.
9. On 20th July, 2016, the applicant attended at the offices of the first respondent in order to keep an appointment that was made the week before. He again refused to sign the PPP having not yet heard back from the second respondent. The applicant asserts that on foot of what transpired between himself and his advisor on 20th July, 2016, he had cause to lodge a complaint with another member of the first respondent's staff. This was duly advised to the second respondent by the applicant.
10. On 27th July, 2016, following a telephone call from a manager with the first respondent, the applicant again attended a meeting with the first respondent. There is dispute as to what transpired at this meeting. According to the affidavit sworn by Gareth Ward, business manager with the first respondent, he became aware that the applicant was recording the meeting on his mobile device. Mr. Ward avers that when he attempted to stop the applicant recording the meeting the applicant alleged that he was being assaulted by Mr. Ward. Mr. Ward avers that the applicant pushed at him a number of times. In a letter written by the applicant to the Chief Appeals Officer of the third respondent on 14th September, 2016, he alleged that he was assaulted by Mr. Ward. Both the applicant and Mr. Ward duly made complaint to An Garda Síochána.
11. On 27th July, 2016, Ms. Annette Hanway of the second respondent's department requested Mr. Ward to provide her with a non-engagement letter in relation to the applicant. By response dated 28th July, 2016, Mr. Ward confirmed that the applicant had refused to sign the PPP "as he believed Seetec would be in control of his benefits". In his affidavit, Mr. Ward avers that he attempted to explain to the applicant that this would not be the case.
12. According to the applicant, he reported what he alleged occurred on 27th July, 2016, at the first respondent's premises to the second respondent. On 5th August, 2016, Ms. Hanway wrote to the applicant inviting him to a meeting on 22nd August, 2016, which duly took place.
13. In a letter written on 25th August, 2016, to the applicant, Ms. Eimear Gormley of the second respondent, advised that the purpose of the meeting on 22nd August, 2016, was to provide him with advice on the benefits of the JobPath programme to which he had been assigned, to afford him an opportunity to seek or provide any relevant clarifications or further information relating to the programme, and to advise him on the provisions within the Social Welfare Act 2010 to reduce social welfare payments through the application of penalty rates and disqualifications for non- engagement with the programme.
14. On the same date, Ms. Hanway wrote to the applicant advising that his Jobseekers Allowance was being reduced by €44 per week because of his failure to sign a PPP with the JobPath programme.
15. On 15th September, 2016, the applicant's Jobseekers Allowance was stopped for a nine-week period for his failure to sign the PPP while on a Penalty Rate for twenty one days. He was advised of his right to appeal this decision.
16. By letter dated 14th September, 2016, the applicant appealed these two decisions to the offices of the third respondent. In his appeal submissions, he set out the history of the matter and emphasised that he had not refused to sign the PPP but rather took issue with "signing [his] personal rights over to the private company Seetec". He submitted, *inter alia*, that he was being subjected to the imposition of unfair terms in having to sign over control of his social welfare entitlements to the first respondent. He further made submissions as to his entitlement to fair procedures and to representation.
17. On 26th September, 2016, the second respondent refused the applicant's application for Supplementary Welfare Allowance on the basis that such payment was prohibited by the relevant legislation in the applicant's particular circumstances. This was appealed by the applicant on 29th September, 2016.
18. The applicant's Jobseekers Allowance appeals were assigned to Mr. Rory Murphy of the third respondent's office. There is dispute between the applicant and the second to fourth respondents as to the circumstances in which it was decided to afford the applicant an oral hearing. Suffice it to say that the applicant was afforded an oral hearing which was scheduled for 18th November, 2016, in the Ardboyne Hotel in Navan.
19. The appeal commenced on the said date but was duly suspended by Mr. Murphy when the applicant insisted that he had the right to record the proceedings.
20. In his affidavit sworn 31st May, 2017, Mr. Murphy avers that when the applicant informed him of his intention to make a live recording of the proceedings, he informed the applicant that it was the policy of the third respondent not to allow any party at appeal hearings to make live recordings. Mr. Murphy avers that the applicant insisted it was his right under the Constitution to record the meeting if he so wished. The applicant was then informed that if he persisted in asserting his right to record the appeal, the hearing would be suspended pursuant to Regulation 18 the Social Welfare (Appeals) Regulations, 1998 ("the 1998 Regulations").

21. On 21st November, 2016, Mr. Pat Nevin wrote to the applicant on behalf of the third respondent, outlining the legal basis of the third respondent's entitlement to determine the procedure at an appeal hearing and the entitlement to postpone or adjourn an oral appeal hearing as he or she may think fit. The letter also confirmed that Mr. Murphy was prepared to reconvene the appeal hearing provided that all parties agreed to and observed the policies of the third respondent in respect of oral hearings.

22. On 16th December, 2016, the applicant emailed a letter dated 13th December, 2016, to Mr. Murphy pointing out that he had a fundamental right to fair procedures and to a fair trial. He requested Mr. Murphy to refer his appeal to the High Court in accordance with s. 306 of the Social Welfare Consolidation Act 2005.

23. A reply was sent to the applicant on 21st December, 2017, advising as follows:

- It was not permissible under law to record proceedings at an oral hearing without the prior permission of all parties and that it was the policy of the third respondent that appellants are not permitted to record an appeal hearing.
- While the applicant's request that his appeal be referred to the High Court for decision was considered, it was not deemed appropriate to do so as the issue was a procedural matter and accordingly the Chief Appeals Officer was of the view that Mr. Murphy was acting in accordance with his legislative powers in refusing permission to record the hearing.
- The applicant was advised that in conducting an oral hearing the Appeals Officer will seek to ensure proceedings are as informal as possible and that the principles of fair procedures and natural justice are applied.
- The applicant was advised that if he wished to proceed with his appeal, an oral hearing could be reconvened but that he would not be permitted to record same. Alternatively, he was given the option of having his appeal determined without an oral hearing, based on the available documentary evidence.

24. On 16th February, 2017, the applicant emailed the third respondent enclosing a letter dated 15th February, 2017, again addressing the issues of the recording of appeal proceedings. The applicant referred, *inter alia*, to the provisions of s. 13(6) of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 ("the 1993 Act") which, it was asserted, gave the applicant "lawful authority to record any communication with any other party without consent as long as I am a part of that communication". The request to refer the matter to the High Court was repeated.

25. On 1st March, 2017, Ms Joan Gordon, Chief Appeals Officer, responded to the applicant, enclosing a copy of the 1998 Regulations and advising the applicant that the procedures at an oral appeal were for the Appeals Officer to determine, and that pursuant to Regulation 18(2) the Appeals Officer had power to postpone or adjourn an oral appeal hearing. It was not accepted that the Appeals Officer's refusal to allow the applicant to record the oral hearing impacted on his constitutional right to fair procedures. The applicant was advised that the 1993 Act was not relevant to the conduct of social welfare appeal hearings. He was further advised that the Chief Appeals Officer did not consider referral to the High Court to be appropriate or necessary. The applicant was again offered the option of continuing with the oral hearing (without recording) or a summary decision and he was asked to indicate by 16th March, 2017, if he wished to avail of either of those options.

26. The applicant responded on 15th March, 2017, outlining his options on how his appeal should proceed, namely that an oral hearing would be arranged no later than 31st March, 2017, at which all sides would be allowed to record if they so wished.

27. On 21st March, 2017, Ms. Gordon refused the applicant's request and requested him to note the options which had been outlined to him in the previous correspondence with a view to progressing and completing the appeal process relating to his Jobseekers Allowance and Supplementary Welfare Allowance appeals.

28. On 22nd March, 2017, the applicant confirmed his intention to proceed to seek a judicial review, which was duly initiated on 24th April, 2017.

### **The applicant's submissions**

29. The applicant asserts that the manner in which the respondents have dealt with him since 13th July, 2016, in particular the way in which the JobPath programme is administered, constitutes a violation of his constitutional and civil rights. He asserts a breach by the respondents of Articles 40.3.1, 40.4.1, 45.2.(i), 45.2.(iii) and 45.4.2 of the Constitution. Moreover, it is the applicant's case that the respondents are in breach of the protections afforded by the European Convention on Human Rights in particular by the manner in which they have dealt with the delays that have ensued since the applicant first raised his issues of concern on 13th July, 2016. On the issue of delay, the applicant cites the decision of the European Court of Human Rights in *Mocie v. France* (Application No. 46096/99). He relies on the decision of Edwards J. in *K.M. and D.G. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 234. He submits that the way in which respondents have transmitted his personal data, in effect between a public body, and a private body violates the provisions of the Data Protection Act 1988 and 2003 and, in this regard, he cites the decision of the European Court of Justice in Case C-201/14 *Bara v. ANAF*.

30. In the context of the requirement for fair procedures in the processing of his social welfare appeal, he cites *The State (Murphy) v. Kiely* [1984] I.R. 458, *Jama v. the Minister for Social Protection* [2011] IEHC 379 and *L.D. v. Minister for Social Protection* [2014] IEHC 641.

31. The applicant submits that the manner in which the first named respondent prevented him from gathering evidence on 27th July, 2016 of what is alleged was the first respondent's attempt to enforce an unlawful contract constituted an assault and thus a criminal offence under the Non-Fatal Offences Against the Person Act 1997. He alleges that following the first respondent's failure to force him into a private agreement, the second respondent was tasked with so doing and thereby failed to abide by its own rules and fair procedures and committed a criminal offence of coercion by the manner in which the second respondent reduced and ultimately stopped his social welfare payments which, it is alleged, was done without lawful authority or right. It is the applicant's contention that the second respondent's actions amount to an act of theft as defined in the Criminal Justice (Theft and Fraud Offences) Act 2001. It is further alleged that the third named respondent was tasked with preventing the actions of the first and second respondents from coming to light and that the third respondent used its own rules to dictate and prevent evidence being presented, thereby making the third respondent an accessory to the criminal acts of which the applicant complains. It is alleged that the fourth respondent, having sanctioned the JobPath programme and having set the guidelines for its implementation by the first, second and third respondents, is equally culpable.

### **The first respondent's submissions**

32. On behalf of the first respondent, it is submitted that it made no “decision” in respect of the applicant. As deposed to in Miss Prenty’s affidavit, the first respondent “has no decision making powers whatsoever as regards the payment, reduction or cessation of social welfare payments to the applicants or any clients of Seetec”. It is thus submitted that insofar as any such decision was made in respect of the applicant, no relief can lie against the first respondent. Counsel for the first respondent contends that insofar as it is suggested by the applicant that the Court should generally assess the operation of the JobPath policy, the operation of such a policy is an executive matter in respect of which the courts have no function. In this regard counsel cites *T.D. v. Minister for Education* [2001] 4 I.R. 259.

33. It is the first respondent’s further contention that insofar as the applicant could have any complaint against the first respondent that is amenable to judicial review, it could not conceivably arise after 27th July, 2016, given that that was the last occasion on which the first respondent had any engagement with the applicant or dealt with any aspect of his file save the issuing of a non-engagement email on 28th July, 2016, to the second respondent. Accordingly, in circumstances where the application for leave was made on 24th April, 2017, the first respondent contends that the leave application is made out of time within the meaning of O. 84 of the Rules of the Superior Court. It is submitted that the applicant has not applied for an extension of time in the statement of grounds or on affidavit, nor is there any explanation for the delay in seeking relief.

#### **The response of the second to fourth respondents**

34. The second to fourth respondents contend that the application for leave to apply for judicial review should be refused and the applicant’s proceedings dismissed on the following grounds:

1. The application is moot given that a full refund of the Jobseekers Allowance has been made to the applicant. No good reason has been proffered by the applicant at the within hearing as to why the proceedings should be progressed in the circumstances, or what might be achieved by the pursuance of same.
2. With particular reference to the allegations of criminal wrong doing, it is contended that the application contains unnecessary and unfounded scandalous content in circumstances where the applicant has not provided any factual basis whatsoever for the making of such allegations in his affidavits and exhibits. Accordingly the application is frivolous and vexatious. The court is urged to refuse and/or strike out the application for leave on this basis alone.
3. Without prejudice to the position that no appropriate matters for judicial review are pleaded, the application was not made within the requisite three month period under O. 84 RSC and/or no good and sufficient reason arises for extending the requisite period. It is submitted that although the applicant has sought to bring the proceedings in time by alluding, in his replying affidavit, to the dates of more recent correspondence from the third respondent, that is not a sufficient basis for the applicant to contend that his proceedings are within time. This is so in circumstances where the application itself arises from the adjournment of the applicant’s appeal hearing on 18th November, 2016, owing to his unfounded insistence on recording the said proceedings, which resulted in an impasse. It is submitted that the applicant has not explained his delay in bringing the within application or shown the circumstances which prevented him from applying for leave earlier.
4. The applicant has failed to exhaust all alternative remedies and/or the appeals process. Insofar as the applicant’s pleadings can be deciphered, it appears that many of the issues referred to are not appropriate matters for judicial review and should more appropriately be referred to other authorities such as the Office of the Ombudsman or An Garda Síochána. It is further submitted that until the applicant has exhausted the appeals process and received a decision from the third respondent, he is not in a position to contend that any constitutional unfairness arises on foot of the refusal to allow him to record his appeal hearing.
5. If the applicant is in fact seeking to impugn the third respondent’s refusal to allow him to record his appeal hearing on 18th November, 2016, it is submitted that the application for leave does not reach the “arguable case” threshold as set out by Finlay C.J. in *G. v. Director of Public Prosecutions* [1994] 1 I.R. 374. This is in circumstances where the Appeals Officer retains discretion under Regulation 18 of the 1998 Regulation to determine the procedure at an appeal hearing and also to postpone or adjourn the hearing as he/she deems fit. Furthermore, as evidenced in correspondence, and as deposed to in the respondents’ affidavits, the applicant was offered a written report of his appeal hearing and in the absence of the hearing progressing and a decision issuing (which in any event is moot) he cannot show any breach of his constitutional entitlement to a fair hearing.

#### **Considerations**

35. The first question which arises is whether the first respondent is correct in its contention that it made no decision in respect of the applicant which could be amenable to judicial review. The first respondent argues that it is not involved in any public decision-making function, nor is it exercising any power other than to report to the second and fourth respondents in relation to an individual’s engagement in the JobPath programme. It is contended that any such report, having regard to the appeal options available under the social welfare legislation, and the fact that other parties make the relevant decisions, is of insufficient consequence for the first respondent’s reporting function to be justiciable.

36. In his replying affidavit sworn 23rd June, 2017, in response to the affidavits sworn by Ms. Prenty and Mr. Ward, the applicant addresses the issue of the first respondent decision-making powers in the following terms:

“Seetec are fully aware by sending of the said reports that it outlined above to the Department of Social Protection this allows the Deciding Officer to put sanctions, apply more sanctions or lift sanctions on any client. Therefore Seetec has the sole [discretion] if and what sanctions are to be put in place based on what report Seetec sends to the Department of Social Protection Deciding Officer, who then applies the level of sanctions to the client based on the type of report they have received from Seetec.

Seetec are the ones that provide the evidence to why the sanctions should be put in place on the client. Therefore the Deciding Officer then places the level of sanctions on the client based on the face value of the evidence that Seetec has provided based on what has been outlined above.”

37. Based on the evidence which has been put before the Court, and having regard to the respective submissions of the parties, I am satisfied that the first respondent had no decision-making powers for the purposes of deciding whether or not the applicant’s Jobseekers Allowance would be reduced and/or suspended or stopped. Pursuant to the provisions of the relevant Social Welfare Acts, I am satisfied that such decision making rests solely with the second respondent. I am also satisfied that the first respondent has not

exercised a public function which is amenable to an application for leave for judicial review. In as much as the first respondent took an action which impacted on the applicant, it was to report to the second respondent on 28th July, 2016, that the applicant refused to sign the PPP. Thereafter, all relevant decisions regarding the applicant's social welfare entitlements and the later appeal processes were taken by the second and third respondents respectively. There is nothing in the papers before the Court to indicate that the first respondent, either of its own volition, or with the express or implied consent of the second respondent, engaged in any decision-making process in relation to the applicant's social welfare entitlements. To my mind, it is not sufficient for the applicant to seek to fix the first respondent with decision-making powers which it evidently does not possess solely by reference to what is contained in the PPP which the applicant was required to sign on 13th July, 2016. In all the circumstances, the applicants' claims vis-à-vis the first respondent are misconceived and the applicant has not established the requisite "arguable grounds" threshold for the purposes of seeking relief against the first respondent.

38. While the first respondent alleged delay on the part of the applicant in commencing the within application, the Court does not find it necessary to deal with this particular argument in light of the finding of the Court that the applicant has not met the requisite arguable grounds threshold in respect of the first respondent.

39. The next question which arises is whether the applicant's proceedings are effectively moot, as contended by the second to fourth respondents.

40. It is common case that on 10th May, 2017, and following upon the commencement of the leave application, Ms. Bernadette Fleming, a Deciding Officer with the second respondent, wrote to the applicant in the following terms:

"This is a revised decision which is made in accordance with s. 302 of the Social Welfare Consolidation Act 2005 and the decision is effective from 24/8/2016.

I am writing to you regarding a Penalty rate which was applied to your Jobseekers Allowance Claim from 24/08/2016 until 13/09/2016. It is now been decided this was applied to your claim erroneously. This penalty rate was followed by a period of Benefit Suspension from 14/09/2016 to 15/11/2016, this was also applied erroneously. I have calculated the amounts of payment due to you for these periods and will refund this to you through your current Social Welfare Payment.

Amount of refund is €1,824, ie 3 weeks of €44 plus 9 weeks of €188."

41. In her affidavit sworn 30th May, 2017, Ms. Margaret Cranney, Meath Area Manager with the second respondent, avers as follows:

"...the Applicant's file was reviewed leading to a revised decision pursuant to s. 301 – 302 of the Social Welfare Consolidation Act 2005. This reversed the Penalty Rate which was applied to his Jobseekers Allowance from 24th August 2016 until 13th September 2016 and disqualification for a nine-week period from same from 14th September 2016 until 15th November 2016, when he refused to sign a Personal Progression Plan with the First-named Respondent who currently holds the contract to run employment activation programmes on behalf of the Department of Social Protection. The Applicant was granted a full refund of €1,824 ... I am aware that after initially contacting this Office to state that he would not accept the refund as it might jeopardise his position, the Applicant had since collected this refund from his local Post Office in Blackcastle, Navan, Co. Meath."

42. Miss Cranney goes on to state:

"Having reviewed our internal Penalty Rate (PR) Circular in light of the original decision to apply same, it was noted that it did not specifically provide for the application of a Penalty Rate and subsequent nine-week disqualification period in a situation where someone refused to sign the Personal Progression Plan but indicated that they would still engage with a prescribed programme. It was also noted that the Applicant had participated in the JobPath programme up until in his refusal to sign the Personal Progression Plan with the First-named Respondent brought it to an end on 27th July, 2016 and a note on the file also indicated: *"Mr. Fagan stated that he has no problem in engaging with the JobPath programme, but refuses to sign his rights away with signing the PPP."* Having reviewed the file in light of the Applicant's submissions regarding this point, it was decided to apply a broader and more generous interpretation of the aforementioned ground given the circumstances of this particular case. Accordingly, a different Deciding Officer reversed the original decision/s."

43. In his replying affidavit of 23rd June, 2017, to the affidavits sworn by Miss Cranney, Mr. Murphy and Miss Gordon, the applicant describes the refund of €1,824 as "a tactic to have the Applicant's grounds for leave denied by the courts due to the fact that the Applicant would be receiving a full refund."

44. He avers as follows:

"The way that the Respondents had done the refund to the Applicant was designed to force acceptance of the refund by mixing the refund into the Applicant's weekly Social Welfare payment."

He states that he accepted the refund as otherwise he would have to "forego all weekly Social Welfare payments until 12th October, 2017 as the refund would be kept being mixed into the Applicant's weekly payment until the Applicant accepted the refund". He avers that "the Applicant would accept his weekly Social Welfare payment of €193 and produce the refund of €1,824 to the court on the 12th October and outline to the courts that in order for the Applicant to pay his weekly bills he was forced to sign for his weekly payment which had the refund in it has produced the money to the courts in order to show the refund has not been accepted by the Applicant in any shape or form."

45. The applicant further avers that contrary to Miss Cranney's contention that a different Deciding Officer reversed the original decisions, the reversal of the decision "was due to a court order made by the courts on 24th April, 2017 to appear in court" and "not due to a fresh look at the case as the Respondent's would like the court to believe".

46. At the end of the day, when one distils the various arguments canvassed by the applicant in this case, what is in issue essentially are the decisions made by the second respondent on 25th August, 2016, 15th September, 2016 and 26th September, 2016 and the decision made by the third respondent on 18th November, 2016, in the course of the appeals process, all of which directly concern the reduction/stoppage of applicant's Jobseekers Allowance and/or his claim for Supplementary Welfare Allowance. Albeit that the reliefs claimed in the statement of claim are framed in somewhat vague terms, the Court is satisfied that what is sought to be achieved by the applicant in the within application is the leave of the Court to judicially review by seeking orders of *certiorari* of what are alleged to be the unlawful decisions of the second respondent and third respondent whereby the applicant was denied his Jobseekers Allowance, Supplementary Welfare Allowance and, as he alleges, a proper, fair, effective and expeditious appeal process.

Effectively, the applicant also seeks leave to apply for an order directing the return of his monies by declaratory order or order of *mandamus*.

47. Irrespective of the merits of any of the arguments made by the applicant in aid of his leave application and which relate to the reduction/withdrawal of his Jobseekers Allowance, denial of Supplementary Welfare and the alleged unfair procedures in the appeal process, I am satisfied, in the first instance, that the return of the €1,824 to the applicant rendered his internal social welfare appeals moot. The refund, in turn, in this Court's opinion, renders the present leave application in its entirety moot. Notwithstanding the myriad arguments canvassed by the applicant, many of which strayed outside of the parameters of his individual case, the Court does not find that there is any basis upon which the applicant should be granted leave to challenge the actions of the second and third named respondents given that the issue of conflict no longer arises. Not only has the applicant had his deducted monies returned, he has been advised that the penalties and deductions were erroneously applied to him. In short, all that the applicant could have achieved were he to successfully challenge in any judicial review application the processes engaged in by the second or third respondents, has been achieved. The Court perceives no remaining issue of legal substance upon which leave might be granted. While the applicant takes issue with the decision of the second and fourth respondents in and about the handing over of aspects of the social welfare system to a private entity for it to administer, the actions of the second and fourth respondents in this regard are matters of Executive policy in respect of which this Court has no function, save where same impacts on the applicant's rights and freedoms. Given that the applicant has had his social welfare entitlements restored, I perceive no arguable basis upon which leave ought to be granted on the basis that the applicant's rights have been infringed. Accordingly, leave is hereby refused.

48. The Court notes the other complaints raised by the applicant, in particular, the allegation of assault in respect of which complaint was made to An Garda Síochána. However, this Court has no function in relation to such matters and the issue of an alleged assault cannot under any circumstances constitute a basis for leave to be granted to the applicant. Equally, such civil action as may be contemplated by the applicant as a result of an alleged incident of assault is not the business of this Court.

49. By reason of the foregoing findings, the Court does not deem it necessary to embark on a consideration of whether or not the leave application was brought within the requisite three month period from the date of the decisions of which the applicant complained, or consider the other arguments canvassed by the second to fourth respondents as to why leave should be refused.