

THE HIGH COURT

[Record No. 2022/529 SS]

CONSULTATIVE CASE STATED

IN THE MATTER OF SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS)
ACT, 1961 (AS AMENDED)

AND

IN THE MATTER OF THE FINES (PAYMENT AND RECOVERY) ACT 2014

AND

IN THE MATTER OF AN ENFORCEMENT PROCESS CONSEQUENT ON PROCEEDINGS

Between:

DPP (AT THE SUIT OF GARDA PAUL HOWARD)

PROSECUTOR

V

LISA MURPHY

DEFENDANT/FINED PERSON

AND

THE COURTS SERVICE

NOTICE PARTY

**DECISION of Ms Justice Marguerite Bolger delivered on the 13th day of March
2024**

1. This is a case stated by District Judge Patricia Harney of the District Court pursuant to s. 52 of the Courts (Supplemental Provisions) Act 1961. The District Judge found the following facts:

- (i) The Accused was convicted in the District Court of offences under the Road Traffic Acts and fines were imposed by way of penalty.
- (ii) The said fines were not paid within the time allowed therefor or at all.
- (iii) That the summonses giving rise to the aforementioned convictions had on their face an address for the Accused as 27 The Hawthorns, Kinnegad, Co. Westmeath.

- (iv) That the said summonses were served personally on the Accused at Fort Haven, Sligo on the 26th of November, 2016.
- (v) That in the course of a hearing in relation to the said prosecutions on the 9th of January, 2017 the Court was informed by the solicitor acting for the Accused that the Accused's correct address and her place of residence was 49 Fort Haven, Coolaney, Co. Sligo.
- (vi) That subsequently a notice in writing pursuant to the provisions of Section 7(4) of The Fines (Payment and Recovery) Act 2014 requiring the Accused to appear before the court on a specified date was issued.
- (vii) That a Declaration of Service of the said notice in writing was placed before the Court indicating that the said notice had been served upon the Accused by ordinary post and that the address specified thereon was 27 Hawthorns, Kinnegad. Co. Westmeath.
- (viii) The Accused failed to appear before the court on the date appointed and in the said notice.

Based on those facts, the District Judge requires the opinion of this Court to the following questions:

- i. Can I find and deem that the Accused has been served with a Notice in writing issued pursuant to the provisions of Section 7 of The Fines (Payment and Recovery) Act 2014 on foot of a Declaration of Service by ordinary post where the address specified in the Notice and Declaration of Service is not the address at which the Accused ordinarily resides absent an alternative address for service having been provided or a direction from the Court regarding service?
- ii. Can I find that the Notice in writing issued in this case pursuant to the provisions of Section 7 of The Fines (Payment and Recovery) Act 2014 was properly and duly served upon the accused?

Statutory provisions

- 2.** Section 7 of the Fines (Payment and Recovery) Act 2014 provide as follows:

"7. (1) Subject to subsections (3) and (5), where a fined person fails to pay the fine by the due date for payment, the court shall, at the sitting of the court on the date specified in the notice concerned under subsection (4) served on the person (unless the person has paid the fine on or before that date)—

- (a) subject to subsection (2), make a recovery order,*
- (b) make an attachment order, or*
- (c) make a community service order if section 4 of the Act of 1983 has been complied with.*

(2) The court shall not make a recovery order in respect of the fined person (not being a body corporate) unless the fine or, as may be appropriate, that part of the fine that remains unpaid—

- (a) exceeds such amount greater than €500 as may be prescribed, or*
- (b) if no such amount stands prescribed, exceeds €500.*

(3) Where a fined person who has exercised his or her option under section 6 (1)(a)(ii) to pay the fine by instalments fails to pay any such instalment (in this subsection referred to as the "relevant instalment") by the due date for payment, it is not necessary for the court to take action under this section in respect of the failure unless—

- (a) there are 2 other failures by the fined person to pay that fine by instalments by the due date for payment, or*
- (b) the relevant instalment has still not been paid when all other instalments have been paid.*

(4) The appropriate court official concerned shall, by notice in writing served on the fined person, require the person to appear before the court on the date and at the time specified in the notice, and to provide to the court a statement in writing of his or her financial circumstances.

(5) (a) The court shall, after considering a statement provided to it pursuant to subsection (4) in deciding what order to make under subsection (1)—

- (i) first, give consideration to making an attachment order in respect of the fined person, and*
- (ii) second, if it is satisfied that it would not be appropriate for it to make an attachment order in respect of the fined person, give consideration to making, subject to subsection (2), a recovery order or community service order in respect of the fined person.*

(b) Where the court is satisfied that it would not be appropriate for it to make an attachment order, recovery order or community service order in respect of the fined

person, it may commit the person to prison in accordance with section 2 or 2A of the Act of 1986.

(6) A notice under subsection (4) shall—

(a) inform the fined person of the orders that the court may make under subsection (1) in respect of the person and of the court's power under subsection (5) to commit the person to prison, and

(b) state that a warrant may be issued for the arrest of the fined person if he or she fails to appear before the court as required by the notice.

(7) Where a fined person fails, without reasonable excuse, to appear before the court as required by a notice under subsection (4), the court shall, if satisfied that the notice was served on the person—

(a) issue a warrant for the arrest of the person, or

(b) if the court thinks it appropriate in all the circumstances, cause a further notice under subsection (4) to be served on the person specifying a new date for the person to appear before the court, and to provide it with the statement referred to in that subsection.

(8) A fined person arrested under subsection (7)(a) shall be brought before the next sitting of the court.

(9) A fined person who knowingly or recklessly makes a statement, in purported compliance with a notice under subsection (4), that is false or misleading in any material respect shall be guilty of an offence and shall be liable, on summary conviction, to a class B fine or imprisonment for a term not exceeding 6 months, or both.

(10) Rules of court shall prescribe the form of a statement referred to in subsection (4)."

Section 21(1) of the Act provides for service of the s. 7(4) notice and states:

"21. (1) A notice under this Act required to be served on a person shall be addressed to the person by name, and may be so served in one of the following ways:

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or

(c) by sending it by post to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to the address."

Order 23, rule 8 of the District Court Rules, S.I. No 19 of 2016 provides:-

"8. (1) Where a fine has been imposed by the Court, there shall be issued by or on behalf of the Clerk a notice in the Form 23.2 Schedule B to the fined person stating that a fine has been imposed, the amount of the fine and the time within which the fine is to be paid. The notice shall inform the fined person of the option to pay by a single payment or by instalments, where allowed, in accordance with section 6 of the 2014 Act and of the consequences of failure to pay the fine by the due date for payment or, as the case may be, failure to pay a relevant instalment in the circumstances mentioned in section 7(3) of the 2014 Act, in accordance with section 7 of the 2014 Act. Any such notice shall be served by ordinary post on the person convicted at the address at which the person convicted ordinarily resides or, in a case in which an address for service has been furnished, at that address, unless the Court has otherwise directed.

(2) The failure to comply with the provisions of this rule, or any omission from or misstatement in the notice shall not in any way prejudice any subsequent proceedings in relation to the fine, or the issue by the Court of any warrant, save by order of the Court."

The s. 7(4) notice

3. Central to this case stated is the fact that the defendant never received a copy of the s. 7(4) notice that was served by ordinary post at her previous address. As well as summoning a fined person to court, this notice sets out the options that are open to them and advises them of the consequences of certain actions or inactions. The notice contains the following information:-

- (i) It advised the defendant *that "[f]ailure by you to appear in Court as directed by this notice may result in a warrant for your arrest being issued by the Court".*
- (ii) It advised the defendant that she was required to appear before the sitting of the District Court in Limerick City on 12 March 2020 at 14.00 *"and to provide the Court with a statement in writing of your financial circumstances."*
- (iii) It furnished the defendant with a blank statement of financial circumstances and advised her that she was required to complete it and bring it with her to court on the court date.
- (iv) It advised the defendant of the different possibilities that the 2004 Act provides for on non-payment of the fines, namely an attachment of earnings order, a recovery order, a community service order for a maximum of 100 hours up to a cumulative maximum of 240 hours community service under the supervision of the Probation Service or an order committing the fined person to a term of imprisonment.
- (v) It advised the defendant that payment of the fine can be made before the date of court and that, if it was paid more than fourteen days before the date of court, that she need not attend court.
- (vi) It advised the defendant that payment cannot be accepted unless accompanied by this notice.
- (vii) It advised the defendant to have in court on the date *"all information and relevant documents concerning your financial circumstances as so defined in section 2 of the Fines (Payment and Recovery) Act 2014, which would include, but are not limited to the following..."* and sets out documents in relation to income, assets, liabilities, credits and outgoings.
- (viii) It warned the defendant that, if they knowingly or recklessly make a statement in relation to their or another person's financial circumstances that is false or misleading in any material respect to the court discharging its function under s. 5(2) of the 2014 Act, or, if they fail or refuse to comply with this notice, they shall be guilty of an offence and shall be liable upon

summary conviction to a Class B fine, being a fine not exceeding €4,000 or imprisonment for a term not exceeding six months or both.

4. The form includes a statutory declaration which was filled out and sworn by an employee of a company called Bill Post, who had been authorised to serve the document on behalf of the appropriate court official. That deponent solemnly and sincerely declared that she duly served the notice by sending a copy of it by ordinary prepaid post in an envelope addressed to the defendant at the address in Kinnegad, which address was described in the statutory declaration as "*the address at which the fined person ordinarily resides*".

Submissions of the parties

5. The defendant contends that the s. 7(4) notice was not served in accordance with the provisions of the 2014 Act and that the procedure, whereby a declaration of service is sworn in support of purported service effected by them pursuant to the provisions of ss. 21(1)(b) and (c) of the 2014 Act, in circumstances where they are not in a position to truly state a belief that a particular individual ordinarily resides, as of the date of service, at an address, is not in accordance with the Act. The defendant emphasises the need to strictly follow penal legislation which they say the 2014 Act is and highlights other legislation, including the Immigration Act 1999 which, unlike the 2014 Act, expressly allows for a statutory presumption that a person's address is whatever it is stated to be.

6. The Courts Service, who were joined as a notice party to these proceedings and acted as *legitimus contradictor* say that the issues raised by the case stated are now moot as the appearance of the defendant before the District Court cured any defects in the service of the s. 7(4) notice and that whatever information was not provided to the defendant by virtue of not being served with the notice, will be provided to her by the District Judge in the discharge of her duty to ensure a fair hearing. They emphasised the administrative nature of the role of the Courts Service as confirmed by Phelan J. in *Stokes v. The Courts & ors* [2023] IEHC 602. They said the District Judge had jurisdiction and that the enforcement proceedings against the defendant should proceed and the deprivation of her liberty by virtue of the execution of a bench warrant against her could not stymie enforcement proceedings against her.

Discussion

(1) The defendant's attendance at court

7. The facts, as found by the District Judge, establish that the District Judge was informed by the defendant's solicitor on the first occasion the matter came before the court on 9 January 2017, that the defendant was then ordinarily resident at Fort Haven in County Sligo and not at the address on the summons in Kinnegad, County Westmeath. The summons, pursuant to which the defendant attended court on that occasion, confirmed that she had been served at that Sligo address and not at the address on the summons. The matter was back before the court on 20 March 2017 and there was no issue with the defendant's attendance. It came before the District Court again on 12 March 2020 but the defendant did not attend. She had been purportedly advised of that date by the s. 7(4) notice but she did not receive it as it was served on the Kinnegad address. Neither did she attend on the adjourned date of 6 October 2017, at which time a bench warrant was issued for her arrest which was executed on 13 May 2021. The defendant posted bail, was released and appeared before the District Court on each subsequent adjourned date.

(2) Mootness

8. The questions asked of this Court by the District Judge go to whether the provisions of the 2014 Act and the related District Court Rules, have been properly applied, including by the system put in place by the Courts Service for the service of a s. 7(4) notice on a fined person. This process summons a fined person to attend before a court and furnishes them with important information in relation to what they need to do, what they should bring with them to court and the consequences of not attending. The suggestion by the Courts Service that any defect in serving the information contained in the s. 7(4) notice, which service is required by a statutory provision, can and was cured by the defendant being brought before the court (by way of a bench warrant) does not address the information deficit they will have suffered not being served with the notice as the legislation requires. Neither does the fact that the District Judge may be able to furnish some of that information when the defendant comes back before them for hearing. It will be too late by then to furnish the defendant with the option (set out at para. 4(v) above) included in the s. 7(4) notice to pay the fine and avoid any need to attend court.

9. In addition, I note that the defendant's attendance before the court was procured, not by service of the notice as required by ss. 7(4) and 21 of the 2014 Act, but by the execution of a bench warrant, with the resulting deprivation of her liberty. As a result, the defendant was deprived of her constitutional right to liberty, which would not have happened

had she been served with the s. 7(4) notice as that would have allowed her to attend court on the date as advised in the notice, as she had previously attended when informed of the need to do so.

10. Section 21(1) of the Act provides for service of the important s. 7(4) notice and their application may engage a fined person's constitutional right to liberty, as it did in relation to this defendant. There has been a failure to properly apply the statutory provisions which resulted in the defendant's loss of liberty. The situation is similar, though not identical, to that which arose in *Power v. PIAB* [2014] IEHC 480 where O'Malley J. found that a PIAB authorisation had not been served in accordance with s. 79 of the PIAB Act 2003 (which contained a similar provision on delivery to a person's address as is at issue here) where it was sent by the tracked mail service DX. O'Malley J. held, at para. 70:

"Having regard to the authorities on statutory interpretation referred to above, I am of the opinion that the purpose of the section is to ensure that a person who is entitled to an authorisation to issue court proceedings for personal injuries receives it. Given that a limitation period begins to run on the date of issue of the authorisation, and given the potentially serious consequences of failure to meet the deadline thereby imposed, certainty as to the receipt is of considerable importance. The constitutional right of access to the courts is in issue."

The approach of O'Malley J. is consistent with what Hogan J. referred to in *MM (Georgia) v Minister for Justice, Equality and Law Reform* [2011] IEHC 529 as "*contemporary Supreme Court authority which stresses the importance of adhering to such procedural requirements in cases with implications for personal rights*" (at para. 18).

11. The questions raised by the District Judge are not moot.

(3) Compliance with the 2014 Act

12. The District Court has no inherent jurisdiction and its jurisdiction to deal with this defendant and the non-payment of her fines comes from the 2014 Act. The long title of the Act sets out that it is to provide for a system to ensure the payment of fines imposed on persons convicted of offences including to allow the court to take account of their financial circumstances, to provide for community services orders and to provide for imprisonment in certain and specified circumstances. The procedure provided for in the Act must be complied with as the Act is, in part, a penal statute and must therefore be strictly and carefully construed. The service of the s. 7(4) notice is not a mere aside but is a significant and

fundamental part of the process that the Act is designed to put in place. Section 21 of the 2014 Act sets out how service of the important s.7(4) notice must be affected and those statutory requirements must be complied with. The purpose of providing the information in the s. 7(4) notice to a defendant is not just to ensure that they attend at court, but also to give them the information that goes to the heart of the purpose of the 2014 Act, which information and options may assist them in addressing the non-payment of their fine in a way that will avoid the imposition of a prison sentence.

13. The mandatory requirements of s. 21 also reflect the importance of a defendant receiving the information contained in a s. 7(4) notice in requiring service to be affected either personally or by leaving it at or posting it to the address where they ordinarily reside, or the address furnished for service. The significance of affecting service in the manner as required by the Act is reflected in the s. 7(4) notice requiring not just a declaration, but a statutory declaration, which transcribes one of the service options provided for by s. 21, *i.e.* service at the address at which the fined person ordinarily resides. The deponent made the solemn declaration required by the s. 7(4) notice on behalf of the appropriate court official that the notice was being sent to the Kinnegad address which she said she conscientiously believed to be the address at which the fined person ordinarily resides. There is nothing in her declaration to explain the basis for her stated solemn declaration that she said she made conscientiously and believing it to be true. She does not identify the contents of the summons (which includes the Kinnegad address) as the basis for her belief. There is nothing to suggest she did or did not know that the defendant had previously been served at her Sligo address or that the District Judge had noted the Sligo address as where she resided as of 9 January 2017.

14. That statutory declaration is incorrect and is also silent on the grounds of it being made. There is, quite simply, no basis on which the District Judge or this Court could, directly or indirectly, approve of it or its content. There is no basis on which the District Judge could deem the defendant was served with the s. 7(4) notice on foot of that statutory declaration, or that the notice was properly and duly served on the defendant.

Answer

15. For the reasons set out above, I answer the questions on which the opinion of this Court is required by the District Judge as follows:-

- i. Can I find and deem that the Accused has been served with a Notice in writing issued pursuant to the provisions of Section 7 of The Fines (Payment and Recovery) Act 2014 on foot of a Declaration of Service by ordinary post where the address specified in the Notice and Declaration of Service is not the address at which the Accused ordinarily resides absent an alternative address for service having been provided or a direction from the Court regarding service? No.
- ii. Can I find that the Notice in writing issued in this case pursuant to the provisions of Section 7 of The Fines (Payment and Recovery) Act 2014 was properly and duly served upon the accused? No.

Counsel for the defendant: Feichín McDonagh SC, Maria Brosnan BL

Counsel for the prosecutor: Lily Buckley BL

Counsel for the notice party: Eoghan Cole SC, Alison Fynes BL