

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 113
RECORD NO: 990/2020 JR

BETWEEN:

GARY CULLY

APPLICANT

-AND-

**THE MINISTER FOR TRANSPORT, TOURISM AND SPORT AND IRELAND AND THE
ATTORNEY GENERAL**

RESPONDENTS

Judgment of Mr Justice Cian Ferriter delivered this 24th day of February 2022

Introduction

1. In these proceedings, the applicant seeks an order of *certiorari* quashing the endorsement of three penalty points, and his disqualification from driving for a period of six months imposed on him with effect from 9th November 2020, on the entry in the driving licence record relating to him. The applicant also seeks a declaration that "*s. 37 of the Road Traffic Act, 2010, as amended, is repugnant to the Constitution having regard to the provisions of Bunreacht na hÉireann and especially the guarantee to a trial in due course of law contained in Article 38.1 and the right to be held equally before the law and to fair procedures in Articles 40.1 and 40.3.1 respectively*".

Background

2. The background to the matter is as follows. The applicant was apprehended by Garda Cyril Page on 27th September 2020 on the N18 dual carriageway near Bunratty, County Clare. Garda Page has sworn an affidavit in these proceedings in which he says that he was on duty conducting speed detections on that date near Bunratty. He avers that, while using a handheld laser speed detection device, he detected a vehicle, which was the applicant's vehicle, travelling at a speed of 143km per hour, which was 43km per hour in excess of the applicable speed limit of 100km per hour for that section of the road. He avers that he subsequently stopped the vehicle and spoke to the applicant, who gave him his name, address and date of birth. Garda Page avers that he informed the applicant that the reason for stopping him was because he was travelling at 143km per hour in a 100km per hour zone. Garda Page informed the applicant that he would receive a fixed charge notice in the post and took the applicant's details in his notebook.
3. Garda Page avers (and the applicant does not deny) that the applicant did not seek to dispute the speed at which he was travelling nor did he advance any extenuating circumstances for his speed.
4. Following the incident, the applicant was issued and served with a "Fixed Charge Notice" dated 2nd October 2020 ("the fixed charge notice" or "FCN") pursuant to section 36 Road Traffic Act 2010 as amended in respect of the alleged speeding offence committed on 27th September 2020 on the N18 at Bunratty West County Clare namely that he was driving at a speed of 143 km when the speed limit was 100km.
5. The fixed charge notice informed him that he could pay a fixed charge of €80 within a period of 28 days, or €120 within a further period of 28 days and that he would not be

prosecuted if he made the correct payment during either of those periods. The notice further informed him that if he paid the penalty within the specified periods, 3 penalty points would be endorsed on his driving licence.

6. The notice also informed him that if he did not pay the fixed charge and if he was convicted of the alleged offence, 5 penalty points would be endorsed on his licence.
7. The applicant paid the €80 penalty on 5th October 2020 and 3 penalty points were endorsed on his driving licence.
8. As the applicant was already on 5 penalty points, and was a novice driver, the incurrance of the 3 extra penalty points arising out of the speeding offence of 27th September 2020 resulted in him receiving a "notification of disqualification caused by penalty points" dated 12th October 2020 ("the disqualification notice") notifying him that, as he had exceeded the maximum number of penalty points allowed for a licence holder of his type of full licence, he would be disqualified from driving for a period of 6 months commencing 9th November 2020.

The legislative context

9. Part 3 of the Road Traffic Act, 2010, as amended, is headed "*Fixed Charge Offences and Notice*".
10. Section 34 provides that Part 3 applies in respect of "*fixed charge offences*", which are thereafter defined.
11. Section 35(1) provides for a member of An Garda Síochána to serve or cause to be served a fixed charge notice on a person where the member has reasonable grounds for believing that a fixed charge offence is being or has been committed by a person. Section 35(2) provides that:

"A prosecution in respect of a fixed charge offence shall not be instituted unless a fixed charge notice in respect of the alleged offence has been served on the person concerned under this section and the person fails to pay the fixed charge in accordance with the notice."
12. Section 36 sets out the matters which shall be contained in a fixed charge notice.
13. Section 37 ("s.37") is described in its marginal note as "*Payment of fixed charge*". It provides as follows:
 - (1) *Where a notice is served or affixed under section 35(1) or served under section 35(9)—*
 - (a) *a person or the person to whom the notice applies may, during either 28 day period specified in the notice and in accordance with the notice, make a payment specified in the notice,*
 - (b) *the payment—*

(i) *may be received in accordance with the notice and the person receiving the payment may issue a receipt for it, and*

(ii) *shall be paid into or disposed of for the benefit of the Exchequer as the Minister for Public Expenditure and Reform directs,*

and shall not be recoverable by the person who made it,

(c) *a prosecution in respect of the alleged offence to which the notice relates shall not be instituted during either 28 day period specified in the notice or, if a payment so specified is made during either such period in accordance with the notice, at all,*

(d) *in case the notice is served or affixed under section 35(1)(b) and a payment aforesaid in accordance with the notice is so made, the registered owner need not comply with section 35(6), and*

(e) *if the registered owner complies with section 35(6), the payment aforesaid need not be made by the registered owner and a prosecution of the registered owner in respect of that alleged offence shall not be initiated.*

(2) *Subject to section 44, the payment of a fixed charge shall not be accepted after the expiration of the second 28 day period specified in the fixed charge notice.*

14. It will be seen that s.37 gives an option (in s. 37(1)(a)) to make a payment specified in the notice and then provides (in s. 37(1)(c)) that a prosecution in respect of the alleged offence to which the notice relates shall not be instituted at all if a payment is made in accordance with the notice.
15. Section 44 addresses a situation where a member of An Garda Síochána serves a person with a summons in respect of a fixed charge offence (i.e. no payment is made within either of the 28 day periods referenced in the notice) and mandates that the member shall, in those circumstances, serve or cause to be served a notice in accordance with section 44. This section 44 notice must be served with the summons in respect of the fixed charge offence and must contain a series of specified information including a statement to the effect that the person may make a payment of a specified amount not later than seven days before the date specified in the summons and, if they do so, *"proceedings in respect of the alleged offence will be discontinued"* (s. 44(9)).
16. It should further be noted that s. 2 of the Road Traffic Act, 2002, as amended, (headed *"Endorsement of penalty points"*) is the statutory provision which provides for the level of penalty points to apply when a person is convicted of a penalty point offence (the relevant schedule of applicable penalty points being specified in the first schedule to that Act).
17. It is common case here that had the applicant elected to proceed to contest that he was guilty of a speeding offence and was convicted of that offence following a hearing in the District Court (or in the Circuit Court following a *de novo* appeal from any conviction to in the District Court), he would have been liable on conviction to five penalty points.

18. Quite apart from the provisions of the Road Traffic Acts set out above, An Garda Síochána operate an extra statutory scheme whereby an application may be made by a person receiving a fixed charge notice to have the notice cancelled. This is adverted to in the "Information notes" section of the fixed charge notice itself where it states, at the bottom of that section, "Help with this notice or information on the Garda Síochána cancellation policy can be found at www.garda.ie/FCN" and also provides a number which can be contacted in relation thereto.
19. The respondents have exhibited a document headed "Cancelling Fixed Charge Notices" which contains details of the extra statutory notice cancellation scheme. In broad terms, an application for cancellation can be made in respect of two categories of person, the first (Category A) relating to circumstances where there is a bona fide defence to the notice (e.g. "where the recipient of the FCN has a statutory exemption in relation to the offence alleged on the FCN") and, the second (Category B) designed for exceptional circumstances such as hardship cases with some examples given, e.g. where a person who got the fixed charge notice for speeding "was bringing someone to hospital due to a medical emergency where it is believed the life of the person is at risk".
20. The applicant contends that the fixed charge notice received by him did not inform him that there was a mechanism to request the cancellation of the notice. This is not borne out by the standard contents of the notice which, as set out above, does reference the cancellation policy and provide a link to a website for further details in addition to a contact telephone line in relation to same.
21. The applicant in any event accepts that his factual circumstances were not such as to bring him within either of the two categories covered by the scheme. As we shall see, part of his case in these proceedings is that the failure of An Garda Síochána to have an out of court appeal process for the cancellation of fixed charge notices, which would extend to the adjudication of situations where the motorist disputes that he or she has been guilty of the speeding offence as alleged, supports his case as to the unconstitutionality of s.37.

The applicant's case

22. The applicant contends that s.37 is repugnant to the Constitution as entailing a breach of various constitutional rights, including his rights to fair procedures under article 38.1 of the Constitution, his right to earn a livelihood under article 45.2 and his right to equality before the law under article 40.
23. The nub of his complaint is that the section fails to afford him a right to appeal a fixed charge notice in a process which would allow a dispute between him and the accusing member of An Garda Síochána, as to whether he had committed the speeding offence, to be resolved outside of the criminal court context, and without the risk of higher penalties if the conflict were resolved against him. He has expressed this right in various different ways in his pleadings including, in a paragraph in an affidavit sworn by his solicitor in response to the statement of opposition and the affidavits filed in opposition by the respondents, by asserting a right "to fully contest each and every allegation without having to go to court".

24. It is important to highlight at this point what the applicant is not challenging in these proceedings: he is not challenging the lawfulness or constitutionality of a fixed charge notice system per se. Furthermore, he is not challenging the extra-statutory cancellation scheme operated by An Garda Síochána. He is not attacking s. 2 of the 2002 Act (the provision which actually empowers the District Court to impose higher penalty points upon conviction) or any provision in Part 3 of the 2010 Act other than s. 37.

The respondents' case

25. The respondents' position, in summary terms, is that the applicant lacks *locus standi* to challenge s.37; that if he does have such standing, he is in any event out of time to mount his challenge; that he has improperly gone by way of judicial review when he ought to have issued plenary proceedings; and that his challenge is, in any event, fundamentally misconceived as s.37 engages no rights under article 38.1, is not improperly discriminatory contrary to article 40.1 and does not on the facts engage, let alone infringe, the applicant's rights under article 45.2.
26. Given the objections raised by the respondents as to *locus standi*, the application being out of time and the application being in improper form, I will address those matters before turning (if appropriate) to the substantive question of the constitutionality of s.37.

Locus Standi

27. O.84, r.20(5) RSC requires that an applicant have "*a sufficient interest in the matter to which the application relates*". This provision reflects the general law on locus standi.
28. In *State (Lynch) v. Cooney* [1982] IR 337 Walsh J. stated (p.369):
- "In each case the question of sufficient interest is a mixed question of fact and law which must be decided upon legal principles but, it should be added, there is greater importance to be attached to the facts because it is only by an examination of the facts that the court can come to a decision as to whether there is a sufficient interest in the matter to which the application relates."*
29. The respondents submitted that the applicant lacked *locus standi* to mount his case on two bases: first, that he paid the notice and did not contest committing the offence, and still does not do so on oath; and, secondly, that the grant of the relief which he seeks regarding s.37 would avail him of nothing anyway given that he was already on 5 penalty points and that as a novice driver, the imposition of 3 further points as opposed to 5, would push him into disqualification in any event.
30. The applicant contended, by reference to the Supreme Court decision in *Mohan v. Ireland* [2019] 2 ILRM 1 ("*Mohan*"), that he did have standing to maintain these proceedings as he was either directly affected by the provision he contended was unconstitutional (being s. 37, pursuant to which he had received and paid a fixed charge notice) or indirectly in the sense that he could show a "*real and significant effect*" of the provision on him (as discussed by O'Donnell J. (as he then was) at para. 36 of his judgment in *Mohan*). He further submitted that he was, in any event, within the exceptions to the rule on standing per *Cahill v. Sutton* [1980] IR 269 in that he could claim that he was challenging a

particular legislative provision directed to a group (i.e. motorists who had received fixed charge notices) with whom he had a common interest and that, furthermore, the population in general was affected by the issues he was seeking to raise and the public interest justified him being granted standing in relation to his action.

31. The respondents, in developing their standing arguments at the hearing, contended that the applicant was in fact seeking to assert a *jus tertii* in that the category of persons who would have standing were those persons who had received a fixed charge notice, did not pay the specified penalty, maintained their innocence of the charge and wished to contest the allegation of commission of an offence, but who were deterred from doing so because of the risk of higher penalties, and criminal conviction, in the event they elected to go to court to defend the charge. Counsel for the respondents laid particular emphasis on the fact that the applicant had nowhere said unequivocally on affidavit that he believed he was innocent of the speeding offence in issue, pointing out that the high point of his case was an averment – in fact made by his solicitor, and not directly by the applicant – to the effect that *“the applicant would have contested the matter before the courts but was of the view that the fixed charge notice did not allow for a non-payment of the fixed charge without being subject to increased monetary sanctions and/or the imposition of increased penalty points”*.
32. It was submitted that, in order for the applicant to demonstrate his standing, he was obliged to put evidence before the court to show that he was a person who was actually potentially affected by the provisions in question (i.e. that he had a basis to say he was innocent of the offence but had been deprived of a fair chance to exonerate his innocence without going to court) and that he had not done so. It was submitted that he simply failed to show how the availability of an appeal mechanism of the type contended for by him could actually affect him or benefit him in those circumstances. It was separately contended by the respondents, as regards standing, that as the applicant was only challenging s. 37, which was a provision in ease of an alleged offender in that it allowed the alleged offender to avoid a prosecution altogether, but was not challenging the provision which in fact allowed the court to impose higher penalties if convicted following a court hearing (being s. 2 of the 2002 Act), that a strike down of s. 37 would not avail him in any event.
33. It was said, in essence, that the applicant was seeking to run the case on behalf of a category of persons to whom he did not belong, i.e. persons who genuinely contested their innocence in respect of an allegation that they had committed a speeding offence but who felt driven by the presence of higher penalties in the event they went to court but lost to accept the penalties in the fixed charge notice despite their innocence. Accordingly, it was submitted that the applicant simply could not demonstrate an adverse effect of the impugned provision on the facts that applied to his case.
34. In my view, the applicant does have the requisite standing to maintain the constitutional challenge he seeks to maintain to s.37.

35. The applicant's case is that he should have had the option of an out-of-court appeal mechanism on receipt of the fixed charge notice. It is part of the applicant's case that he was coerced into paying the fine, and thereby accepting the commission of the offence, by virtue of the absence of an appeal mechanism against the notice i.e. in the event that such an appeal mechanism existed, he would have availed of it and not have paid the penalty and admitted to the speeding offence. If there had been such a mechanism, he clearly would have been in a position to avail of it. Leaving aside the entirely separate question of the merits of his case as to an entitlement to such an appeal mechanism, the fact that the applicant paid the penalty in the fixed charge notice is part of his case and not a reason as to why he should not be allowed maintain that case. It follows that the facts of his case are such as to demonstrate that the absence of such a mechanism affected his interests in a real way, to deploy the language of O'Donnell J. in *Mohan*.
36. It further seems to me that question as to whether, in the event that an appeal mechanism was available to him to contest the speeding offence charge without having to go to court, there was clear evidence that he might be declared innocent of the offence or otherwise have an arguable defence to the offence, is not a question that properly arises in an examination of his standing to bring the constitutional claim. While he has not sworn an affidavit in these proceedings declaring his innocence of the charge or the basis upon which he would seek to defend the speeding offence charge if successful in these proceedings, he has not admitted the offence and makes the fact of his payment of the penalty in the notice part of his complaint as to unconstitutionality. This seems to me to put the applicant in a different position to the plaintiff in *Cahill v Sutton* where the plaintiff, Mrs Cahill, accepted that she was not in the very category of persons who stood to be affected by the unconstitutionality in the Statute of Limitations complained of in that case i.e. those plaintiffs who might not know of the possibility of having a cause of action before the expiry of the limitation period, Mrs Cahill admittedly being aware of the possibility of a claim at all stages after her accident.
37. Furthermore. it is a cornerstone of our criminal justice system that a party accused of an offence is entitled to the presumption of innocence. I think it would be wrong to conflate questions of standing to maintain the challenge of the sort brought here with the quite separate question of whether, if the out-of-court appeal mechanism the applicant contends should have been made available to him through s.37 was available to him, he would, on the facts, have been successful with such an appeal had he availed of same. He has made clear that if there was such an appeal mechanism, he would have availed of it; from a standing perspective it seems to me that that is the key point. Whatever about the merits of the argument as to whether he is entitled in law to such a mechanism, the facts of his situation do directly engage that case.
38. For the same reasons, I do not believe it is an answer to the applicant's case in standing to say that whether he received 3 points or 5 points in respect of the offence would not have made any difference to his disqualification, given the level of penalty points he was on prior to the incident in issue, as this is again to jump to a conclusion on the merits of his defence to the charge which is not an issue before this Court.

39. Accordingly, in my view, the challenge to the applicant's standing to maintain these proceedings is not well founded.

Application out of time?

40. Pursuant to O.84, r.21(1) RSC "an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose".
41. As regards the question of whether the applicant was out of time when he brought his proceedings, the applicant's solicitor avers that the originating statement of grounds and affidavits supporting same were filed on 8th December, 2020 and issued on 11th December, 2020. The *ex parte* application was assigned a date of 11th January, 2021, the first available date between the Michaelmas term, 2020 and the Hilary term, 2021. The *ex parte* application for leave was moved on 11th January, 2021 and leave was granted on that date. The High Court also granted the applicant a stay on the imposition of the penalty points and disqualification on that date.
42. The applicant contends that the three-month time limit commenced on 9th November, 2020 which was the date of the commencement of the driving disqualification and that the application for leave to apply it was accordingly brought within the 3 month limit.
43. The respondents contend, for their part, that the relevant time limit ran from either 2nd October, 2020 (the date of issuance of the fixed charge notice) or, at the latest, 5th October, 2020 (when the payment under the fixed charge notice was made), meaning that the time limit expired no later than 5th January, 2021. The respondents further contend that it was incumbent on the applicant to at least open the *ex parte* application for leave in court before the time limit had expired.
44. In my view, given that the notice of disqualification challenged in the proceedings issued on 12th October 2020, and the applicant seeks to quash that notice in these proceedings (in addition to seeking a declaration of unconstitutionality of s. 37), the applicant's application was made (just about) within time i.e. within 3 months of 12th October 2020.
45. If I am wrong in that regard, in light of the matters deposed to by the applicant's solicitor as to the unavailability of an earlier date for moving the *ex parte* application before 11th January, 2021, in my view the applicant has demonstrated good and sufficient reason based on circumstances beyond his control within the meaning of O. 84, r. 21(3) such as to warrant an extension of time under that provision. In light of the fact that there was at least a reasonably open question as to the precise date from which the three-month time limit ran, I do not believe that it was unreasonable of the applicant to not seek to move an *ex parte* leave application during the Christmas vacation period but, rather, wait for the assigned date of 11th January which, even at the height of the respondents' case, was only six days outside the three-month period.

Complaints re incorrect process and vagueness of case

46. The respondents have complained that judicial review proceedings are not an appropriate vehicle for challenging the constitutionality of a statutory provision. While I accept that as a general proposition, I do not believe it was invalid of the applicant to proceed by way of

judicial review in circumstances where he was seeking the remedy of *certiorari* in respect of the disqualification notice, in addition to his declaration of unconstitutionality.

47. The respondents also complained of a lack of clarity, and a vagueness, in the grounds sought to be advanced in the applicant's statement of grounds. However, the respondents were in a position to deal with the grounds advanced both in their opposition papers and at the substantive hearing and those grounds, in my view, were sufficiently clear to come within the jurisprudence on the importance of clear pleading in judicial review proceedings (as summarised by the Supreme Court in *AP v. DPP* [2011] 1 IR 729).

The substantive case

48. Having addressed the various preliminary objections raised by the respondents, I will turn to the substantive issue raised in the proceedings, being the constitutionality of s.37.

The fixed charge scheme in context

49. The area of fixed charge notices under the 2010 Act was considered by Ní Raifeartaigh J. in *O'Byrne & Neville v. DPP & Ors* [2019] IEHC 715. That case gave rise to discrete issues concerning service of notices, which do not arise here. However, Ní Raifeartaigh J. made some general comments about the fixed charge scheme which are helpful by way of context to the issues arising in this case.

50. Ní Raifeartaigh J. stated (at paragraph 3):

"Obviously, therefore, the purpose of the fixed charge scheme as a whole is to give the motorist a chance to avoid going to court with all the consequences which that entails, and provides to the State a quick, cheap and efficient way of imposing penalties on erring motorists without the expense and inconvenience of having to bring prosecutions in all such cases."

51. At paragraph 5, she stated *inter alia*:

"The entire system as it currently stands could be described as a carrot-and-stick approach. There are several carrots and one stick. The stick is the prospect of criminal prosecution and conviction, accompanied by a fine and mandatory five penalty points. The carrots are the possibility of avoiding prosecution by paying a fine and incurring three penalty points. ... All of this makes sense in the generality. The system is unlikely to cause unfairness if it operates as it is intended to operate, such that a person only gets the stick if he or she has declined to avail of the earlier carrots."

52. As Ní Raifeartaigh J. noted, the fixed charge regime creates the possibility of avoiding a criminal prosecution.

53. Similarly, in *Kinsella v. DPP* [2018] IEHC 474 McDermott J. noted (at paragraph 17):

"The purpose of a fixed penalty notice is to provide an erring motorist with a quick and efficient method of acknowledging his wrongdoing and submitting to a lesser penalty than that which might be imposed after conviction. In doing so the motorist

also avoids prosecution and the recording of a potential conviction for a criminal offence.”

Article 38 arguments

54. As noted earlier, the nub of the applicant’s case is that s.37 is unconstitutional in failing to provide for a mechanism whereby a motorist such as him receiving a fixed charge notice can challenge whether or not he has committed the speeding offence in an out-of-court process which does not require him to contest the charge in court on pain of a higher level of penalty if he loses following a court hearing.
55. The applicant was unable to identify any authority for the proposition that he has a *right* as a matter of law to have contested matters of fact relating to whether or not a criminal offence has occurred adjudicated outside of the criminal courts by a binding, non-court adjudicative process.
56. The Constitution in article 38.1 entitles a person accused of a criminal offence to be tried in “due course of law”. If the applicant believed he was innocent of the speeding offence, he had a full right under the relevant road traffic legislation to contest the charge in the District Court, following a summons for same, where he would have the opportunity to challenge the evidence of the accusing garda in relation to the commission of the offence and to have the matter determined by the District Court in due course of law. He would also have the right to appeal any adverse outcome of the District Court by way of a *de novo* hearing in the Circuit Court.
57. I know of no legal principle which *entitles* a person who is alleged to have committed even the most minor of criminal offences to have the core facts related to the commission of that offence, if in dispute, resolved *as of right* outside of the court process by some other mechanism of formal or informal adjudication.
58. In my view, counsel for the respondents is correct in his submission that the appropriate forum for the resolution of disputed facts in the context of the alleged commission of a criminal offence is a court established by law, trying the events in due course of law, within the meaning of Article 38.1. The key point of s. 37 is that it allows at the election of the recipient of a fixed charge notice for admission of an offence with the consequence thereby of avoiding prosecution (and therefore) conviction altogether; this is clear from the terms of s.37(1)(c). The fixed charge notice is not a summons or otherwise the formal commencement of the prosecution of a criminal charge. Acceptance of the penalties specified in the notice does not lead to a criminal conviction; indeed, such acceptance avoids prosecution and conviction. Article 38.1 rights are not engaged in relation to s. 37 in light of those factors. If a motorist alleged to have committed a fixed charge notice offence wishes to contest that allegation, he or she can, following formal charge by way of summons, avail of a trial in court with a full panoply of rights, including a presumption of innocence, a standard of proof of beyond reasonable doubt and evidence being heard and tested on oath according to the rules of evidence.

59. While it might be a legitimate policy choice for the Oireachtas to legislate for a non-court system of adjudication of matters relating to road traffic offences (subject, of course, to the jurisprudence which exists on the question of whether such tribunals might be impermissibly engaged in the administration of justice contrary to Article 34 of the Constitution – see *Zalewski v WRC* [2021] IESC 34 - or in the trial of criminal charges other than in due course of law contrary to Article 38), there is no *right* in a person said to have committed such an offence to an entire adjudicative machinery outside of the court process and the applicant’s arguments in this regard are accordingly ill-founded.

Equality arguments

60. The applicant contended that he was being discriminated against, contrary to his rights under Article 40.1 and Article 40.3, because he was being treated less favourably than those persons who received fixed charge notices who could contend that they were within one or other of the categories of person who might qualify for cancellation of their notices under the extra-statutory fixed charge notice cancellation scheme operated by an Garda Síochána.
61. However, in my view, that is not to compare like with like. The applicant was in precisely the same position as any other motorist who received a fixed charge notice for a speeding offence but who could not demonstrate that either they had a *bona fide* defence or that the speeding resulted from a genuine emergency or hardship situation such as to put them in a position where An Garda Síochána, exceptionally, might decide not to charge them with the offence. No question of constitutionally-impermissible discrimination therefore arises.
62. The applicant further sought to contend that the cancellation scheme was discriminatory in not providing for a stay or suspension of the payment of the fine during the 28 or 56 day period. However, as noted earlier, the scheme is an extra-statutory one and the provisions of the scheme (which were not invoked by the applicant on the facts in any event) were not the subject of challenge in the pleadings or the subject of the leave granted to the applicant. In the circumstances, I do not propose to consider same further, save to observe that, as noted earlier, s.37 provides a choice to a motorist receiving a fixed charge notice such that if the motorist wishes to contest the charge he or she is free to go to court without having to pay any fine in order to do so.
63. It follows that, in my view, the applicant’s equality arguments are also misconceived.

Right to earn a livelihood

64. The applicant in his Statement of Grounds pleads (paragraph 13) that he is a *“professional boxer and any disqualification from driving interferes with his ability to earn a livelihood and continue going forward with his profession”*. Although not on affidavit, I was told at the hearing that he has held a European title in boxing and that the inability to drive would inhibit him in attending training and boxing matches.
65. It is clear from the authorities that the Constitution does not confer a constitutional right to make a living from any particular job; rather the Constitution confers a right not to be prevented from working. In *Nurendale Ltd t/a Panda Waste Services v. Dublin City*

Council [2013] 3 IR 417 McKechnie J. stated (p.508) that the right “*is not a right to earn a livelihood from performing a particular job or task. It is merely a right not to be prevented from working*”. This principle was approved, most recently, by the the Supreme Court in its decision in *NVH v Minister for Justice* [2018] 1 IR 246.

66. It follows that the applicant has no constitutional right to earn his livelihood as a boxer. As he has not sought to contend that he cannot work at all by virtue of his disqualification from driving, the applicant can make out no case in breach of his constitutional rights under this heading and his case in this regard fails *in limine*.

Conclusion

67. Ultimately, the applicant here received a fixed charge notice alleging he was driving at 143km per hour in a 100km per hour zone. He chose not to contest same. He paid the minimum penalty within 28 days and incurred 3 penalty points. He was not in any of the exceptional categories of motorists receiving fixed charge notices who might qualify to have their fixed charge notices cancelled under the extra-statutory scheme operated by An Garda Síochána. The effect of the incurrence of those penalty points as a novice driver, when added to the previous penalty points incurred by him, was to lead to automatic disqualification. He was not compelled to take the step of paying the fine and incurring the penalty points (and therefore disqualification). He could have exercised his right to have a trial in due course of law in the District Court, with the presumption of innocence and the benefit of full fair trial rights. He elected not to do so. He had no right, in the alternative, to some form of statutory scheme which would allow him to challenge the allegation of speeding in an out-of-court process. He was treated exactly as all other motorists in his category are treated under the legislation. His constitutional challenge is misconceived in all the circumstances and must fail.
68. In the circumstances, I refuse the relief sought.