THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 725 J.R.]

BETWEEN

SYED ZAIGHAM

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice Faherty delivered on the 6th day of October, 2017

1. The applicant seeks an order of *certiorari* quashing the decision of the respondent pursuant to s. 15 of the Irish Nationality and Citizenship Act 1956, as amended, ("the 1956 Act") refusing the grant of a certificate of naturalisation to the applicant, as notified to him on 21st September, 2015

Background

2. The applicant is a Pakistani national who arrived in Ireland in 2003 on a student visa. He has resided in the State on a Stamp 4/work to permit basis since 2007. He is currently employed by Tesco Ireland as a sales assistant. In 2010 he married a Pakistani national. His spouse resides in Pakistan together with the child of the marriage.

3. The applicant submitted an application for naturalisation as an Irish citizen on 18th June, 2013. In the Form 8 which the applicant completed for the purposes of his application he answered in the affirmative the query as to whether he had ever committed "any offences against the laws of Ireland or any overseas country".

4. He also answered in the affirmative the query as to whether he had "any convictions in the State or any other country (including traffic offences) …" He outlined that on 6th January, 2011, he was fined in Cork District Court for non-display of parking disc.

5. On 20th November, 2013, the respondent wrote to the applicant requesting him to confirm, *inter alia*, whether fines of:

"€300 – No Road Tax

€200 – Valid NCT DISC not Displayed

€250 – Driving without Driving Licence" which were imposed on the applicant at Limerick City Court on 10th June, 2010 had been paid. The applicant was asked to provide proof of payment and to submit an explanation for not disclosing those offences on his application form.

6. On 23rd November, 2013, the applicant advised the respondent that he omitted to mention the said offences by mistake and that the omission was not deliberate. He advised that he had searched for and found the receipts in respect of the final payments which he enclosed with his letter. He advised that this omission was the "biggest ever blunder" he had made in eleven years in the State. He explained that his failure to mention the offences was due to the fact that these offences had occurred some three years prior to his application. He went on to state that it had not been his intention to omit the 2010 offences from his application and again apologised for his oversight. Also enclosed with the letter was the receipt of payment of the 2011 fine which he had disclosed in his application.

7. On 7th July, 2014, the applicant furnished a copy of his Pakistani driving licence and international driving permit following request for same by the respondent. He also advised that he had understood (erroneously) that he could drive in the State with the type of driving licence he held. He advised the respondent that at all times he had held a policy of insurance. He explained that since the 2010 offences he had not driven in Ireland, albeit that he had tried to obtain a driving licence in the State but had failed the theory test on three occasions. It was further explained that he had sold his motor car. On 27th August, 2014, in response to a request from the respondent, the applicant supplied details of his vehicle registration but advised that he had no record of the sale of the car or any correspondence in relation to his driver theory tests. In his letter, the applicant again apologised for his blunder in not having disclosed the 2010 offences.

8. By letter dated 21st September, 2015, the applicant's application for naturalisation was refused. The letter advised as follows:

> "The Minister has considered your application under the provisions of the Irish Nationality and Citizenship Acts 1956 and 1986 as amended and has decided not to grant a certificate of naturalisation.
>
> Section 15 of the Irish Nationality and Citizenship Act, 1956 provides that the Minister may, in her absolute discretion, grant the application if satisfied that the applicant is of good character. The Minister, having considered your application, has decided not to grant you a certificate of naturalisation …
>
> There is no appeals process provided under this legislation. However, you should be aware that you may re-apply for the grant of a certificate of naturalisation at any time. When considering making such a re-application you should give due regard to the reasons for refusal given in the attached submission. Having said this, any future application will be considered taking into account all statutory and administrative conditions applicable at the time of application."

9. A copy of the submission which had been prepared for the respondent was enclosed with the letter. It reads as follows:

> "The Minister may in her absolute discretion grant a certificate of naturalisation, if satisfied that the applicant fulfils the statutory conditions specified in the Irish Nationality and Citizenship Act 1956, as amended.

> **Comments**: [The applicant] has come to the adverse attention of the Gardaí, see attached Garda report. He disclosed a non display of a parking disc fine dated 06/01/2011 but did not disclose on his application the offences dated 10/06/2010, see attached note and letter of explanation from the applicant. The resulting fines imposed on him by the court have been paid. He was employed as a chef … from June 2007 to June 2012. He is employed as a customer assistant by Tesco Ltd, Limerick since September, 2012.
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> **Recommendation**: Failure to disclose material information is an offence under Section 29 of [the 1956 Act]. As the applicant did not disclose the 2010 offence on his application form I cannot be satisfied that the applicant is of good character and therefore cannot recommend that the Minister grant a certificate of naturalisation in this case."

The submission was signed by three civil servants in the respondent's department.

Leave

10. On 21st December, 2015, leave was granted by Mac Eochaidh J. to seek judicial review. The grounds upon which relief was sought are:

> 1. The said refusal was unreasonable and/or disproportionate. Given that the applicant has lived, worked and paid taxes in Ireland for twelve years, and has had no convictions since 2010, when he was fined €750 for minor traffic offences, he is entitled to clear and specific reasons for the refusal of naturalisation, and the reasons should be substantial. It was unreasonable or disproportionate to refuse the applicant naturalisation in 2015 only on the basis that he had forgotten that he had been fined for minor road traffic offences in 2010, when making his application in 2013. Furthermore, he had apologised for this non-disclosure in 2013 when it was brought to his attention and has been granted permission to remain on Stamp 4 conditions without any difficulty on several occasions since 2010.
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> 2. The naturalisation application is particularly important to the applicant and the outcome significant. If he were an Irish citizen, he would meet the income threshold for family reunification provided for in the respondent's "Family Reunification Guidelines" and would likely be permitted to bring his spouse and his child to Ireland and enjoy family life here.
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> 3. The respondent erred in law in determining character only by reference to the alleged non disclosure of minor offences which dated from 2010.
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> 4. While the respondent's refusal letter indicates that the applicant can re-apply for a naturalisation certificate, it states that that he should have regard to the reasons for refusal. There is no indication that the non-disclosure in 2013 will ever be forgiven or that he might be considered of good character again in any future application.

11. A statement of opposition was filed on 5th July, 2016, denying, *inter alia*, any error of law or unreasonableness on the part of the respondent.

The Law

12. The 1956 Act, as amended, in the relevant part provides:

> "14.—Irish citizenship may be conferred on a non-national by means of a certificate of naturalisation granted by the Minister.
>
> 15.—Upon receipt of an application for a certificate of naturalisation, the Minister may, in his absolute discretion, grant the application, if satisfied that the applicant-
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> (a) (i) is of full age, or
> (ii) is a minor born in the State;
> (b) is of good character;
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> (c) has had a period of one year's continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years;
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> (d) intends in good faith to continue to reside in the State after naturalisation; and
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> (e) has, before a judge of the District Court in open court, in a citizenship ceremony or in such manner as the Minister, for special reasons, allows-
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> (i) made a declaration, in the prescribed manner, of fidelity to the nation and loyalty to the State, and
>
> (ii) undertaken to faithfully observe the laws of the State and respect its democratic values…
>
> (2) The conditions specified in paragraphs (a) to (e) of subsection (1) are referred to in this Act as conditions for naturalisation. "

The applicant's submissions

13. The applicant's primary contention is that his application was refused based on the good character requirement under s. 15 of the 1956 Act, the refusal relating not to the fact that he had committed offences in 2010, but rather on the basis that he had failed to disclose these offences when he submitted his naturalisation application. Counsel submits that the respondent erred in law and acted irrationally and unfairly in automatically treating the applicant's non-disclosure as a matter going to the applicant's character, without any assessment, consideration or determination of the applicant's explanation that the omission was an innocent error and was in no way a deliberate attempt to conceal this information from the respondent. That it was an innocent omission is, counsel submits, evidenced by the fact that the applicant did disclose a parking fine he received in 2011 as part of his application in circumstances where he was fully aware, from the contents of the application form, that there was a Garda check as part of the naturalisation process. In those circumstances there was absolutely no point in the applicant deliberately trying to hide his convictions from the respondent.

14. It is submitted that the respondent has not approached the assessment of the applicant's good character in the spirit or manner advocated by Mac Eochaidh J. in *G.K.N. v. Minister for Justice and Equality* [2014] IEHC 478. *G.K.N.* is authority for the proposition that just having criminal offences on ones record is not sufficient to make a finding that a person is not of good character – the context must be looked at. Moreover, as is made clear in *G.K.N.,* not all offences will warrant a finding that a person is not of good character. Nor is the assessment consistent with the approach adopted by Hogan J. in *Hussain v. Minister for Justice, Equality and Law Reform* [2011] IEHC 171, who opined that there cannot be an "exalted" expectation as to what constitutes good character. While it is accepted that "absolute discretion", as set out in s. 15 of the 1956 Act, suggests a wide margin of appreciation for the respondent, counsel for the applicant submits that the exercise of that discretion must be rational, proportionate and exercised fairly.

15. It is submitted that the respondent erred in law in failing to consider the applicant's explanation for his non-disclosure and whether it was accepted that this was an innocent oversight as opposed to a deliberate concealment. Only a finding of deliberate concealment could ground a finding of bad character, and there is no such finding in the respondent's decision.

16. It is also contended that the author of the recommendation misstated the law and effectively applied a "strict liability" test as to good character when she stated that "[f]ailure to disclose material information is an offence under section 29 of [the 1956 Act]". Counsel submits this is not what s. 29A of the 1956 Act provides. The section states as follows:

> "A person who knowingly or recklessly makes (whether in the State or outside the State) –
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> (a) a declaration under this Act, or
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> (b) a statement for the purposes of any application under this Act,
>
> that is false or misleading in any material respect shall be guilty of an offence and shall be liable –
>
> (i) on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months, or to both, or
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> (ii) on conviction on indictment to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or to both."

17. Accordingly, the misstatement in the recommendation simply serves to underline the erroneous approach adopted by the respondent and her officials and also shows that any new application that might be made by the applicant would be pointless.

18. Counsel also contends that even if the respondent has assessed the apology and the explanation proffered for the initial non-disclosure, a finding that some information deliberately may not have been disclosed at one point in the application should not automatically lead to a finding of "bad character", particularly where the information is not significant.

The respondent's submissions

19. In the first instance, counsel for the respondent submits that what the Court must have regard to is that the within proceedings are judicial review proceedings against a backdrop where the granting of a certificate of naturalisation is, in the words of Stewart J. in *M.A.D. v. Minister for Justice and Equality* [2015] IEHC 446 *"bestowed absolutely on the ministerial holder as part of her function in office"*, albeit it is acknowledged that the exercise of the absolute discretion provided for in the 1956 Act is subject to the rule of law.

20. Secondly, the present case is not about the nature of the 2010 offences which, it is accepted, were road traffic offences of a minor nature. What the decision relates to is the applicant's non-disclosure of those offences in circumstances where he had signed a statutory declaration wherein he "solemnly" and "sincerely" declared that the particulars given by him in his application were true.

21. Thirdly, it is not a question of the respondent making a finding of "bad character". In any event, no such finding is made in that regard by the respondent such as might give rise to a challenge. It is clear from the decision that the respondent approached the matter in accordance with the statutory provision in that she was not satisfied that the applicant was of good character.

22. Fourthly, contrary to the applicant's submission, no question of the proportionality of the respondent's decision arises in circumstances where "absolute discretion" is vested in the respondent, subject only to that discretion being exercised in accordance with the general principles of administrative law.

23. Fifthly, the Court cannot be invited by the applicant to intervene in a function reserved to the respondent with the aim of holding out for another result in the future.

24. There is no merit in the applicant's complaint that his explanation for the non-disclosure of the 2010 offences was not considered in circumstances where the recommendation to the respondent expressly refers to the applicant's letter of explanation.

25. It is settled law that the grant of a certificate of naturalisation is not a right but a privilege exercised by the respondent, as codified in legislation, albeit that the exercise of that discretion is subject to the rule of law. It is submitted that this is acknowledged by Hogan J. in *Hussain* (at paras. 16 – 17).

26. With respect to what may be considered a reasonable basis for finding that good character has not been satisfactorily demonstrated, counsel relies on the decision of Cooke J. in *Tabi v. Minister for Justice, Equality and Law Reform* [2010] IEHC 109. In that case Cooke J. found that four separate road traffic offences with fines totalling a sum of €475, which included a failure to display a disc and failure to produce insurance, could constitute evidence of a want of good character under the terms of the 1956 Act on which a refusal of naturalisation could be founded. He stated: *"[I]n circumstances where the Minister has explicitly based his decision upon the existence of four convictions, even for "minor offences", the existence of which is undisputed, it could not in any sense be said that the Minister has acted in a way which is arbitrary, capricious, partial or manifestly unfair."*

27. It is submitted that there is no basis for the applicant to rely on *G.K.N.* -the central issue in that case was that all relevant materials in respect of the convictions in issue in that case had not been before the Minister, unlike the situation in *Tabi* and indeed the present case.

28. Counsel submits that *Tabi*, *M.A.D.* and *A.A.v. Minister for Justice and Equality* [2016] IEHC 416 are authority for the proposition that the existence of minor offences may be sufficient for a finding that an applicant is not of good character. In view of this jurisprudence, albeit that the issue in the present case is not the minor offences for which the applicant was convicted in 2010, it

was reasonable for the respondent to find that she could not be satisfied as to the applicant's good character by reason of the proximate failure on his part to disclose such offences.

29. It is not correct to assert, as the applicant does, that "only a finding of deliberate concealment could constitute a finding of bad character". The relevant criterion is not that the Minister has to be satisfied that an applicant is not of bad character, but rather, that an applicant is of good character. Thus repeated emphasis in the applicant's written submissions on a purported finding of bad character is a fundamental misstatement of the law, and, furthermore, inaccurate in circumstances where the decisions specifically states that the respondent "cannot be satisfied that the applicant is of good character".

30. Moreover, contrary to any apprehension the applicant may have, the respondent did not analyse the 2010 offences. Rather what was under consideration was the applicant's failure to disclose them, as is clear from the decision. This, counsel submits, was a moral issue which accords with the approach of Hogan J. in *Hussain* as to whether or not it is something which could reasonably be found to reflect on the applicant's character. Thus, contrary to the applicant's submissions, the issue for the respondent did not revolve around having to consider whether the applicant knowingly or recklessly failed to disclose the offences. It is further submitted that the Court should not impose such a test on the respondent in the context of the reasonableness of the refusal decision.

31. Counsel also contends that the reference in the recommendation to the respondent that failure to disclose material information is an offence under s. 29A of the 1956 Act does not equate to a finding that the applicant is guilty of that offence. Rather, it is an indication that non-disclosure has been considered by the Oireachtas to be so serious as to warrant being made an offence and, in turn, is indicative of how non-disclosure is to be regarded when good character is being considered.

Considerations

32. By way of preliminary observation, there is no question in this case of the Court assessing the decision from a proportionality standpoint since what is in issue is the conferring of a privilege and not any right to which the applicant lays claim, albeit that the respondent's decision must accord with the rule of law.

33. In reliance on *Mallak v. Minister for Justice, Equality and Law Reform* [2012] IESC 59, the applicant asserts that the respondent must provide reasons for the refusal and operate fair procedures. That is undoubtedly a correct statement as to the law. In the present case, the respondent had set out a reason for the refusal. The Court will address the applicant's challenge to the reason for the refusal in due course. Before doing so, I will address the applicant's contention that the decision is unfair because the respondent does not address the explanation proffered by the applicant for the failure to include reference to the 2010 offences in his application for naturalisation.

34. As can be seen from the submission to the Minister which attached to the letter of refusal dated 21st September, 2015, under "Comments", reference is made to the applicant's "letter of explanation" for the omission of the 2010 offences from his application form. I am satisfied that this is a reference to the applicant's response dated 23rd November, 2014 to the queries posed by the respondent on 20th November, 2014. While the contents of the applicant's letter are not set out in any detail in the submission to the Minister there is, in my view, no basis on which the Court should come to the conclusion that the explanation was not considered, given the express reference to the applicant's letter in the submission. Accordingly, the issue for consideration in these proceedings is whether the refusal of the application for naturalisation was, in the particular circumstances, unreasonable or unfair and/or whether the respondent erred in law in determining character only by reference to the applicant's non disclosure in 2013 of what were minor offences committed in 2010 and/or in the manner in which the consideration of s.29A of the 1956 Act was addressed. A further matter for consideration is whether it behoved the respondent to engage more comprehensively in the decision with the applicant's explanation for his failure to make reference to the 2010 offences.

35. As provided for in the 1956 Act, one of the pre-conditions to the exercise of the respondent's "absolute discretion" to grant a certificate of naturalisation is that the respondent must be satisfied that an applicant "is of good character". This is a necessary statutory pre-condition to a grant of a certificate of naturalisation. In *A.B. v. Minister for Justice, Equality and Law Reform* [2009] IEHC 449, Cooke J. held, at para. 19, that *"[i]t is for the Minister to determine what criteria fall to be considered in assessing whether the condition as to "good character" is met".*

36. However, the exercise of this ministerial discretion is not immune from judicial review, as is made clear by Hogan J. in *Hussain v. Minister for Justice, Equality and Law Reform* [2011] IEHC 171:

> *"16. This brings us to the question of the "absolute" nature of the Minister's discretion under s.15. By describing the discretion as "absolute", the Oireachtas intended to emphasise that the grant by the Minister of a certificate of naturalisation "is the purely gratuitous conferring of a privilege in exercise of the sovereign authority of the State": Jiad v. Minister for Justice, Equality and Law Reform [2010] IEHC 187, per Cooke J..*
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> *17. This description nevertheless cannot mean, for example, that the Minister is freed from the obligations of adherence to the rule of law, which is the very "cornerstone of the Irish legal system": Maguire v. Ardagh [2002] IERSC 21, [2002] 1 I.R. 385 at 567, per Hardiman J. Nor can these words mean that the Minister is free to act in an autocratic and arbitrary fashion, since this would not only be consistent with the rule of law, but it would be at odds with the guarantee of democratic government contained in Article 5 of the Constitution.*
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> *18. Yet if the Minister could act entirely upon his own personal conceptions of what was entailed by good character on the basis that the Oireachtas had thereby vested him with an "absolute" discretion, the way would be opened for the imposition of private morality and arbitrary choice in the sphere of public law. In fairness, counsel for the Minister, Ms. Stack, fairly disclaimed any such contention, although she did argue that the words gave the maximum possible degree of leeway to the Minister in making an assessment of this kind.*
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> *19. In this regard it should also be recalled that s. 15 requires that the Minister must be "satisfied" as to an applicant's good character prior to the grant of a certificate of naturalisation. Phrases such as "if the Minister is of opinion" or "if the Minister is satisfied" of certain matters which predicate the exercise of statutory powers are, of course, a familiar feature of the statute book. It has been clear since the Supreme Court's decision in The State (Lynch) v. Cooney [1982] I.R. 337 (if not, indeed, earlier) that the existence of such subjectively worded statutory formulae notwithstanding, the Minister's assessment is nonetheless amenable to judicial review. Thus, the Minister's conclusion must, in the words of the judgment of O'Higgins C.J. delivering the judgment of the Court on the constitutional issue, be one "which is bona fide held and factually sustainable and not unreasonable": [1982] I.R. 337 at 361. This point was further amplified by Henchy J. in his concurring judgment on the non-constitutional issues when he said ([1982] I.R. 337 at 380-381):*

"It is to be presumed that when it conferred the power, Parliament intended the power to be exercised only in a manner that would be in conformity with the Constitution and within the limitations of the power as they are to be gathered from the statutory scheme or design. This means, amongst other things, not only that the power must be exercised in good faith but that the opinion or other subjective conclusion set as a pre-condition for the valid exercise of the power must be reached by a route that does not make the exercise unlawful - such as by misinterpreting the law or by misapplying it through taking into consideration irrelevant matters of fact or through ignoring (sic) irrelevant matters."

20. In the light, therefore, of the Supreme Court's conclusion in The State (Lynch) v. Cooney (and, indeed, a wealth of subsequent case-law to similar effect) the Minister's assessment of the good character issue is plainly subject to judicial review. It is equally plain that the Minister must direct himself properly in law by reference to the question of what "good character" actually means, so that, for example, if the Minister's decision could not stand if irrelevant considerations were taken into account: see, e.g., the judgment of Edwards J. in LGH v. Minister for Justice, Equality and Law Reform [2009] IEHC 78. In that case the Minister took into account the fact that the applicant's two adult sons had (relatively minor) convictions for motoring offences in concluding that the applicant was not of good character. As Edwards J. pointed out, this was an absurd non-sequitur, since the applicant could not in any way be held responsible for the conduct of her adult children.

21. Nevertheless, provided that the Minister's application of these principles to the facts of the case is reasonable, then his or her ultimate decision is probably unimpeachable in law. Returning now to the facts of the present case, the Minister would obviously be entitled to conclude that a person who was knowingly in possession of either forged notes or counterfeited items was not a person of "good character" for this purpose, since this shows a level of calculated dishonesty which is plainly at odds with ordinary standards of civic morality. The real question, however, is whether the Minister was entitled, without more, to reach this conclusion on the facts of the present case."

37. As to how good character is to be assessed, in *Hussain* Hogan J. had this to say:

"14. There is no settled or fixed interpretation of the words "good character". Applying the standard principle of noscitur a sociis, these words accordingly take their meaning according to the relevant statutory context and general objects of the legislation: see, e.g., the comments of Henchy J. in Dillon v. Minister for Posts and Telegraphs (Supreme Court, 3rd June, 1981). It is implicit from the general tenor of s. 15 that the section is designed to empower the Minister to grant naturalisation to persons who have resided here for an appreciable period of time and who intend to do so in the future. Furthermore, the fact that s. 15(e) requires the applicant to make a declaration - generally in open court before a judge of the District Court - of "fidelity to the nation and loyalty to the State" suggests that such a person must be prepared to make a public commitment that they will discharge ordinary civic duties and responsibilities, given that the these words are themselves borrowed directly from Article 9.2 of the Constitution.

15. It is against this background that the words "good character" must be understood and measured. Viewed in this statutory context, it means that the applicant's character and conduct must measure up to reasonable standards of civic responsibility as gauged by reference to contemporary values. The Minister cannot, for example, demand that applicants meet some exalted standard of behaviour which would not realistically be expected of their Irish counterparts. Nor can the Minister impose his or her own private standard of morality which is isolated from contemporary values."

38. In *G.K.N.*, Mac Eochaidh J. addressed the issue of good character and criminality in the following terms:

"The connection between character and criminality can only be established where the Minister has all relevant information in connection with the crime".

He went on to state:

"16. I agree with the comments of Lang J. in Hiri v Secretary of State for the Home Department [2014] ETHIC 256

> *"35… .In my judgment, in deciding whether an applicant for naturalisation meets the requirement that "he is of good character", for the purposes of the British Nationality Act 1981, the Defendant must consider all aspects of the applicant's character. The statutory test is not whether applicants have previous criminal convictions - it is much wider in scope than that. In principle, an applicant may be assessed as a person "of good character", for the purposes of the 1981 Act, even if he has a criminal conviction. Equally, he may not be assessed as a person "of good character" even if he does not have a criminal conviction. Plainly, criminal convictions are relevant to the assessment of character, but they are likely to vary greatly in significance, depending upon the nature of the offence and the length of time which has elapsed since its commission, as well as any pattern of repeat offending. So, in order to conduct a proper assessment, the Defendant ought to have regard to the outline facts of any offence and any mitigating factors. She ought also to have regard to the severity of the sentence, within the sentencing range, as this may be a valuable indicator of the gravity of the offending behaviour in the eyes of the sentencing court. Although I asked for details of the number of applications she has to process, none was provided. Her letter of 26th September 2012 stated that the majority of applicants do not have any unspent convictions. I was not provided with any evidence to support a view that it was too onerous for her to consider individual convictions.*
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> *36. The Defendant is entitled to adopt a policy on the way in which criminal convictions will normally be considered by her caseworkers, but it should not be applied mechanistically and inflexibly. There has to be a comprehensive assessment of each applicant's character, as an individual, which involves an exercise of judgment, not just ticking boxes on a form.""*

39. In the course of his submissions, counsel for the applicant contended that even if the Court were to find that the respondent factored in the 2010 offences in addition to the non-disclosure as a basis for the refusal, these offences, of themselves, would be insufficient to merit a finding of "bad character". It is said that this is so given the length of the applicant's residence in the State and the fact that there were no offences between 2010 and the refusal decision, save the minor matter of the failure to display a parking disc in 2011 which the applicant had disclosed. Thus, counsel submits that if the 2010 offences were taken into account, given their minor nature it could not be rendered reasonable on the respondent's part to make a finding that she could not be satisfied as to the applicant's good character based on those offences.

40. The first thing to be observed is that the respondent did not make a finding that the applicant was of "bad character". The appropriate question was addressed, namely whether the respondent could be satisfied that the applicant was of "good character". Secondly, I am satisfied from a reading of the decision that the existence of the 2010 offences was not the basis upon which the refusal of a certificate of naturalisation was made. The refusal rests squarely on the issue of the applicant's non-disclosure. It is axiomatic that non-disclosure of a relevant matter can be a factor to be taken into account in the context of "good character", particularly when the non-disclosure relates to something to which the applicant was specifically alerted on the application form, namely the existence of criminal convictions (including for traffic offences). This, no one disputes, would be a relevant consideration for the respondent in coming to a decision, given that a pre-condition of a grant naturalisation is that an applicant must be of "good character". It is of course well established that the mere existence of criminal convictions will not debar a grant of naturalisation- much will depend on the nature of the offences. It is not disputed that the offences in the present case were minor in nature and, without more, it would be difficult to conceive that they should debar an otherwise meritorious application. But the issue in this case is not about the 2010 offences of themselves; it relates to the issue of the applicant's non-disclosure and the obvious reliance placed on this by the respondent to refuse the application.

41. One of the arguments canvassed by the applicant is that it appears to be the case the author of the recommendation adopted a "strict liability" approach in order to make a finding that the applicant was not of good character, which is not the test provided for in s. 29A of the 1956 Act. Counsel submits that s.29A requires a finding that the applicant deliberately or recklessly made a declaration or statement under the 1956 Act that "is false or misleading" in a material respect. Yet in the applicant's case the respondent made no assessment as to whether the applicant's failure to disclose the 2010 offences was knowingly or recklessly engaged on. Counsel also contends that the erroneous approach on the part of the respondent was compounded by the respondent's failure to conduct any proper assessment, consideration or determination of the applicant's explanation for the omission, or of the fact that the applicant had voluntarily disclosed a parking fine from 2011 and was fully aware that his application would be subject to a Garda check. In such circumstances, counsel submits that the respondent erred in law by asking the wrong question; instead of asking if the applicant had deliberately or recklessly failed to disclose the information regarding his 2010 conviction, the respondent instead simply asked if the applicant had failed to disclose the information, without considering the applicant's explanation. It is further submitted that if it was the respondent's intent to consider the applicant's omission from the standpoint of s. 29A of 1956 Act, it was incumbent on her to consider and analyse the applicant's explanation for the omission. The applicant's case is that the decision is therefore bad in law for this reason and should be quashed.

42. I am not persuaded by the applicant's contention that the respondent was obliged to assess the applicant's failure on the basis of criteria set out in s.29 of the 1956 Act as to what constitutes an offence in law. Irrespective of s. 29A of the 1956 Act making it an offence for someone to knowingly or recklessly make a declaration that is false or misleading, or whether the applicant's declaration, as given in the application, constituted an offence (which was not for the respondent to determine), the respondent was reasonably entitled to regard the applicant's non-disclosure *simpliciter* as a factor to be taken account of when satisfying herself as to his "good character". To my mind, the obligation to disclose, in particular where it is specifically requested on the application form, comes within the range of "civic responsibility" referred to by Hogan J. in *Hussain*. Equally, *Hiri*, as approved of by Mac Eochaidh J. in *G.K.N.*, states that an applicant may not be assessed as a person of "good character" even where he or she does not have a criminal conviction.

43. It seems to me therefore that it was not unreasonable for the respondent to make a character assessment on the basis of the applicant's failure to disclose the 2010 offences even where s. 29 of the Act was somewhat misstated in the submission attached to the refusal decision.

44. I return now to the applicant's argument that his explanation for the failure to disclose the 2010 offences was not properly or adequately analysed or determined by the decision-maker. I am not persuaded that this argument has been made out. As I have already stated, the submission attached to the refusal letter expressly refers to the applicant's letter of explanation. Admittedly, his explanation is not repeated in the decision but that omission alone does not vitiate the decision, particularly when the explanation itself is relatively succinct, namely that the applicant failed to recollect the offences given that they had occurred three years prior to the naturalisation application. Furthermore, I am satisfied that the respondent had regard to other relevant factors going to the applicant's credit in arriving at her decision. The applicant's employment record in the State was noted, as was the fact that he had paid all fines imposed on him for the road traffic offences. At the end of the day however, the respondent was not satisfied as to the applicant's "good character" by reason of his failure to disclose the 2010 offences.

45. In all the circumstances of this case, I am not persuaded by the applicant's argument that it was unreasonable for the respondent to conclude that she could not be satisfied as to the applicant's "good character", particularly given the wide margin of discretion afforded to the respondent under the 1956 Act.

46. The applicant also challenges the refusal decision on the basis that it is unreasonable in circumstances where the letter of refusal advises that the applicant can re-apply for a certificate of naturalisation at any time giving "due regard to the reasons for refusal", but does not give the applicant any indication as to when the finding set out in the decision of 21st September, 2015 as to the applicant's "good character" will be abated, or no longer relied on by the respondent. The applicant's apprehension is that if the respondent has formed the view that the applicant is not of "good character" because he did not disclose the 2010 offences, then that view will prevail in any future application, thereby rendering any further application for naturalisation by the applicant entirely moot. Counsel submits that the applicant may always be faced with the finding made in the decision of 21st September, 2015, given that there is no indication in the decision that the respondent, in any new decision, would not have regard to the "good character" finding as made in the decision of 21st September, 2015. There is, counsel submits, nothing to suggest from the respondent's correspondence that the passage of time will abate the finding that the applicant is not of good character.

47. It is further submitted that the naturalisation decision is particularly important to the applicant and the outcome significant given that, if he was an Irish citizen, he would meet the income threshold for such a family unit pursuant to the respondent's Policy Document on Family Reunification and would likely be permitted to bring his spouse and child to Ireland to enjoy family life here.

48. The respondent contends that, contrary to the applicant's assertion, the door has not been closed on his making a further application for a certificate of naturalisation. Counsel submits that the decision makes it clear that the applicant can re-apply and, moreover, by directing the applicant to have regard to the reasons for the refusal the respondent implicitly invites him to re-apply. That being said, counsel emphasises that it is not the function of the respondent to advise or guide the applicant with regard to any future application.

49. I agree with the respondent's submission that it is not the function of the respondent to advise or guide the applicant with regard to any future application for a certificate of naturalisation. This is made clear by Stewart J. in A.A. She stated as follows:

> *"44. With regard to the applicant's fair procedures argument, the respondent has made clear that the reason for*

refusing the application is the nature of the offences that brought the applicant to the adverse attention of Gardaí. In communications with the applicant, the respondent has repeatedly suggested that the applicant "give due regard to the reasons for refusal given in the attached submission." In essence, the reasons for the refusal are the factors that might affect further applications for naturalisation. The applicant has clearly been informed of this and there has been no breach of fair procedures. As to how the applicant may make relevant and effective submissions on the nature of his offences, this is a matter for him to address in future applications. The respondent is reviewing an application for the grant of a privilege. She is not facilitating the exercise of rights. There is no requirement to provide the applicant with a point-by-point guide that will definitively lead him to the promised land of naturalisation."

50. In the within proceedings, in seeking to quash the decision, the applicant is effectively asking the Court to speculate as to what might occur if he were to reapply. This approach was also specifically rejected by Stewart J. in *A.A*:

"45. Furthermore, the applicant has also questioned the manner in which the respondent adopted and applied her policies in this case. As outlined by s. 15 of the 1956 Act and the Supreme Court in Mallak v. Minister for Justice, Equality and Law Reform [2012] IESC 59 , the respondent has an absolute reasoned discretion in regard to the grant of applications for naturalisation. If the Court were to begin meticulously dictating the content and nature of the policies that the respondent can implement in the exercise of her discretion, that would severely limit the "absolute" nature of that discretion. As outlined in O'H v. O'H 1990 2 IR 558, it is a long-standing principle of Irish law that words should be given their ordinary and natural meaning wherever possible. In Mallak, Fennelly J. made it clear that the phrase "absolute discretion" was not so all-encompassing as to empower the Minister to act in an arbitrary, capricious or autocratic fashion. However, a plain reading of the word "absolute" would suggest to this Court that the discretion is very broad. Thus, it falls to the applicant to prove that the respondent has acted in an arbitrary, capricious or autocratic fashion when applying the relevant policies and procedures to this application. The evidence put forward by the applicant is insufficient to displace this burden."

51. Given that the applicant has been told why his application has been refused, I am satisfied that he can re-apply in the knowledge that, to quote Fennelly J. in *Mallak*, (at para. 64) *"whatever reason the Minister had for refusing the certificate of naturalisation was not of such importance or such a permanent character as to deprive him of hope that a future application would be successful."*

Summary
52. In all the circumstances of this case, the relief sought in the within proceedings is denied.