

THE HIGH COURT

[2022] IEHC 160
[2017 No. 6470 P.]

BETWEEN

GERARDINE SCANLAN

PLAINTIFF

AND

**DANSKE BANK T/A DANSKE BANK AND SHARON KEENAN AND STEPHEN TENNANT AND
TARGETED INVESTMENT OPPORTUNITIES ICAV**

DEFENDANTS

JUDGMENT of Mr. Justice Mark Heslin delivered on the 16th day of March 2022

Introduction

1. On 17 June 2020, the first named defendant (hereinafter "Dankse" or "the bank") issued a motion seeking the following reliefs: -

"(1) *An order pursuant to O. 19, r. 28 of the Rules of the Superior Courts and/or the inherent jurisdiction of this Honourable Court dismissing the plaintiff's claim against the first named defendant on the grounds the plaintiff is seeking to re-litigate issues decided in previous decisions, and to mount impermissible collateral challenges to those previous decisions;*

(2) *An order pursuant to O. 19, r. 28 of the Rules of the Superior Courts and/or the inherent jurisdiction of this Honourable Court dismissing the plaintiff's claim as against the first named defendant on the grounds that the plaintiff's proceedings failed to disclose any reasonable cause of action are bound to fail.*

(3) *In the alternative, and without prejudice, and where necessary, an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts and/or the inherent jurisdiction of this Honourable Court dismissing the plaintiff's claim against the first named defendant on the grounds that the plaintiff is seeking to litigate matters in the present proceedings which properly and conveniently could and should have been made as part of previous proceedings.*

(4) *In the alternative, and without prejudice, and where necessary, an order pursuant to O. 19, r. 27 of the Rules of the Superior Courts and/or the inherent jurisdiction of this Honourable Court striking out the plenary summons and statement of claim or portions thereof as inter alia unnecessary pleadings, or pleadings which tend to prejudice or delay.*

(5) *Further or other relief.*

(6) *Costs".*

2. On 4 August 2020, the third named defendant (hereinafter "the Receiver") issued a similar motion seeking to strike out the plaintiff's claim and the relief sought in that motion was in the following terms: -

- "(1) *An order pursuant to O. 19, r. 28 of the Rules of the Superior Courts striking out the plaintiff's claim on the grounds that it discloses no reasonable cause of action and/or is frivolous and/or vexatious.*
- (2) *Further or in the alternative, an order pursuant to the inherent jurisdiction the court dismissing the plaintiff's claim on the grounds that it is an abuse of process and/or otherwise bound to fail and/or is frivolous and/or vexatious.*
- (3) *Further or in the alternative, an order pursuant to the inherent jurisdiction of the court dismissing the plaintiff's claim on the grounds of inordinate and inexcusable delay.*
- (4) *Further and/or in the alternative, an order pursuant to O. 19, r. 27 of the Rules of the Superior Courts and/or pursuant to the court's inherent jurisdiction striking out all portions and/or paragraphs of the plenary summons and statement of claim which are unnecessary and/or scandalous and/or which may tend to prejudice, embarrass or delay the fair trial of the action.*
- (5) *Such further or other orders, reliefs or directions as this Honourable Court deem fit.*
- (6) *Costs".*
3. In addition to the foregoing, the plaintiff has brought a motion seeking to remove the second and fourth named defendants from the proceedings, which motion appears to have been listed on 15 March 2021 but adjourned generally, quite possibly due to COVID-19 restrictions. The co-defendants consent to the removal of the second and fourth named defendants.

The first defendant's motion

4. Insofar as the *motion brought by the first named defendant* is concerned, I have carefully considered the following: -
- The affidavit sworn by Mr. Michael Leonard on 9 June 2020 on behalf of the bank together with the exhibits thereto;
 - The replying affidavit of the plaintiff sworn on 19 November 2020;
 - The supplemental affidavit sworn by the plaintiff on 24 May 2021 and the documentation exhibited therewith;
 - The further supplemental affidavit of the plaintiff sworn on 8 June 2021 and the exhibits thereto;
 - The affidavit sworn by Mr. Ian Bell solicitor for the first named defendant on 10 June 2021 and the exhibits thereto.

The third defendant's motion

5. As regards the *third named defendant's motion*, I have carefully considered the contents of the following: -

- The affidavit of Ms. Patricia Shaw sworn 4 August 2020 together with the exhibits thereto;
- The replying affidavit sworn by the plaintiff on 19 November 2020 (the plaintiff swore a single affidavit on this date in opposition to both motions);
- The supplemental affidavit of the plaintiff sworn 24 May 2021 (again the plaintiff swore a single affidavit on this date in opposition to both motions);
- The further supplemental affidavit of the plaintiff sworn 8 June 2021 (again, a single affidavit was sworn by the plaintiff in opposition to both motions);
- The further supplemental affidavit of the plaintiff sworn 22 November 2021 and exhibits thereto.

Relevant facts in chronological order

6. Having regard to the contents of the various pleadings, affidavits and exhibits put before the court, the following chronology of relevant events emerges:

8 September 2008 facility letter

7. The plaintiff obtained borrowings from Dankse, the relevant facility letter being dated 8 September 2008 in respect of a loan in the sum of €107,500. The plaintiff accepted the foregoing loan facility on 02 October 2008 and the funds were advanced to her and secured over property at 19, Radharc na Sleibhte, Churchtown, Mallow, Co. Cork (hereinafter "the property").

21 August 2003 – All sums mortgage

8. The loan from the bank which the plaintiff availed of was secured in the form of a mortgage over the property by way of an all sums deed of mortgage dated 21 August 2003.

17 July 2013 – arrears notice

9. The plaintiff failed to comply with the terms of an arrears notice from the bank, which notice was dated 17 July 2013.

7 August 2013 – bank's letter demanding repayment

10. By letter dated 7 August 2013 the bank demanded that the plaintiff repay the outstanding balance of the relevant loan which then stood at €84,599.44. The plaintiff failed to discharge the amount due.

15 August 2013 – appointment of receiver

11. By deed of appointment dated 1 August 2013 the bank appointed the third named defendant, Mr. Stephen Tennant of Grant Thornton, as receiver over the property.

12 June 2015 – sale of property

12. The mortgaged property was sold on 12 June 2015 and the net sale proceeds were applied in reduction of the plaintiff's indebtedness to the bank.

11 September 2015 – receiver’s letter

13. By letter dated 11 September 2015, the receiver wrote to the plaintiff in response to a request made by her pursuant to the Data Protection Acts, which letter, in addition to referring to an enclosed “CD which provides full details on all data held by Grant Thornton” went on to state *inter alia*: -

“The data saved on this disc provides full details and transparency on the sale of the property. I can confirm in summary the following: -

- *The sale of the property closed 12 June 2015*
- *The sale price achieved for the property was €51,089.07.*
- *The net sale proceeds remitted to Danske Bank amounted to €42,056.60”.*

A copy of this letter comprises part of Exhibit “RNS 1” to the plaintiff’s supplemental affidavit sworn on 24 May 2021 in respect of the present motions.

25 November 2015 – email by receiver to the plaintiff

14. At para. 9 of the plaintiff’s supplemental affidavit sworn 24 May 2021, she avers that she received an email from the receiver on 25 November 2015 informing her that the property had been sold by Danske as mortgagee in possession.

6 June 2014 – summary proceedings by bank

15. The bank brought proceedings against the plaintiff by way of summary summons dated 6 June 2014 seeking judgment against her in respect of her borrowings. Those proceedings were entitled “*Danske Bank A/S Trading as Danske Bank v. Gerardine Scanlan*” bearing High Court record no. 2014/1456 S. The bank issued a motion in those proceedings dated 9 September 2014 seeking judgment, which motion was grounded on an affidavit sworn on 4 September 2014. The plaintiff delivered a replying affidavit sworn on 17 November 2014.

21 October 2014 – proceedings by the plaintiff

16. On 21 October 2014, the plaintiff issued plenary proceedings against the bank and the receiver claiming damages. These proceedings were entitled “*Gerardine Scanlan v. National Irish Bank now acting in the style of Danske Bank A/S (Trading as Danske Bank) and Stephen Tennant*”, bearing High Court record no. 2014 / 8950 P. The plaintiff delivered a statement of claim in these proceedings, dated 23 February 2015. A range of allegations were made, including that the bank engaged in reckless lending practices, misled the plaintiff as to the nature of the loan agreement, and “*prematurely and without any attempt at positive communication*” appointed the receiver. The plaintiff also alleged that the receiver’s conduct caused her damage.

Claims made by the plaintiff in 2014/8950P proceedings

17. It is fair to say that the plaintiff’s 2014 proceedings were extremely broad in their scope. The plenary summons sought no less than 27 separate reliefs, whereas the statement of claim ran to 54 paragraphs. The following constitutes the primary claims advanced by the plaintiff in her 2014 proceedings: -

- A claim of reckless lending against the bank (see paras. 6, 7 and 47 of the plaintiff's statement of claim dated 23 February 2015);
- A claim the plaintiff suffered personal injuries by reason of the actions of the bank and the receiver (see statement of claim para. 9);
- A claim that the plaintiff's right to privacy and confidentiality were violated by the bank and by virtue of the appointment of the receiver (statement of claim paras. 12 and 13);
- A claim that the bank breached various provisions of consumer protection legislation (see para. 14 onwards of the statement of claim);
- A claim that the bank "*prematurely*" appointed a receiver over the mortgaged property (para. 18 of the statement of claim);
- A claim that the bank made no "*attempt at positive communication*" with the plaintiff and appointed a receiver "*to a very modest financial situation*" adding unnecessary expense and stress to the plaintiff's situation; and that the bank refused to engage with the plaintiff or consider alternative courses of action (see paras. 18, 20 and 21 of the plaintiff's statement of claim);
- A claim that the receiver failed to comply with his "*duty of care*" and damaged the mortgaged property (see para. 23 of the statement of claim);
- A claim of "*unjust enrichment*" on the part of the defendants and their agents at the expense of the plaintiff (see paras. 27 and 42 of the statement of claim);
- A claim that the bank was operating in the State without a valid banking licence, amounting to a serious criminal offence (see para. 29 of the statement of claim);
- A claim that the bank breached various legislative provisions (see para. 34 onwards of the statement of claim);
- A claim that the bank engaged in excessive securitisation (see para. 33 of the statement of claim);
- A claim that the bank acted negligently in its dealings with both the plaintiff and the mortgaged property (see *inter alia* para. 40 of the statement of claim);
- A claim that both the bank and the receiver engaged in "*Robo – Signing*" whereby affidavits were signed by persons with no knowledge of the facts deposed to (see para. 43 of the statement of claim);
- A claim that both the bank and the receiver were guilty of "*gross misconduct*" (see para. 51 of the statement of claim);

- A claim that the bank and the receiver attempted to illegally enter the mortgaged property and harassed the residents (see para. 52 of the statement of claim);
- The plaintiff made, inter alia, a claim for damages, namely, "€30,000 in personal damages, €10,000 for building costs and €60,00 (sic) for Income and Business Damages and any subsequent amounts as the court shall deem fit" (see the 10th page of the statement of claim).

March 2015 Motion by bank seeking to dismiss the 2014 proceedings

18. On 18 March 2015, the bank issued a motion seeking an order pursuant to O. 19, r. 28 of the Rules of the Superior Courts and/or the inherent jurisdiction of this Court dismissing the plaintiff's 2014 claim on the grounds that the plenary summons and statement of claim failed to disclose any reasonable cause of action against the defendants, were bound to fail and were frivolous and vexatious. The application was grounded on an affidavit sworn by Ms. Sharon Keenan, bank official, on 16 March, 2015 to which the plaintiff replied by means of an affidavit sworn on 29 April 2015.

19 October 2015 – hearing of two motions

19. The bank's two motions, namely, (i) its motion seeking summary judgment against the plaintiff in the proceedings under record no. 2014/1456 S, as well as (ii) the bank's motion seeking to dismiss the plaintiff's proceedings under record no. 2014/8950 P came on for hearing on 19 October 2015, before Fullam J., who reserved judgment.

25 February 2016 – judgment delivered (Fullam J.)

20. On 25 February 2016 Fullam J. delivered a written judgment in respect of the bank's application for summary judgment and its application to dismiss the plaintiff's 2014 proceedings (see [2016] IEHC 118). For the reasons set out therein, the court struck out the plaintiff's claim in the 2014 proceedings and granted summary judgment in favour of the bank in the sum of €47,704.46, which represented the balance due and owing by the plaintiff after the net proceeds of sale of the mortgaged property were applied to the indebtedness. The final three paragraphs of Fullam J.'s judgment were in the following terms:

"Conclusion

37. *The courts afford litigants in person an appropriate degree of latitude. However, they are still bound by the laws of evidence and procedure. Ms. Scanlan's extensive blanket grounds amount to general assertions that are not backed up by evidence.*
38. *It is the court's view that the plaintiff's claim discloses no reasonable cause of action and is bound to fail. Accordingly, the plaintiff's claim against the Bank and the receiver is struck out pursuant to the inherent jurisdiction of the Court and pursuant to Order 19, Rule 28 of the Rules of the Superior Courts.*
39. *The court is satisfied that this matter should not go to full plenary hearing and final judgment should be entered against Ms. Scanlan. The Court was informed that the*

proceeds of sale of the property have been applied to Ms. Scanlan's indebtedness leaving a balance due of €47,704.46. Liberty to apply".

18 March 2016 – costs hearing

21. A contested costs hearing subsequently took place before Fullam J., on 18 March, 2016, at which the plaintiff appeared and made submissions. It is clear from the averments made by the plaintiff which are before this court that, at that point in time, she was fully aware that the mortgaged property had been sold and that it had been sold by the bank, as mortgagee, yet she did not raise before Fullam J. any issues relating to the manner of the sale of the mortgaged property.

5 July 2016 – Orders perfected – No appeal

22. On 5 July 2016, two orders were perfected, namely, (i) an order granting summary judgment against the plaintiff; and (ii) an order dismissing the plaintiff's 2014 plenary proceedings. There was no appeal made by the plaintiff against either order.

2015 proceedings by Grant Thornton

23. Arising out of an inadvertent disclosure by Grant Thornton of confidential data to the plaintiff, on 15 September 2015, following her data access request, Grant Thornton issued proceedings entitled "*Grant Thornton (a firm) and by order Grant Thornton Corporate Finance Limited v. Gerardine Scanlan*" bearing record no. 2015/9954 P. In these 2015 proceedings, Grant Thornton sought the return of the confidential information, together with related relief. There was no suggestion that Danske had any involvement in the inadvertent disclosure to the plaintiff, of the relevant information. Despite this, the plaintiff sought to have the bank joined into those proceedings.

27 July 2017 – judgment refusing the plaintiff's application to join the bank

24. On 27 July 2017, Gilligan J. delivered a written judgment which, inter alia refused the application by the plaintiff to join Danske Bank into the 2015 proceedings brought by Grant Thornton. It is appropriate to quote as follows from the decision of Gilligan J. (in which the plaintiff in the present proceedings was the defendant in the proceedings under record no. 2015/9954 P): -

"14. Insofar as the defendant makes an application to join Danske Bank to these proceedings I take the view that there is no role for Danske Bank within the parameters of the plenary summons or statement of claim as issued and delivered on the plaintiffs' behalf. The issues in this case revolve around its own specific facts and the legal consequences arising therefrom. The involvement of the defendant with Danske Bank relates to a loan she drew down from that Bank, the fact that the loan appears to have fallen into arrears, then a whole range of criticism of the Bank and the proceedings.

15. The judgement of the Court as handed down on the 25th day of February 2016 and the orders arising therefrom have not been appealed and no further proceedings or applications are in being to seek in any way to set aside the orders of Fullam J. and I cannot see any connection between the plaintiffs' action herein and the specific reliefs that are being sought and the defendant's complaints involving Danske

Bank. It is also clear that a previous set of proceedings against Danske Bank and Stephen Tennant have already been struck out.

16. Accordingly, the relief as sought by the defendant herein as regards joining Danske Bank to these proceedings is refused”.

25. Later in this judgment, I will look again at the decision of Gilligan J. in the context of claims which the plaintiff seeks to raise in the present proceedings but which were previously canvassed in the 2015 proceedings and struck out.

September 2017 – plaintiff’s appeal to the Court of Appeal

26. The plaintiff appealed against the judgment made by Gilligan J. and the order reflecting same, by means of a September 2017 Notice of appeal.

31 October 2019 – judgment by Court of Appeal (Baker J.)

27. On 31 October 2019, Baker J. on behalf of the Court of Appeal dismissed the plaintiff’s appeal against Gilligan J.’s refusal to join Danske Bank to the 2015 proceedings which had been brought by Grant Thornton against the plaintiff herein ([2019] IECA 276). In a judgment which inter alia explained why the plaintiff’s application to set aside High Court orders for objective bias was not one made on any ground which had been substantiated, or which could reasonably be advanced, Baker J. stated the following with respect to the refusal to join Dankse Bank: -

“39. The application to join the Bank was made on the grounds that the Bank had appointed Mr Tennant as receiver, and Ms Scanlan has not sought to challenge the conclusion to which the trial judge came, that the fact that the Bank had previously obtained judgment against Ms Scanlan and appointed the receiver, and that the previous proceedings had long concluded and been definitively determined meant that it had no role to play in the claim.

...

45. With the leave of the court, the Bank furnished written and oral submissions on the appeal and Irvine J. gave leave to intervene and the appellant expressly made no objection.

46. Counsel argues that the attempt to join the Bank amounts to an attempt to mount an as-yet unarticulated collateral attack on the judgment and order of Fullam J. which must be seen as final and not open to challenge. I agree with that observation and it is another basis on which the appeal is to be dismissed”.

The present proceedings – record no. 2017/6470 P

28. The plaintiff commenced the present proceedings by means of a plenary summons issued on 19 July 2017. The first observation to make is that the present proceedings were issued one year and five months *after* the judgment delivered by Fullam J. on 15 February 2016 in which he dismissed the plaintiff’s 2014 proceedings in which the plaintiff had made a very wide range of complaints against the self-same defendants (i.e. the

bank and the receiver). The plethora of claims made in the plaintiff's 2014 proceedings were analysed by Fullam J. and were struck out as being bound to fail.

Claims made by the plaintiff in the present proceedings

29. A wide variety of claims are also made in the within proceedings and, insofar as the various claims made against the bank and the receiver are concerned, the plenary summons refers inter alia to the following: -

- (1) Breach of duty, breach of statutory duty, negligence and fraud on the part of the bank;
- (2) Conspiracy to commit fraud on the part of the bank and the receiver;
- (3) Conspiracy on the part of the bank and the receiver in obtaining High Court orders through deceit;
- (4) Breach of "Article 1, Protocol 1 of the European Convention" by the bank and the receiver;
- (5) Breach of "Article 6 of the European Convention" through a conspiracy as between the bank and receiver in the provision of misleading evidence to the High Court;
- (6) A failure by the receiver to comply with statutory obligations as regards the plaintiff's data access request and the alleged withholding of the plaintiff's private data to carry out acts of fraud through concealment of facts from the plaintiff and the High Court;
- (7) Unlawful use of personal data by the receiver, contrary to Article 8 of the European Convention;
- (8) Negligence on the part of the bank, as data controller, through an alleged failure to ensure the plaintiff's rights were protected by the receiver as a data processor;
- (9) A claim that by reason of the conduct of the bank and the receiver "*the property of the plaintiff is traceable to the fourth named defendant who has become unjustly enriched through unfair trading, fraud and deceit*";
- (10) Failure by the bank and the receiver "*to provide for the plaintiff's request for equity of redemption on the property*".

30. It is entirely fair to say that the very same underlying facts constitute the basis for the range of claims which the plaintiff makes in the present proceedings. This is also illustrated by an analysis of the statement of claim, which I will look at presently. Before doing so, it is appropriate to look at what occurred between the issuing, by the plaintiff, of the present proceedings in July 2017 and the delivery of a statement of claim almost three years later.

19 July 2017 – 27 April 2020

31. Having issued the plenary summons in the present proceedings on 19 July 2017, the plaintiff does not appear to have taken any step to progress her claim until the delivery, almost three years later, of a statement of claim, dated 27 April 2020. The delivery, by the plaintiff, of a notice of intention to proceed, dated 31 March 2020, is not a 'step' in terms of the pleading of a case. Rather, it indicates that an extensive period of delay has occurred.
32. In my view, the plaintiff's delay with regard to the progress of the present proceedings can fairly be described as inordinate, being, without doubt, outside the norm. It is also delay which is inexcusable. Indeed, the plaintiff has proffered nothing by way of any reason or excuse for the delay. I will return to this topic later in this judgment.
33. A year and seven months *after* the delivery of a statement of claim, the plaintiff furnished a draft amended statement of claim, dated 30 November 2021. The defendants neither consented to an amendment of the statement of claim, nor was any court order sought or obtained by the plaintiff, with regard to the many amendments made. Later in this judgment, I will also look at the draft amended statement of claim, but it is first appropriate to look at the statement of claim as delivered on 27 April 2020.

27 April 2020 statement of claim

34. The plaintiff's statement of claim in the present proceedings is a lengthy and detailed document, running to 75 paragraphs, which comprises a claim for damages and a wide range of declaratory relief. Although in somewhat prolix terms, the essence of the plaintiff's claim for damages relates to the manner in which Danske Bank allegedly dealt with her default in respect of her loan obligations and appointed a receiver over her mortgaged property. The plaintiff also alleges data breaches arising out of the inadvertent disclosure of data by Grant Thornton to her. A range of declaratory reliefs are sought on the foregoing basis, with the aim clearly being to reverse the sale of the mortgaged property which she provided as security to the bank in respect of her borrowings.

Similarities between the 2014 and the 2017 proceedings

35. An analysis of the plaintiff's 2014 proceedings (struck out by order of Fullam J.) and the present proceedings reveal numerous similarities, the following being examples.
36. At para. 6 of her 27 April 2020 statement of claim (hereinafter, where relevant, "the statement of claim") the plaintiff pleads that "there were insignificant arrears to the loan . . . at the time of the receivership appointment". A similar plea is made at para. 22 of the statement of claim wherein the plaintiff refers to what she describes as "*the insignificant arrears regarding the appointment of a receiver*". At para. 50 of the statement of claim, it is pleaded that the bank engaged in the "*premature appointment of a receiver regarding purported loan arrears*". The foregoing is the basis for seeking "*a declaration from the High Court that Danske Bank are in contravention of Article 1, Protocol 1 of the EU Convention on Human Rights*". The foregoing pleas reflect the contents of pleas made in the plaintiff's 2014 proceedings which have previously been dismissed. At para. 18 of the plaintiff's 23 February 2015 statement of claim in her proceedings under record no. 2014/8950 P (hereinafter "the 2015 statement of claim") the plaintiff pleaded that: "*The*

defendant prematurely and without any attempt at positive communication with the plaintiff appointed a receiver to a very modest financial situation . . .”

37. At para. 11 of the statement of claim in the present proceedings, the plaintiff pleads that she *“offered to rectify the arrears and/or redeem the loan”* and goes on to plead that the *“Bank duly ignored the matter and the property remained with the ambit of the receiver”*. Similar pleas were made by the plaintiff in her 2014 proceedings in that, at para. 21 of the 2015 statement of claim it was pleaded that *“The plaintiff intends to show she was denied any opportunity to make any advancement with the defendant . . . the plaintiff requested positive dialogue regarding a new agreement which was ignored by the defendant”*.
38. In para. 7 of the statement of claim in the present proceedings, the plaintiff pleads that she *“...persistently tried to engage with the said receiver, calling on Mr. Stephen Tennant by registered letter, email and by phone to have the matter resolved . . .”*, going on to plead that *“The plaintiff claims dereliction of duty and statutory duty by the said receiver who adopted a strict policy of non-engagement with the plaintiff, contrary to the plaintiff’s enshrined contractual and constitutional private property rights”*. The foregoing pleas reflect those previously made in the plaintiff’s 2014 proceedings in that, at para. 15 of the plenary summons dated 21 October 2014, (hereinafter “the 2014 plenary summons”) it is pleaded that *“the receiver refused to engage, interact or provide any information at all times to the detriment of the plaintiff”*. Furthermore, at para. 23 of the 2015 statement of claim, the plaintiff pleads that *“Despite the defendant’s insistence on a receivership situation the defendant’s agent refused to comply with his duty of care despite insistence on a valid appointment”*. In addition, the plaintiff made the following averment at para. 62 of her 29 April 2015 affidavit which was sworn in response to the application to dismiss her 2014 proceedings: *“I say the defendant’s agent, Stephen Tennant, the receiver has refused to engage or communicate directly . . .”*. The self-same issue, concerning the alleged failure and refusal on the part of the receiver to engage with the plaintiff, is relied upon by the plaintiff, at para. 8 of her statement of claim in the present proceedings, as a basis to say that her rights were breached. At para. 8 of the 27 April 2020 statement of claim, the plaintiff pleads that *“persistent refusal by said receiver to engage . . . was an unjust attack on the plaintiff’s right to dignity and property personal rights as guaranteed by the . . . Constitution by Articles 40.1, 40.3 and 29.4.6”*
39. At para. 9 of the 27 April 2020 statement of claim, the plaintiff pleads that: *“the pursuit of said private property by the defendants in circumstances where arrears were so insignificant was devoid of proportionality, inherently unjust, unconstitutional and an attack on the fundamental property and personal rights of the plaintiff . . .”*. It will be recalled that claims based on the alleged insignificance of the arrears were also made in the plaintiff’s 2014 proceedings.
40. At para. 9 of the statement of claim in the present proceedings, the plaintiff repeats the allegation that *“the bank also refused to engage on the matter of the loan and/or arrears on the strict basis the case was placed in contract with a private receiver”* and the plaintiff

goes on to plead that the defendants "persistently refused to engage, which was an unjust attack on the plaintiff's right to be heard and fair procedures, having regard to contractual, constitutional and EU Convention rights". Pleas concerning the alleged refusal to engage mirror those made in the earlier 2014 proceedings, which were dismissed.

41. At para. 10 of the plaintiff's statement of claim it is pleaded that "*Danske Bank sought to leave the residential property market in this State... notwithstanding the insignificant arrears as accrued on the plaintiff's loan account, the bank proposed to dispose of all residential property. This clearly included the plaintiff's property. The bank had no interest nor motivation in the property for continuance of the said loan. The property was identified by the bank for a 'portfolio sale' to a private fund and it was inconvenient and possibly costly to disengage and single out properties from this arrangement. It can be observed from the plaintiff's private data, that the property was identified for portfolio sale during the receivership appointment*". The foregoing reflects pleas previously made in the 2014 proceedings, including the plea at para. 18 that "*The defendant prematurely and without any attempt at positive communication with the plaintiff appointed a receiver to a very modest financial situation which added extreme unnecessary expense and stress to the plaintiff's situation. Danske Bank were winding down personal banking operations in Ireland with it to be discontinued completely in October 2013 indicating the defendant's intention of a speedy foreclosure, quick cash and to vacate Ireland than accept or honour any required negotiation with the plaintiff, saddling the plaintiff with unnecessary costs and an unnecessary 'shortfall' to the detriment of the plaintiff in breach of the plaintiff's constitutional, personal, human and civil rights as well as other international regulatory directives and agreements*". Similarly, at para. 27 of the 2015 statement of claim, it was pleaded that "*The plaintiff intends to show 'unjust enrichment' by the defendants and its agents by a rush to repossess the aforementioned property, an abuse of process through the courts system to secure a quick judgment and sale even when the mortgage had been settled by an insurance policy*".
42. Para. 11 of the 27 April 2020 statement of claim begins with the plea that "*The plaintiff claims they were unable to make meaningful progress with the bank . . .*". Para. 18 of the plaintiff's 21 October 2014 plenary summons pleads that "*the Bank failed to engage in adequate communications with the plaintiff . . .*". Furthermore, at para. 21 of the plaintiff's 23 February 2015 statement of claim it is pleaded that "*the plaintiff intends to show she was denied any opportunity to make any advancement with the defendant . . .*".
43. At para. 11 of the 27 April 2020 statement of claim, the plaintiff also pleads that "*The bank's failure to correctly engage or deal with the plaintiff as a bona fide basis as customer was unfair and an unjust attack on the plaintiff's contractual equity of redemption and constitutional (and EU) property and personal rights as guaranteed by the EU Conventions and Articles 40.1, 40.3 and 43 of the Constitution*". Claims were also made in the 2014 proceedings with reference to the relevant contract between the plaintiff and the bank. At para. 38 of the 2015 statement of claim it is pleaded, with reference to the said contract, that Danske was under "*a duty to fully and accurately disclose all pertinent information pertaining to the home loan which affected the plaintiff's*

financial future. The plaintiff will further show the defendant's reckless practices and the securitisation of this mortgage without her knowledge and consent removed her from any part of this contract. Consent being a strict requirement in the context of such trading, and the effect of which trading wantonly and recklessly ignored and damaged the plaintiff's equity of redemption in respect the property aforesaid. The defendant failed to advise, notify or seek the consent of the plaintiff in regard to the trading by the defendant of and in the securities which had been provided to it by the plaintiff".

44. At para. 12 of the 27 April 2020 statement of claim, it is pleaded that the plaintiff *"pursued said receiver as advised by the bank to no effect, and finally, to the detriment of the plaintiff whose property was unnecessarily and unlawfully sold contrary to contractual and constitutionally guaranteed rights . . ."*. Para. 15 of the plaintiff's 21 October 2014 plenary summons alleges *"the receiver refused to engage"*, whereas para. 32 of the 23 February 2015 statement of claim pleads that *"the defendant sold the loan and recorded a profit from both insurance settlement and subsequent sale of the Mortgage File (having sold the mortgage file for less than its gross worth, it is either proof of settlement or gross mismanagement)"*. Furthermore, para. 27 of the 2015 statement of claim pleads *"the plaintiff intends to show 'unjust enrichment' by the defendants and its agents by a rush to repossess the aforementioned property an abuse of process through the courts system to secure a quick judgment and sale even when the mortgage had been settled by an insurance policy"*.
45. The following is pleaded at para. 21 of the 27 April 2020 statement of claim: -
- "The plaintiff claims, had the said receiver and bank adhered to and been subject to lawful restrictions regarding disclosure, request and processing of personal data, it would require appropriate engagement with the plaintiff"*. In the manner previously examined, the plaintiff's 2014 proceedings repeatedly refer to the alleged refusal to engage. As referred to earlier, para. 15 of the 21 October 2014 plenary summons pleads *"the receiver refused to engage, interact or provide any information at all times to the detriment of the plaintiff"*.
46. Para. 22 of the 27 April 2020 statement of claim again makes reference to *"the insignificant arrears regarding the appointment of a receiver"*, mirroring the reference at para. 18 of the 23 February 2015 statement of claim wherein it is pleaded that *"the plaintiff appointed a Receiver to a very modest financial situation . . ."*
47. At para. 22 of the 27 April 2020 statement of claim, a range of pleas are made with reference to the bank's summary proceedings and the affidavits sworn in the context of Danske's application for summary judgment. Direct criticisms are made of the affidavit sworn on behalf of the bank in respect of the application for summary judgment. Averments made in an affidavit sworn on 16 March 2015 on behalf of the bank in the context of Danske's application for summary judgment are described as *"extraordinary"* claims. Among other things, it is pleaded, at para. 22 of the statement of claim, that the bank's 16 March 2015 affidavit *"was presented with intent to restrict or hide material facts regarding these events. The plaintiff had no insight as to those events or decisions*

involving their private property. The plaintiff claims that those matters should have come to light in the course of a court hearing, however all parties remained silent on these precise matters". With regard to the foregoing, para. 43 of the plaintiff's 23 February 2015 statement of claim includes the plea that "The plaintiff will show the defendants misled the court". 'Inter Alia' engaging in the practice of almost 'Robo-Signing' whereby the defendants used people who had no personal knowledge to sign affidavits indicating they had personal knowledge of those matters contained in the affidavits."

48. At para. 23 of the 27 April 2020 statement of claim, it is pleaded that *"The plaintiff claims breach of contract as the receiver as Agent for the borrower was appointed to dispose of said property. The contract with receiver was incomplete in any case at the point of discharge, nor was the borrower notified of this change in circumstances regarding their private property"*. At para. 17 of the 23 February 2015 statement of claim, the plaintiff pleads that *"the defendant failed to advise, notify or seek consent of the plaintiff in regard to the appointment of a receiver and failed to provide supporting necessary documentation authorising and necessitating that appointment"*.
49. At para. 23 of the 27 April 2020 statement of claim, the plaintiff goes on to plead that she *"...was unable to and not permitted to adequately construct a reasonable outline or meaningful pleadings in relation to events regarding their private property having been consistently denied information for years regarding any decision making and treatment of their private property"* which, the plaintiff claims, amounts to a breach of constitutional and/or EU convention rights; and it is also pleaded at para.23, with reference to the 2014 proceedings, that *"The bank failed to inform the court and plaintiff that their private property was sold at the time of the hearing"*. At para. 38 of the 23 February 2015 statement of claim, it is pleaded that the existence of what was said to be a special relationship imposed on the defendants *"a duty to fully and accurately disclose all pertinent information pertaining to the home loan which affected the plaintiff's financial future"*.
50. Para. 25 of the 27 April 2020 statement of claim, begins with the following plea:

"The plaintiff claims breach of contract of the said mortgage deed where the Agent for the borrower was contracted to take possession and dispose of the property". In the plaintiff's affidavit, sworn on 29 April 2015 in the context of opposing the application to strike out her 2014 proceedings, the plaintiff averred at para. 15 that: *"The defendant has breached contractual obligations on several counts, and as a consequence removed my ability to fulfil the contract"*.
51. At para. 25 of the statement of claim, the plaintiff goes on to plead: *"The plaintiff claims the receiver failed in statutory duty and in principle good faith actions to the detriment of the plaintiff, their Constitutionally enshrined rights to due process, the right to notification, and the right to be heard regarding their registered private property, including the right to fair hearing in legal proceedings. The plaintiff claims the conduct of the receiver and bank in this precise manner was deceitful, full expression of their power and dominance over the private person and an unjust attack on their property and*

personal rights guaranteed by Article 40.1, 40.3 and 43". The foregoing reflects pleas in the 2014 proceedings, including the plea at para. 23 of the 23 February 2015 statement of claim, that: "Despite the defendant's insistence on a receivership situation the defendant's agent refused to comply with his duty of care despite insistence on a valid appointment".

52. Para. 27 of the 27 April 2020 statement of claim contains the following plea: *"The plaintiff claims that the aforementioned court proceedings in which the plaintiff acted as Litigant in Person were subsequently used and abused by these defendants in other important legal matters to depict the plaintiff as vexatious and an abuser of court process. The plaintiff was ignorant of the precise details of the case and/or applicable law in this precise matter which was expressly taken advantage of by the defendants and their legal representatives".* The foregoing reflects the contents of para. 21 of the plenary summons dated 21 October 2014, wherein it was pleaded that: *"The bank is abusing court process using short sharp practice to prevent due process taking place to the detriment of the plaintiff".* An averment in similar terms is made by the plaintiff at para. 21 of her 29 April 2015 affidavit, and the plaintiff goes on to make a range of averments (paras. 21 to 23) under the specific heading *"Abuse of Court Process"*. These averments included the following: -

"The defendant wishes to avoid a plenary hearing and has consistently endeavoured to contrive speedy judgment". (Para. 21);

"I say the defendant continues to use Court process to manoeuvre to more favourable circumstances". (Para. 22)

"If the Defendant stands righteous in their position, there is no reason to abstain from requesting judgment" (Para. 22);

"I say the law, once seen as a means to ensure fairness has become a tool used by the defendant and its agents to rush to judgment instead of upholding the right of the individual to express their full humanity. Instead of being used to liberate and create fairness, the defendant is using it to dominate and suppress". (Para. 23)

53. At para. 28 of the 27 April 2020 statement of claim, it is pleaded: *"that the bank and/or receiver either sold or destroyed the plaintiff's private property within the Property prior to or following the sale"*. Para. 12 of the plenary summons dated 21 October 2014 pleads: *"the Receiver did not discharge his duties correctly by leaving the house in a state of vandalism and disrepair to the cost and detriment of the plaintiff"*.
54. At para. 29 of the 27 April 2020 statement of claim, the following is pleaded: *"The plaintiff claims damages and/or compensation for offences against their personal data and privacy rights as guaranteed by Article 40.3 of the Constitution and by statute pursuant to s. 7 of the Data Protection Acts 1988 & 2003 (Primary EU Directive 96/45/EC) for conduct repugnant to ss. 4, 2(a) and 2(d) of the Acts and further, conduct repugnant to Article 8 of the EU Convention (Transposed through Article 8 of the European Charter on Human*

Rights 2003 Act)". At para. 30, declaratory relief is sought on the basis of an alleged interference with the plaintiff's rights concerning privacy and personal data. Para. 12 of the statement of claim dated 23 February 2015 contains the following plea:

"The plaintiff's right to privacy and confidentiality regarding her relationship with the defendant was violated by the defendant and its agent soliciting private information from 3rd parties and disclosing information to 3rd parties regarding about the plaintiff's personal and legal financial circumstances to the detriment of the plaintiff's good name and standing".

55. At para. 39 of the 27 April 2020 statement of claim it is pleaded that: *"The plaintiff claims damages and/or compensation including punitive damages for offences against their constitutional right to fair procedures and the right to be heard prior to a property sale and in the course of a receivership involving their private property subject to constitutional procedural protections guaranteed by Articles 40.1 and 40.3".* The allegation that fair procedures were not applied was also a feature of the plaintiff's 2014 proceedings. Para. 7 of the plenary summons dated 21 October 2014 pleads: *"The bank did not allow for 'due process' in dealing with loan matters to the detriment of the plaintiff and subsequently pursued the loan in a manner that consistently and persistently violated the consumer protection code".*
56. At para. 42 of the 27 April 2020 statement of claim, the plaintiff seeks a declaration from this Court *"that the bank's 'security interest' in their private property had no estate legal or equitable in their land;"*. At para. 23 of the plaintiff's 2014 plenary summons, she makes a claim *"for 600,000 Euro in damages and an order declaring the mortgage null and void"*.
57. At para. 43 of the 27 April 2020 statement of claim the plaintiff claims *"damages and /or compensation in that the bank and receiver failed to establish possession of the plaintiff's private property . . ."* In addition to seeking, at para. 23 of the 21 October 2014 plenary summons, *"600,000 Euro in damages and an order declaring the mortgage null and void"*, para. 10 of the 23 February 2015 statement of claim referred to *"the aggressive pursuit by the defendant and its agents to sell the aforesaid property disregarding the plaintiff's rights"* and, at para. 52 of the 2015 statement of claim, it was pleaded that *"The defendant and its agents have illegally attempted to force entry to the 'occupied property'..."*.
58. At para. 46 of the 27 April 2020 statement of claim, it is pleaded that: *"The plaintiff seeks a declaration from the High Court that the receiver and/or the bank made false statutory declaration(s) in relation to the property and possession of the property/rent . . ."* This echoes claims made in the 2014 proceedings including the plea, at para. 6 of the 23 February 2015 statement of claim that *"the defendant was negligent, in breach of duty, in breach of statutory duty, in breach of its fiduciary duty to the plaintiff and in breach of the plaintiff's constitutional, personal, human and civil rights"*. Furthermore, at para. 17 of the 2015 statement of claim, the plaintiff pleads that *"the defendant and its agents have refused to issue valid and correct paperwork or issue copies of same"*.

59. At para. 47 of the 27 April 2020 statement of claim it is pleaded that: "*The plaintiff claims damages and/or compensation including punitive damages for denial of the plaintiff's enshrined right to equity of redemption due to a deliberate policy of non-engagement by the bank and receiver denying the plaintiff their inherent untouchable constitutional right to be heard and fair procedures prior to life altering decisions directly affecting the plaintiff's constitutionally protected private property*". The foregoing reflects a range of pleas made in the 2014 proceedings, including para. 7 of the 21 October 2014 plenary summons where it is pleaded that "*the bank did not allow for 'due process' in dealing with loan matters to the detriment of the plaintiff and subsequently pursued the loan in a manner that consistently and persistently violated the Consumer Protection Code*". Alleged breaches of constitutional rights were also pleaded in the 2014 proceedings. At para. 6 of the 23 February 2015 statement of claim, the plaintiff pleads that "*the defendant was negligent, in breach of duty, in breach of statutory duty, in breach of its fiduciary duty to the plaintiff and in breach of the plaintiff's constitutional, personal, human and civil rights*". A breach of "*the plaintiff's constitutional personal, human and civil rights*" is also pleaded at paras. 11 and 18 of the 2015 statement of claim.
60. At para. 49 of the statement of claim, it is pleaded that "*The plaintiff claims damages and/or compensation including punitive damages that the bank appointed a receiver in circumstances devoid of necessity, fairness and proportionality in that purported arrears accrued on the plaintiff's loan account were insignificant and agreed payments were agreed and accepted by the bank, contrary to Article 1, Protocol 1 of the EU Convention*". The claims that arrears were insignificant, and a range of pleas based thereon, also featured in the 2014 proceedings.
61. Numerous pleas are made in the 27 April 2020 statement of claim that the plaintiff "claims compensation and/or damages including punitive damages" for alleged "breach of contract/ agreement" on the part of the bank, (e.g. para. 52) and for alleged "breach of statutory duty and dereliction of duty and dereliction of duty by the receiver". In the 2014 proceedings, substantial damages were sought as against the bank and the receiver in respect of a range of alleged breaches, including of contract and statute.

Attack on the Judgement of Fullam J

62. Para. 53 of the 27 April 2020 statement of claim contains the following plea: "The plaintiff claims substantial compensation and/or damages including punitive damages in that they were denied the right to constitutional fair hearing/trial in relation to limited summary statutory proceedings and joined proceedings that the plaintiff was denied material facts and basic data access regarding their Constitutionally protected property which denied the plaintiff their Constitutional procedural protections of the Court . . .". The foregoing is a very direct attack on the outcome of the 2014 proceedings, specifically, the judgment of this Court given by Fullam J. on 25 February 2016, which the plaintiff chose not to appeal against.
63. It is fair to say that – whether based on allegations of a lack of fair procedures on the part of the bank, or the receiver, or whether based on constitutional rights, Convention rights, data protection legislation, or otherwise – at the very heart of the present proceedings is

the proposition that the judgment by Fullam J. was wrong and that issues decided with finality must be re-litigated.

64. It is plain from the reading of the 27 April 2020 statement of claim that, among the 'bald' and unsubstantiated assertions made are: firstly, that the evidence relied upon by the court when it decided the motions in respect of the 2014 proceedings was inadequate or defective; secondly, that this Court's 15 February 2016 judgment is defective.
65. Both of the foregoing claims are made in the context of the plaintiff challenging the manner in which the bank and the receiver dealt with her; and seeking to have the sale of the mortgaged property set aside. These inter-related assertions can be seen from the plea at para. 54 of the 27 April 2020 statement of claim, which is in the following terms: -
- "The plaintiff seeks a declaration from the High Court that the Court as created by Article 34 of the Constitution, at the time failed to apply entitled Constitutional and EU procedural protections to the peaceful enjoyment of their private property as guaranteed by Article 40.1, 40.3 and Article 1, Protocol 1 of the EU Convention until all legal proceedings in this precise matter were fully concluded. Consequently, the sale of the plaintiff's private property, by Danske Bank prior to Court proceedings was unlawful and contrary to the Constitutional, fundamental rights and entitlements of the plaintiff".*
66. Paras. 62 and 63 of the 2020 statement of claim make allegations of "conflict of interest" on the part of the receiver and Grant Thornton. This issue was also raised by the plaintiff in the 2014 proceedings. At para. 41 of the affidavit, sworn by the plaintiff on 29 April 2015, she averred: "I say there is and was little evidence of the organisational and appropriate social distance required for 'effective regulatory enforcement'. Inappropriately close social relationships breed conflict of interest in many quarters of the defendant's sector".
67. At para. 67 of the 27 April 2020 statement of claim, it is pleaded that: "The plaintiff seeks a declaration from the High Court that the defendants' unnecessary, unlawful and deceitful interference with the plaintiff's private and personal property was devastating to their inherent Constitutional entitlement to dignity and good standing before their community and peers". Pleas were made in relation to the same issue in the 2014 proceedings. At para. 11 of the 23 February 2015 statement of claim, it is pleaded that: "The plaintiff's good name and standing has been destroyed by the activities of the bank and its agents".
68. At para. 73 of the 27 April 2020 statement of claim, the plea is made that the plaintiff's constitutional rights were "systematically and persistently denied to the plaintiff by an unnecessary receivership and unlawful procurement (purported) possession and disposal of their private and personal property." The claim that the receivership was unnecessary and flawed was a central feature in the 2014 proceedings. At para. 17 of the 23 February 2015 statement of claim, it was pleaded that "the defendant failed to advise, notify or seek consent of the plaintiff in regard to the appointment of a receiver and failed to

provide supporting necessary documentation authorising and necessitating the appointment. Furthermore the defendant and its agent have refused to issue valid and correct paperwork or issue copies of same". Furthermore, at para. 23 of the 23 February 2015 statement of claim it was pleaded that: "Despite the defendant's insistence on a receivership situation the defendant's agent refused to comply with his duty of care despite insistence on a valid appointment."

69. At para. 75 of the 27 April 2020 statement of claim, the following plea is made: *"The plaintiff claims substantial damages, punitive damages, exemplary damages and damages and/compensation (subject to the inherent constitutional jurisdiction of the court for such matters) for pain and suffering, violation of their dignity, loss, defamation, legal sanctions where appropriate and/or other damages and/or compensation as the court sees fit in this precise manner and/or including immediate return of the plaintiff's private property."* This reflects the claim for damages which was made under numerous headings in the 2014 proceedings. Para 8 of the 23 February 2015 statement of claim contains the plea that *"the plaintiff has been caused to suffer detrimental loss and damage, loss of investment value and of investment income, loss of property values, loss of good name and standing in her community, loss of income and business together with severe distress and personal injuries."*

Both sets of proceedings having the same aim

70. What the plaintiff seeks to achieve in the present proceedings is perfectly clear from the following plea at para. 68 of the 27 April 2020 statement of claim: *"The plaintiff claims substantial compensation and/or damages OR the immediate return of their private property with rectification of the Property Register for unnecessary unlawful interference and disposal of their private and personal property, contrary to law and contrary to the fundamental rights and entitlements as guaranteed by the Constitution, the EU Convention on Human Rights 2003 and the EU Charter on Human Rights"*. It is entirely fair to say that the foregoing is precisely what the plaintiff sought to achieve by means of her 2014 proceedings. It will be recalled that the following is pleaded at para. 23 of the 21 October 2014 plenary summons: *"The plaintiff's claim is for 600,000 Euro in damages and an order declaring the mortgage null and void"*. Furthermore, at para. 8 of the 23 February 2015 statement of claim, it was pleaded that: *"the plaintiff has been caused to suffer detrimental loss and damage, loss of investment value and of investment income, loss of property values, loss of good name and standing in her community, loss of income and business together with severe distress and personal injuries"*. The fact that a central objective of the 2014 proceedings was the return of the property to the plaintiff, in addition to damages, (being the self- same objective in the present proceedings) is also plain from the contents of 21 October 2014 plenary summons which contained the following:

"23. The plaintiff's claim is for €600,000 in damages and an order declaring the mortgage null and void.

24. Any liens or charges to be removed from Folio CK114934F.

25. *Plus aggravated damages.*"

Relevant legal principles

71. Before proceeding further, it is appropriate to identify certain relevant legal principles which must guide the court in deciding the present applications. On 21 December 2021 Ms. Justice Butler delivered a judgment in proceedings *entitled Gerardine Scanlan (plaintiff) v. Paul Gilligan, Maurice Collins, Joe Jeffers, Shane O'Brien, Fiona O'Beirne, Grant Thornton Corporate Finance Limited, Aidan Connaughton, Ireland, The Attorney General and the Data Protection Commissioner (defendants)* bearing record number 2019 No. 7318P. That judgment dealt with a series of applications made by the defendants to strike out proceedings issued by the plaintiff against them, in 2019. At para. 6 of her judgment Butler J. referred to the particular challenges arising in cases brought by litigants in person, in circumstances where a claim may be pleaded in dense, repetitive and prolix terms. Such is the position in the present case which, as Butler J. observed, makes it difficult for the court to extract the essence of the dispute between the parties from the case as pleaded. Again, this is the position in the present case and it is for this very reason that I have identified (i) the principal claims advanced in the 2014 proceedings; (ii) the principal claims advanced in the present proceedings; and (iii) compared the two, in some detail.
72. It is appropriate to quote para. 8 of Ms. Justice Butler's decision which, in my view, is a very helpful analysis of the proper approach to be taken in the present case. At para. 8 the learned judge stated as follows:
- "8. This is not to say that cases brought by litigants in-person are invariably bad cases. Frequently, at the core of the litigation there may be a point of real substance although it is often obscured by excessive pleading and by an insistence on pursuing all points, however unmeritorious, to the detriment of the real issue. The court's task is to ensure that if there is a point of merit in the case, it is not overlooked or disregarded because of the verbiage by which it is sometimes surrounded. The task is unenviable not least because of the tendency of the litigant-in-person to take the view that unless the judge accepts all of their applications and arguments, they have not received justice."*
73. Guided by the foregoing principle, and others to which I will presently refer, this court must take great care to ensure that no point of real substance is overlooked. For this reason, later in this judgment I will also look at the plaintiff's draft amended statement of claim, dated 30 November 2021, to see what it discloses. That task will also be guided by the helpful analysis guided by Ms. Justice Butler who stated, at para. 39 of her 21 December 2021 decision that:
- "... in approaching applications by opposing parties relating to pleadings prepared by a litigant-in-person, the court must remain conscious that just because a case is badly pleaded, it does not necessarily follow that it is a bad case. Thus, in examining the applications brought by the defendants to strike out the plaintiff's*

claim, the court must consciously disregard the poor state of the pleadings and focus on what is, so far as the court can ascertain, their true intent."

The proper approach to the present motions

74. Order 19, rule 28 of the Rules of the Superior Courts provides that: "*The court may order any pleading to be struck out, on the grounds that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.*"

75. In addition, the court enjoys an inherent jurisdiction to strike out a claim which must inevitably fail. The latter jurisdiction was outlined by Costello J in *Barry v. Buckley* [1981] IR 306 and in a line of a succeeding authority. The distinction between the two jurisdictions was clarified by Clarke J., (as he then was) in *Lopes v. Minister for Justice* [2014] IESC 21 wherein, (from paras. 2.1 to 2.9) the learned judge analysed the nature and extent of these parallel jurisdictions in the following terms: -

"2. *The Jurisdiction to Dismiss*

2.1 *Applications to dismiss at an early stage of proceedings are, when brought, frequently based alternatively on the provisions of O. 19, r.28 of the Rules of the Superior Courts ('RSC') and the inherent jurisdiction of the Court. It is important to emphasise that the inherent jurisdiction of the Court should not be used as a substitute for, or means of getting round, legitimate provisions of procedural law. That constitutionally established courts have an inherent jurisdiction cannot be disputed. That the way in which the ordinary jurisdiction of those courts is to be exercised is by means of established procedural law including the rules of the relevant court is also clear. The purpose of any asserted inherent jurisdiction must, therefore, necessarily, involve a situation where the Court enjoys that inherent jurisdiction to supplement procedural law in cases not covered, or adequately covered, by procedural law itself. An inherent jurisdiction should not be invoked where there is a satisfactory and existing regime available for dealing with the issue under procedural law for to do so would set procedural law at naught.*

2.2 *Against that background, it is important to distinguish between the jurisdiction which arises under O. 19, r. 28 of the RSC and the inherent jurisdiction often invoked. The inherent jurisdiction can be traced back to the decision of Costello J. in Barry v. Buckley [1981] I.R. 306. However, that jurisdiction needs to be carefully distinguished from the jurisdiction which arises under the RSC, precisely because it would be inappropriate to invoke the inherent jurisdiction of the Court in circumstances governed by the rules. In that context, I said, at para. 3.12. of my judgment in the High Court in Salthill Properties Limited & anor v. Royal Bank of Scotland plc & ors [2009] IEHC 207, the following:*

'3.12 *It is true that, in an application to dismiss proceedings as disclosing no cause of action under the provisions of Order 19, the court must accept the facts as*

asserted in the Plaintiff's claim, for if the facts so asserted are such that they would, if true, give rise to a cause of action then the proceedings do disclose a potentially valid claim. However, I would not go so far as to agree with counsel for Salthill and Mr. Cunningham, to the effect that the court cannot engage in some analysis of the facts in an application to dismiss on foot of the inherent jurisdiction of the court. A simple example will suffice. A Plaintiff may assert that it entered into a contract with the Defendant which contained certain express terms. On examining the document the terms may not be found, or may not be found in the form pleaded. On an application to dismiss as being bound to fail, there is nothing to prevent the Defendant producing the contractual documents governing the relations between the parties and attempting to persuade the court that the Plaintiff has no chance of establishing that the document concerned could have the meaning contended for because of the absence of the relevant clauses. The whole point of the difference between applications under the inherent jurisdiction of the court, on the one hand, and applications to dismiss on the factual basis of a failure to disclose a cause of action on the other hand is that the court can, in the former, look to some extent at the factual basis of the Plaintiff's claim.'

- 2.3 *The distinction between the two types of application is, therefore, clear. An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious. The reason why, as Costello J. pointed out at p. 308 of his judgment in Barry v Buckley, an inherent jurisdiction exists side by side with that which arises under the RSC is to prevent an abuse of process which would arise if proceedings are brought which are bound to fail even though facts are asserted which, if true, might give rise to a cause of action. If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the Court to prevent abuse can be invoked.*
- 2.4 *It is important to keep that distinction in mind. It is also important to note the many cases in which it has been made clear that the inherent jurisdiction of the court should be sparingly exercised. This was initially recognised by Costello J. in Barry v Buckley and by the Supreme Court in Sun. Fat Chan v Osseous Ltd [1992] 1 I.R. 425. In the latter case, McCarthy J. stated that 'generally the High Court should be slow to entertain an application of this kind'. This point has been reiterated more recently in Kenny v Trinity College Dublin [2008] IESC 18 at para. 35 and in Ewing v Ireland and the Attorney General [2013] IESC 44 at para. 27.*
- 2.5 *It is also important to remember that a Plaintiff does not necessarily have to prove by evidence all of the facts asserted in resisting an application to dismiss as being bound to fail. It must be recalled that a Plaintiff, like any other party, has available*

the range of procedures provided for in the RSC to assist in establishing the facts at trial. Documents can be discovered both from opposing parties and, indeed, third parties. Interrogatories can be delivered. Witnesses can be subpoenaed and can, if appropriate, be required to bring their documents with them. Other devices may be available in particular types of cases. In order to defeat a suggestion that a claim is bound to fail on the facts, all that a Plaintiff needs to do is to put forward a credible basis for suggesting that it may, at trial, be possible to establish the facts which are asserted and which are necessary for success in the proceedings. Any assessment of the credibility of such an assertion has to be made in the context of the undoubted fact, as pointed out by McCarthy J. in Sun Fat Chan (at p. 428), that experience has shown that cases which go to trial often take unusual turns on the facts which might not have been anticipated in advance.

- 2.6 *At the same time, it is clear that certain types of cases are more amenable to an assessment of the facts at an early stage than others. Where the case is wholly, or significantly, dependent on documents, then it may be much easier for a court to reach an assessment as to whether the proceedings are bound to fail within the confines of a motion to dismiss. In that context, it is important to keep in mind the distinction, which I sought to analyse in Salthill Properties, between cases which are dependent in themselves on documents and cases where documents may form an important part of the evidence but where there is likely to be significant and potentially influential other evidence as well.*
- 2.7 *The allegation made by Mr. Lopes in these proceedings is, of course, one of fact. He asserts that the outcome of his litigation was unjustly determined to his disadvantage by reason of bias, discrimination or corruption on the part of judges. There are a range of legal issues which arise in that context, not least the question of whether judicial immunity from action would afford a defence and whether, even if it does not, the Minister is vicariously liable for the actions of judges. Those questions raise important legal issues but, before coming to those issues, it is necessary that there be a credible case on the facts as to bias, discrimination or corruption.*
- 2.8 *It seems to me, therefore, that this case is more appropriately considered under the inherent jurisdiction of the Court rather than under the RSC. There is an allegation of bias, discrimination or corruption. If it is made out, then those difficult legal questions which I have just mentioned will arise. But the necessary facts are pleaded and, therefore, for the purposes of an application to dismiss under the RSC as vexatious, it would have to be assumed that those facts could be established.*
- 2.9 *On the other hand, so far as the inherent jurisdiction of the Court to protect against abuse of process is concerned, the Court can at least consider whether there is a credible basis for suggesting that Mr. Lopes might be able to establish the facts which he asserts. If there is no such basis, then these proceedings are bound to fail and their maintenance must, therefore, be an abuse of process, such that the*

proceedings ought now be dismissed. It is true that Hanna J., in dismissing the proceedings, had regard to some of the legal issues which might potentially arise in a claim such as this. However, for reasons which I hope to address, I am satisfied that it would not be appropriate, in all the circumstances of this case, to dismiss the claim sought to be brought by Mr. Lopes by virtue of forming a view that his claim was bound to fail on the law. Rather, it seems to me that the judgment of Hanna J. should only be upheld if it is appropriate to agree with the conclusions which he reached to the effect that there was no credible basis, on the facts, on which Mr. Lopes could hope to establish bias, discrimination or corruption. It is to that question that this judgment is directed. As the principal complaint which Mr. Lopes makes centres on the way in which his claim for damages for loss of earnings was assessed, I would, before going on to consider the credibility of his accusation of bias, feel it appropriate to make some general observations about the way in which claims for damages for loss of earnings are dealt with in the Irish legal system."

76. Having quoted para. 2.3 from the Supreme Court's decision in *Lopes v. Minister for Justice*, Butler J. put succinctly the distinction between the two jurisdictions in her judgment in *Scanlan v. Gilligan & Ors* [2021] IEHC 825 at para. 45, as follows:

"Thus, the issue under O. 19, r. 28 is whether the pleadings disclose a cause of action whereas, under its inherent jurisdiction, the court can look beyond the cause of action disclosed by the pleadings to see whether it is one which has no prospect of success."

Data protection

77. Having pleaded *inter alia* that the bank and the receiver unlawfully refused to engage with her and that the plaintiff's property was unlawfully and unnecessarily sold contrary to contractual and constitutionally guaranteed rights, the plaintiff makes a range of pleas, from para. 13 onwards, in the 27 April 2020 statement of claim with reference to "*the Data Protection Acts 1988 & 2003*". It is appropriate to quote para. 13 in full as follows:

"13. The plaintiff claims in the course of these events, the said receiver was found in breach of s. 4(1) of the Data Protection Acts 1988 & 2003 in failing to meet a subject access request (SAR) issued September 2013 until September 2015 in a further policy of deliberate non-engagement regarding the plaintiff. The plaintiff claims the SAR was acknowledged by the receiver's offices in 2013 and yet, not provided for a further two years. It was only delivered on a "final warning" from the Data Commissioner's office in September 2015. The plaintiff claims compensation and damages pursuant to s. 7 of the said Acts for failure to provide the plaintiff's private data contrary to s. 4(1) of the Acts as entitled. Further, the plaintiff claims that such failure to provide their personal data within the statutory time limit had significant consequences on their visibility to view the use of personal data by the receiver including the pursuit and disposal of their private property. The plaintiff dispatched a SAR to procure a copy of their personal file with the said receiver which proved impossible in light of the receiver's continued non-engagement. The receiver persistently refused to meet the statutory requirement

of the SAR for two years contrary to law and as officially determined by the Data Commissioner in a section 10 decision. The plaintiff claims the receiver only sought to provide the plaintiff's private data after the property was disposed of, an event which the plaintiff was unaware. Notwithstanding the contravention of the Data Protection Acts 1988 & 2003, such conduct is repugnant to the plaintiff's constitutional fundamental rights as provided by Article 40.1 and 40.3. The plaintiff claims they are fully entitled to general damages pursuant to Article 40.3 of the constitution and Article 8 of the EU Convention in this precise manner, notwithstanding statutory provisions of section 7 of the Acts for damages acknowledged by the Data Commissioner."

78. It is appropriate to note that in the 2015 proceedings Ms. Scanlan has delivered an "Amended Revised Defence and Counterclaim", para. 1 of which counterclaim is pleaded in the following terms:

"AND THE DEFENDANT CLAIMS:

- 1. The defendant claims substantial damages pursuant to section 7 of the Data Protection Acts ("the Acts") for the plaintiff's failure to provide the defendant's data access request within the statutory time permitted or within any reasonable time at all, in violation of and contrary to section 4 of the Acts and consequently in violation of the defendant's fundamental rights as enshrined in Article 8, which concealed material facts from the defendant and had a consequential detrimental effect on the defendant's litigation."*

79. At para. 14 of the 27 April 2020 statement of claim, the following is pleaded:

"14. The plaintiff claims damages and compensation from the said receiver in breach of section 2(1)(a) and (d) of the Data Protection Acts 1988 & 2003 in the course of this receivership in failing to meet significant legal principles in relation to collection and fair processing of the plaintiff's personal data. The plaintiff claims the Data Commissioner held the receiver and their agency to be in breach of the said sections of the Acts and is entitled to compensation and/or damages pursuant to section 7 for failure to apply the legal principles of data collection and fair processing of personal data in the course of private business. Notwithstanding contravention of the Data Protection Acts 1988 & 2003, such conduct is repugnant to the plaintiff's constitutional fundamental rights as provided by Article 40.1 and 40.3. The plaintiff claims they are entitled to "general damages" pursuant to Article 40.3 of the Constitution and Article 8 of the EU Convention in this precise matter, notwithstanding any statutory provisions of s. 7 of the Acts acknowledged by the Data Commissioner."

The foregoing reflects pleas which were made by the plaintiff in the 2015 Grant Thornton proceedings, but which have been struck out.

Pleas which have been struck out

The following pleas were made at paras 3 and 4 of the Defence & Counterclaim in the 2015 proceedings as *originally* delivered by Ms. Scanlan, on 21 December 2017:

"3. *The defendant claims substantial damages pursuant to s. 7 of the Data Protection Acts for the plaintiff's inability, unwillingness and failure to establish the scope and extent of a significant data breach in September 2015. The plaintiff's inability to establish data loss is contrary to and in violation of section 2C of the Acts as well as every paragraph of section 2(1) and (2) and consequently offensive to Articles 16, 17(3) of Directive 95/46/EC and Articles 6 & 7.*

4. *The defendant claims substantial damages pursuant to s. 7 of the Data Protection Acts for the plaintiff's failure, refusal and neglect to ensure the defendant's private data was 'adequately protected' and further protected within a sphere of lawful data processing ensuring 'adequate' protection of the defendant's privacy rights contrary to and in violation of section 2(1)(d) of the Acts."*

The judgment of 27 July 2017

80. It will be recalled that in a judgment delivered by this court (Gilligan J.) on 27 July 2017, the court dealt with Ms. Scanlan's motion in the Grant Thornton proceedings which sought to permit her to join the Attorney General, the Data Protection Commissioner and Danske Bank to those proceedings (refusing the joinder). In that decision, the learned judge outlined the backdrop to the Grant Thornton proceedings which arose in circumstances where, following a data access request by Ms. Scanlan, and as a result of inadvertence on the part of Grant Thornton, she was provided with a 'disk' which apparently contained confidential information and/or personal data relating to third parties, including allegedly confidential proprietary information of the plaintiffs and material covered by legal privilege. Gilligan J. noted that the plaintiffs allege that Ms. Scanlan utilised the alleged confidential information and shared it with third parties and, in those circumstances an application was made for interlocutory orders which were granted on 4 December 2015, pending the determination of the proceedings. Those orders restrained the defendant and any person having notice of the orders from, *inter alia*, disseminating the confidential information and delivering up same etc. Gilligan J. noted that the position appeared to be that Ms. Scanlan copied the contents of the disk onto three USB keys and returned the original disk and two out of three 'USB keys', but one USB key remained outstanding at that point. The learned judge noted that the plaintiffs (i.e. Grant Thornton) maintained that the defendant had retained information to which she was not entitled, whereas the defendant denied that she had done so. Gilligan J. went on to refer to the decision by Fullam J. granting summary judgment and dismissing Ms. Scanlan's claim; and the court noted that the judgment by Fullam J. had not been appealed. For stated reasons Gilligan J. refused the application to join Danske Bank, the Attorney General and/or the Data Protection Commissioner. Mr. Justice Gilligan also decided Grant Thornton's motion which sought to strike out Ms. Scanlan's Defence and Counterclaim. In the course of dealing with the various paragraphs of same, Gilligan J. stated *inter alia* the following with regard to the 2014 proceedings brought by Ms. Scanlon.

"42. At para. 136 the defendant makes reference to the defendant's claim against the plaintiffs in High Court proceedings bearing record no. 8950P/2014. It is appropriate to state that these proceedings were decided and concluded in a full hearing before this court (Fullam J.) who having considered the matter gave a reasoned judgment which found against the defendant and again the defendant has not sought to avail of any of the remedies that would be available to her which are to seek to set the judgment aside if the court was deliberately misled or in the alternative to appeal the decision of the court to the Court of Appeal. The findings of the court as set out in the judgment of Fullam J. are a final binding judgment and issues that arose in those proceedings will not be permitted to be ventilated in these proceedings."

81. Gilligan J. examined Ms. Scanlan's Defence and Counterclaim on a paragraph by paragraph basis and, for the reasons given in his judgement, all pleas made in the counter claim were struck out, save for the plea which now appears at para 1 of the amended revised defence & counterclaim, which I have quoted earlier. Of this element of the plaintiff's claim, Gilligan J. stated the following:

"59. There is only one aspect of the proposed counterclaim in my view which is capable of being left to stand and that is the defendant's claim as against the plaintiff for damages pursuant to s. 7 of the Data Processing Act, 1988 – 2003. This claim however must necessarily arise out of the actual facts of the giving of the disk to the plaintiff with her own information thereon in addition to information relating to third parties with whom the plaintiff has no connection."

82. Having regard to the foregoing, the position is that the plaintiff, in the present proceedings, makes a range of pleas in her 27 April 2020 statement of claim with reference to data protection legislation, which reflect pleas she made in her Defence and Counterclaim in the 2015 Grant Thornton proceedings. With a single exception, this court has previously decided that the wide range of pleas made with reference to data protection legislation should be struck out. The sole surviving plea in the 2015 Grant Thornton proceedings relates to Ms. Scanlan's claim for damages pursuant to s. 7 of the Data Protection Acts in light of the alleged breach of s. 4 of same which, according to Ms. Scanlan, constituted a violation of her fundamental rights. That sole surviving plea in the 2015 Grant Thornton proceedings is materially the same as pleas which the plaintiff makes in the present proceedings, including at paras. 14 and 29 of the 27 April 2020 statement of claim.

83. It should also be noted that Ms. Scanlan appealed the order made by Mr. Justice Gilligan on 27 July 2017 which reflected his judgment of that date. This resulted in a written judgment of the Court of Appeal (Baker J.) delivered on 31 October 2019. In setting out the background facts giving rise to the institution of the Grant Thornton proceedings, Baker J. referred to the judgment delivered by Mr. Justice Fullam on 25 February 2016. Baker J. also referred to the plaintiff's data access request and to the furnishing on 15 September 2015 by Grant Thornton to the plaintiff of a "compact disc" containing certain

information and data pertaining to her, and what is accepted to have been confidential and personal data relating to unconnected third parties, and confidential proprietary information belonging to Grant Thornton. The foregoing was what the Court of Appeal referred to as the "*confidential information*". Baker J. stated, at para. 6 of the Court of Appeal's judgment, that

"Ms. Scanlan accepts, and had accepted for some time before the proceedings were instituted, that she did send some documents forming part of the confidential information to third parties, and she asserts that she was, and remains, under a legal obligation to do so and to inform the affected parties that she has the information and the manner in which it was disclosed to her.

84. In circumstances where, in the 27 April 2020 statement of claim in the present proceedings, the plaintiff makes a range of claims with reference to data protection legislation, notwithstanding the fact that a range of similar claims were struck out by court order (Gilligan J.). It is appropriate to quote as follows from the Court of Appeal's decision:

"The refusal to join Danske Bank

38. *The appeal against the refusal to join the Bank to the proceedings is made on the basis that the bank was the 'primary data controller' within the meaning of the then relevant Data Protection Act, 1988, of the data in respect to which the proceedings are brought and that the bank 'benefitted' from withholding that data in the course of the earlier debt proceedings heard by Fullam J.*
39. *The application to join the Bank was made on the grounds that the Bank had appointed Mr. Tennant as receiver, and Ms. Scanlan has not sought to challenge the conclusion to which the trial judge came, that the fact that the Bank had previously obtained judgment against Ms. Scanlan and appointed the receiver, and that the previous proceedings had long concluded and been definitively determined meant that it had no role to play in the claim.*
40. *It is now argued by Ms. Scanlan that the Bank was the 'controller' of the data wrongfully sent to her and that it should be joined to the proceedings in the light of its statutory obligations as controller to protect that data.*
41. *In the course of argument on the appeal, Ms. Scanlan submitted that the bank is, accordingly, the 'only party with requisite standing' to bring the proceedings, and in those circumstances she seemed to concede that her application was that the bank be joined as a plaintiff. Apart altogether from the question of whether a party can be joined by a defendant as a plaintiff without his or her consent, I consider that the question of the joinder of the Bank to the proceedings may fairly be dealt with by reason of the fact that, if Ms. Scanlan is correct in her assertion that the Bank is the only or primary person or body with standing to bring these proceedings, then*

that is a matter which goes to her defence of the proceedings and does not require that the Bank be a party, whether as plaintiff, defendant, or notice party.

42. *When the matter was argued before the trial judge, the approach of Ms. Scanlan was to argue that the Bank as primary data controller failed in its duty to ensure compliance with the legislation, although she later asserts in her grounding affidavit, at para. 13, that the Bank and Grant Thornton 'conspired to remain silent and conceal facts' from Fullam J.*
43. *I agree with the finding of the trial judge that no cause of action is asserted against the Bank in these proceedings or, as he put it, 'the Bank has no role'. Insofar as the argument that the bank be joined is based on the alleged concealment of facts in the receivership or judgment process, that is not a matter which arises in the present proceedings, and, taking the application of the appellant at its height, if the focus were to be on the matters pleaded in the defence and counterclaim delivered on 18 December 2017, no role was asserted and no relief sought against the bank which might require it to be a party.*
44. *Insofar as the appeal concerns the refusal of the trial judge to make the declaration sought at paras 10 and 11 of the notice of motion that the Bank conspired with Grant Thornton to mislead her, or to mislead Fullam J., these are not orders that are capable of being made on interlocutory motion and do not arise on the pleadings.*
45. *With the leave of the court, the Bank furnished written and oral submissions on the appeal and Irvine J. gave leave to intervene and the appellant expressly made no objection.*
46. *Counsel argues that the attempt to join the bank amounts to an attempt to mount an as yet unarticulated collateral attack on the judgment and order of Fullam J. which must be seen as final and not open to challenge. I agree with that observation and it is another basis on which the appeal is to be dismissed."*
85. Two comments seem to me to be appropriate to make at this juncture. Firstly, insofar as the plaintiff seeks to raise issues, with reference to data protection legislation arising out of the inadvertent disclosure of data to her by Grant Thornton, the self-same issues were raised by her in the 2015 Grant Thornton proceedings. Secondly, the decision made by Gilligan J. in the Grant Thornton proceedings to strike out all but one of Ms. Scanlan's pleas is a decision which was not disturbed by the Court of Appeal who also upheld Gilligan J.'s refusal to join Danske Bank into the Grant Thornton proceedings. Thus, the foregoing issues have been finally determined by the Court of Appeal.
86. Leaving aside Ms. Scanlan's submission, which the Court of Appeal referred to at para. 41 of its judgment, to the effect that the bank is the "*only party with requisite standing*" to bring the relevant proceedings with respect to the data sent to her, even a first principles analysis demonstrates that it is entirely impermissible for Ms. Scanlan to both pursue the

claim pleaded at para. 1 of her amended revised defence and counterclaim (being proceedings in which the court has ruled, definitively, that Danske Bank is not an appropriate party), and simultaneously to bring the same claim against the same bank in the present proceedings.

87. It is a statement of the obvious that the Grant Thornton proceedings were commenced in 2015, whereas the present proceedings were issued two years later in 2017. Furthermore, if the claim articulated by Ms. Scanlan at para. 1 of her amended revised defence and counterclaim is one she regards as of any relevance to the receiver, it does not appear that Ms. Scanlon sought to have the receiver joined in the 2015 proceedings in any capacity. In making that observation I am not for a moment suggesting that such a joinder was or is appropriate.
88. In light of the foregoing, it can safely be said even at this stage that, in the present proceedings, the plaintiff undoubtedly seeks to raise issues which have already been determined, with finality.

Res Judicata

89. The doctrine of *res judicata* provides that a final judgment of a court of competent jurisdiction is conclusive. Thus, a party is precluded from re-litigating matters decided in an earlier judgment. The *res judicata* doctrine can be divided into two sub-categories. Firstly, *cause of action estoppel* arises where the cause of action in the later proceedings is identical to that in the earlier proceedings. In essence, there is a strict rule of law that one cannot bring another action against the same party for the same cause. Secondly, *issue estoppel* arises where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and, in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to re-open that issue.

Abuse of process

90. The abuse of process doctrine is designed to prevent parties from attempting to re-litigate issues which either have been decided or could have been decided in a previous action. This doctrine can also be divided into two sub-categories. Firstly, it operates to prevent parties re-litigating issues which have been decided in earlier proceedings. Secondly, it prevents parties re-litigating issues which *could* have been decided in earlier litigation. The latter is commonly known as the rule in *Henderson v Henderson* [(1843) 3 Hare 100].

The rule in Henderson v Henderson

91. In essence, the rule in *Henderson v Henderson* requires that a party to litigation must make her or his whole case when the matter is before the court for adjudication and will not afterwards be permitted to re-open the matter to advance new grounds which could have been advanced at the time. A summary of the law with regard to the rule in *Henderson v Henderson* can be found in chapter 16 of *Delany and McGrath on "Civil Procedure"* (4th Ed., 2018) and I have had regard to same.

92. In his 24 July 2015 judgment in *Vico Ltd & Ors v Bank of Ireland & Ors*. [2015] IEHC 525, McGovern J. stated the following with regard to the doctrine of res judicata and the related jurisdiction derived from *Henderson v Henderson*:

"Res judicata and the rule in Henderson v Henderson

8. *The doctrine of res judicata has its origins in public policy considerations which require that there should be finality to litigation and parties should not be permitted to re-litigate matters which have already been determined by the courts. In Dublin Corporation v Building and Allied Trade Union [1996] 1 I.R. 468, Keane C.J. at p. 481 said that the court recognised:*

'[T]he interest of all citizens who resort to litigation in obtaining a final and conclusive determination of their disputes. However severe the stresses of litigation may be for the parties involved – the anxiety, the delays, the costs, the public and painful nature of the process – there is at least the comfort that at some stage finality is reached. Save in those exceptional cases where his opponent can prove that the judgment was procured by fraud, the successful litigant can sleep easy in the knowledge that he need never return to court again.'

9. *A complementary jurisdiction to avoid multiplicity of proceedings is to be found in Henderson v Henderson (1843) Hare 100, which has been approved by the Supreme Court in Re. Vantive Holdings [2010] 2 I.R. 118, where Murray C.J. quoted with approval the trial judge where he said at pp. 124 – 125:*

'The rule in Henderson v Henderson is to the effect that a party to litigation must make its whole case when the matter is before the court for adjudication and will not afterwards be permitted to reopen the matter to advance new grounds or new arguments which could have been advanced at the time. Save for special cases, the plea of res judicata applies not only to issues actually decided but every point which might have been brought forward in the case. In its more recent application this rule is somewhat mitigated in order to avoid its rigidity by taking into consideration circumstances that might otherwise render its imposition excessive, unfair or disproportionate.'

93. The backdrop to the *Vico Limited* proceedings concerned the giving of security by that entity over property known as "Gorse Hill" on Vico Road, Killiney, County Dublin, in favour of a bank, in respect of a Mr. and Mrs. O'Donnell's liabilities. The plaintiff sought to challenge the security documents in proceedings commenced in 2015 notwithstanding the fact that in 2012 the O'Donnell children, (although not Vico Limited), brought proceedings against the bank defendants. For the reasons set out in his decision, McGovern J. held that the proceedings constituted an abuse of process and were vexatious, offending the rule in *Henderson v Henderson*.

The 'obvious purpose' of the proceedings

94. I find it particularly useful to quote para. 15 of the learned judge's decision. After referring to the principles emerging from the *Henderson v Henderson* doctrine, McGovern J. stated as follows:

"15. To that I would add that it seems to me appropriate that, in looking at earlier proceedings and comparing them with the action now sought to be dismissed, it is necessary to focus on the obvious purpose of the proceedings in terms of the relief sought and not to be distracted by particular aspects of each case which might show some variations in the particulars pleaded."

95. Any reasonable comparison of the present proceedings and the 2014 proceedings reveals that the *obvious purpose* of both is to challenge: (i) the manner in which the bank and the receiver dealt with the plaintiff; (ii) the appointment of the receiver; (iii) the taking of possession of the property; and (iv) the sale of the property; with (v) claims made in both proceedings for compensation and/or the return of the property/release of the mortgage.

Covering the same ground

96. In the *Vico Limited* case, McGovern J. referred to a list of some 22 issues which the plaintiffs in those proceedings, said were not raised in the earlier proceedings; and the learned judge went on to state (at the end of para. 15) that:

"To focus particularly on each and every item in that list would be to obscure the bigger picture which the court has to take into account in coming to a decision in an application of this nature which is whether, in essence, the proceedings are covering the same ground as the earlier proceedings which have been determined. The court also has to determine whether or not matters which could have been raised and ought to have been raised in the earlier proceedings are only now being raised for the first time."

For the reasons detailed in this decision, I have no hesitation in saying that the present proceedings cover the same ground as the 2014 proceedings which have been determined with finality. In due course, I will return to the topic of whether there are matters raised in the present proceedings which did not form part of the 2014 claim and the extent to which these could and should have been raised in those earlier proceedings.

Fraud

97. It is also appropriate to note that the *Vico Ltd.* decision was the subject of an appeal which resulted in a judgment delivered by Ms. Justice Finlay Geoghegan: (*Vico Ltd. & Ors v. The Governor and Company of the Bank of Ireland & Ors.* [2016] IECA 273). Having cited the passage from the decision in *Re Vantive Holdings* which McGovern J. quoted at para. 9 of his judgment (and which I have set out earlier), Finlay Geoghegan J. went on, at para. 27, to comment on "*special cases*" constituting exceptions to the *res judicata* principle. The learned judge put matters as follows: -

"27. The special cases referred to by him are those primarily where the judgment was procured by fraud: see *Dublin Corporation v. Building and Allied Trade Union* [1996] IR 468 at 481. The nature of the fraud which must be proved was identified by Fennelly J. in *Kenny v. Trinity College Dublin* [2008] IESC 18 at paras. 54 to 55 where he set out the evidential requirements in an action to set aside a final judgment:

*'I am satisfied that, in order to ground an action to set aside a judgment, the plaintiff must allege fraud in the true sense, that is deliberate and purposeful dishonesty, knowing and intentional deceit of the court. That approach is consistent with the statement of principle made by Keane J, in *Dublin Corporation v Building & Allied Trade Union* and others, with the interests of parties to litigation who have secured a final decision of a court and with the overriding public interest in finality of litigation.*

55. In addition, the fraud alleged must be such as to affect the impugned decision in a fundamental way. It will not suffice to allege that the new situation revealed by the uncovering of the fraud might have affected the judgment. It will not be enough to show, for example, that a witness lied unless it is shown that the true version of his evidence would probably have affected the outcome.... I believe that, in an action to set aside a judgment based on an allegation that the court was deliberately deceived into making the impugned decision no less stringent test should be required. There must be something fundamental, something that goes to the root of the case.'

98. The foregoing principles seem to me to be of particular use in terms of guiding the court in the present application. Even at this juncture, I have no hesitation in stating that the plaintiff is using the present proceedings as a vehicle to try and set aside final judgments made by this Court, in particular the judgment of Fullam J. of 2016 and the orders subsequently made on 5 July 2016.
99. The plaintiff in the present proceedings never appealed against the foregoing, nor did she bring any application to set aside the judgment on the basis that it was obtained through fraud. However, in approaching the present motions it seems to me to be appropriate for this Court to ask whether the claim made by the plaintiff in the present proceedings discloses any fraud likely to have affected the 2016 judgment and orders. In other words, it seems to me appropriate for this Court to ask whether the present proceedings brought by the plaintiff discloses "something fundamental" which "goes to the root" of the 2014 case which would, as a matter of probability, have affected the outcome. Having posed those questions, I have no hesitation in saying that nothing is disclosed in the present proceedings which could, on any analysis, have affected the outcome of the 2014 proceedings.

The 30 November 2021 draft amended statement of claim

100. After the plaintiff swore the last of her affidavits, in response to these motions, she furnished a draft amended statement of claim dated 30 November 2021. I have carefully

considered its contents, conscious that an application to dismiss proceedings will fail if the deficiency in the pleading can be rectified by means of an amendment that will set out a good cause of action (see *Sun Fat Chan v. Osseous Ltd* [1992] 1 IR 425).

101. In circumstances where the plaintiff is a litigant in person, it was acknowledged by counsel for the bank and receiver, respectively, that it was appropriate to look at this document which constitutes the most up to date articulation by the plaintiff of her claims. Having carefully considered it, I am entirely satisfied that the primary objective in the present proceedings is one and the same as the plaintiff's objective in the 2014 proceedings.
102. Fundamentally, both proceedings are based on the plaintiff's contention that the sale of the mortgaged property was unlawful; that her rights were breached; and that she is entitled to compensation by way of damages and/or the return of the property and the setting-aside of the mortgage on same. For present purposes, it is sufficient to compare the following pleas:
- Para. 94 of the draft amended statement of claim dated 30 November 2021 contains the following plea: *"94. The plaintiff claims compensation and/or damages OR the immediate return of their private property with rectification of the Property Register for unnecessary unlawful interference and disposal of their private and personal property contrary to law, and contrary to the fundamental rights as guaranteed by the Constitution and the EU Convention"*.
 - Para. 23 of the plaintiff's 21 October 2014 plenary summons states: *"23. The plaintiff's claim is for 600,000 Euro in damages and an order declaring the mortgage null and void"*.
 - Furthermore, at para. 6 of the 23 February 2015 statement of claim, the bank's activities and conduct were pleaded to be *". . . negligent, in breach of duty, in breach of statutory duty, in breach of its fiduciary duty to the plaintiff and in breach of the plaintiff's constitutional, personal, human and civil rights"*
 - At para. 23 of the 23 February 2015 statement of claim, the plaintiff pleads that: *"Despite the defendant's insistence on a receivership situation the defendant's agent refused to comply with his duty of care despite insistence on a valid appointment"*.
 - At para. 24 of the same 2015 statement of claim, it is pleaded that: *"The plaintiff intends to show the defendant and its agent denied the plaintiff the right to privately sell the property in order to secure the best possible price for the property"*.
103. Earlier in this judgment I compared numerous pleas in the plaintiff's 27 April 2020 statement of claim with pleas made by her in the 2014 proceedings. On any analysis, the object of both sets of proceedings is the same and similar issues are canvassed. It is fair to say that relatively few pleas contained in the 27 April 2020 statement of claim have been deleted from the 30 November 2021 draft amended statement of claim. Thus, the exercise in comparison which I conducted earlier in this judgment still holds true.

Constitutional right to be heard prior to the sale

104. A central theme in the plaintiff's claim in the proceedings – in their most up to date form – is that she was denied what she asserts to be a constitutional right to be heard prior to any sale of her property taking place. Examples of how this is pleaded can be seen from paras. 51 and 53 of the 30 November 2021 draft amended statement of claim as follows:

"51. The plaintiff claims damages and/or compensation for offences against their constitutional right to fair procedures and the right to be heard prior to a property sale involving their private property subject to constitutional procedural protections guaranteed by Articles 40.1 and 40.3 and the legal right to peaceful enjoyment of their private property pursuant to Article 1, Protocol 1 of the EU Convention and legal precedent in the case of Rousk v. Sweden ECHR 2013.

53. The plaintiff seeks a declaration from the High Court that they are (and were) entitled to the constitutional procedural protections as guaranteed by Article 40.1 and 40.3 in relation to fair procedures and the right to be heard prior to the sale of their private property pursuant to binding case law in the case of Dellway v. NAMA SC 2012".

105. This alleged right to be heard and the alleged breach of same was also the subject of oral submissions made by the plaintiff during the trial. In her oral submissions, the plaintiff asserted that she had what she described as an "*enshrined right*" to be heard prior to any sale. The thrust of her submission was to contend that, if her right to be heard had not been breached, the relevant mortgage could have been satisfied. She asserted "*I would have discharged the loan*". She submitted "*I didn't want to go 'cap in hand' to my parents, but they would have paid for it. My father had it in his bank account, his current account. It was no big deal*". With reliance on the decision in *Dellway*, the plaintiff submitted that "*what was absolutely upheld by the Supreme Court was Mr. McKillen's right to be heard on the disposal of his private property*". The plaintiff went on to submit "*I am a private property owner. I am 'king of the castle' when it comes to that title*". The plaintiff further submitted, with regard to the defendants, that: "*They may have some right in this regard but I am king of that castle and the very least I am entitled to as king of the castle is notification from a bank or a receiver that they are going to sell my property so that I have the enshrined right to approach the courts, put my case forward and say 'they are not going to sell my property because...'. Now that is cancelled . . .*". The plaintiff also made the following submission: "*I would have had a right, an enshrined right to be heard, and I could put my case before a judge to say 'listen, I have done my best here to engage with a receiver and the bank. I am not just willing to discharge the arrears as can be seen by my cheque. I am going to pay off the loan in its entirety'. I had the means to dispose of that loan. The bank were obliged to get the most they could for that loan and I was willing to pay the full amount. My father would have given it to me. No one wants to go cap-in-hand to their parents but my father would give it to me, and sadly the man is deceased recently and there was no issue with giving the bank the money. The problem was that my right to be heard at every single juncture was denied*".

106. Two comments seem to be appropriate with regard to the foregoing. Firstly, it cannot be disputed that a material element of plaintiff's claim in her 2014 proceedings was the assertion of a right to be heard; an alleged denial of that right; and a claim that the bank and the receiver refused to engage with her. Those 2014 proceedings have been determined with finality. Secondly, there was no 'bar' to the plaintiff repaying the relevant loan and arrears at the time or, for that matter, stating this on affidavit in the context of opposing the application for summary judgment in the 2014 proceedings. The plaintiff did not do so at the time. Not only that, para. 5 of the plaintiff's 23 February 2015 statement of claim contains the following plea: "*The plaintiff lost her employment, property values fell dramatically and the potential for rental income diminished to such extent that, by mid – 2009, rental incomes from property aforesaid fell to a level at which the plaintiff could no longer service the full indebtedness to the defendant in respect of the aforesaid mortgage*". Thus, leaving aside the fact that the nature of the claims made in the present proceedings and in the 2014 proceedings are similar, the plaintiff made averments 7 years ago, which are wholly at odds with the submissions she now makes.
107. The plaintiff's reliance on the *Dellway* decision ([2011] 4 IR 1) is also misplaced. In that case the Supreme Court held that NAMA was required to operate, in accordance with constitutional justice, the *statutory* procedures governing its operations which included the right of the relevant borrower to be heard prior to its assets being acquired. In the present case, the relationship between the plaintiff and Danske was governed by the *contract* between them, namely, a mortgage dated 21 August 2003 which was made between the plaintiff, as mortgagor, and Danske's predecessor, National Irish Bank Ltd., as mortgagee. The plaintiff does not dispute that this mortgage was entered into and Clause 6(2) of the said mortgage provides as follows:
- "(2) *that the powers of sale and of appointing a Receiver conferred on mortgagees by the Conveyancing and Law of Property Act 1881 shall apply to these presents with this variation that the same shall be exercisable by the Bank at any time after demand made by the Bank as hereinbefore provided and notwithstanding that the notice required by s. 20 of the said Act has not been given . . .*".
108. For the mortgage contract to provide that the bank can exercise the power to sell property and to appoint a receiver as conferred by the 1881 Act does not mean that a sale or appointment constitutes the exercise of a *statutory* power. Thus, reliance on the *Dellway* decision cannot avail the plaintiff.
109. At this juncture, I feel I should make clear that, for this Court to engage in the foregoing manner with the plaintiff's claims and submissions, is not for a moment to suggest that the hearing of these motions amounts to some type of 'appeal' against the judgment delivered by Fullam J. in 2016. It is nothing of the sort but, having regard to the great emphasis which the plaintiff lays on this aspect of her claim, which she plainly regarded as central to it, it seems appropriate to explain why the plaintiff is mistaken. In short, as a matter of law the plaintiff's claim in this regard cannot succeed.

110. As previously stated, the claim based on an alleged breach of an alleged right to be heard was a central feature in the plaintiff's 2014 proceedings, which were dismissed by Fullam J. and cannot be re-litigated. To illustrate this, one need only quote from paras. 18 and 20 of the plaintiff's 23 February 2015 statement of claim: -

"18. The defendant prematurely and without any attempt at positive communication with the plaintiff appointed a receiver to a very modest financial situation . . .";

"20. The plaintiff intends to show the defendant neglected to advise, discuss or negotiate any possible for alternatives on the account other than the appointment of a receiver and immediate sale of the property. No attempt was made by the defendant to facilitate dialogue, an amicable or alternative outcome or facilitate arrears . . .";

21. The plaintiff intends to show she was denied any opportunity to make any advancement with the defendant, despite paying a substantial agreed amount of the mortgage each month. The plaintiff requested positive dialogue regarding a new agreement which was ignored by the defendant".

111. It is fair to say that the majority of amendments which appear in the draft amended statement of claim constitute no more than variations on themes which, in substance, were pleaded in the 2014 proceedings and which constitute arguments asserted once more in these proceedings. There are, however, a limited number of *additional* or *new* claims made for the first time in the draft amended statement of claim, a principal claim being that the plaintiff's loan was not, in fact, in arrears at the time of the sale.

A new claim - that the loan was not in arrears

112. Para. 69 of the draft amendment statement of claim now appears as follows: -

"69. The plaintiff claims damages and/or compensation that the defendant bank appointed a receiver in circumstances devoid of necessity, fairness and proportionality in that purported arrears accrued on the plaintiff's loan account at the time were (at its height) insignificant and on forensic reporting, finds that the said mortgage was not in arrears at the point of demand or time of appointment of receiver".

113. The foregoing claim is made for the first time in a draft amended statement of claim, notwithstanding the fact that, (i) demand letters were served in light of the arrears; (ii) a receiver was appointed in the wake of a failure to repay the sums demanded; and (iii) if the plaintiff had wished to make the case that there were no arrears, she could have done so in advance of the judgment delivered by Fullam J.

114. The plaintiff made no such claim at the relevant time. In fact, she made a claim which is utterly inconsistent with the one she now seeks to make. I say this in circumstances where, at para. 5 of the plaintiff's statement of claim in the 2014 proceedings, she details the reasons why, as pleaded by her: *"...the Plaintiff could no longer service the full indebtedness to the Defendant in respect of the aforesaid mortgage".* This "new" claim is

one which is, without doubt, captured by the rule in Henderson v. Henderson. It is also a claim which is wholly inconsistent with what the plaintiff pleaded in the 2014 proceedings.

The alleged unlawfulness of the sale

115. A range of pleas are made by the plaintiff in the present proceedings to the effect that the sale of the relevant property was unlawful. The plaintiff also asserts that she was not aware, at the time of the hearing before Fullam J., that the property had been sold by the bank, as mortgagee, as opposed to having been sold by the receiver. As to the lawfulness of the sale, Clause 6 of the relevant mortgage incorporates into the contract as between the bank and the plaintiff, the power of the mortgagee to sell and to appoint a receiver. In particular, the mortgagee has the power of sale provided for at s. 19 (1) (i) of the 1881 Conveyancing Act, namely: - "A power, when the mortgage money has become due, to sell . . .". The foregoing power of sale does *not* require the mortgagee to be "in possession". This can be contrasted with the power provided for in accordance with s. 19 (1) (iv) of the 1881 Act, namely: - "A power, while the mortgagee is in possession, to cut and sell timber . . .".

The plaintiff's knowledge of the sale by the bank as mortgagee

116. With regard to the plaintiff's knowledge of the sale, it is a matter of fact that the plaintiff was fully aware that the relevant deed of transfer had been executed by the bank and was aware of this for some seven months *prior* to the order made by Fullam J. having been perfected. This is clear from the averment made by the plaintiff at para. 9 of her 24 May 2021 affidavit, wherein she avers that she received an email on 25 November 2015 informing her that the property had been sold by the bank as a mortgage. It will be recalled that after Fullam J.'s 25 February 2016 judgment was delivered there was a contested costs hearing on 18 March 2016 after which, on 5 July 2016, two orders were perfected (granting summary judgment and dismissing the plaintiff's 2014 proceedings). Thus, fully aware that the bank sold the property as mortgagee, the plaintiff decided against appealing either of the foregoing orders which are final.

Cancellation of a *lis pendens*

117. An element of the claim advanced by the plaintiff in her draft amended statement of claim is to the effect that prejudice was suffered as a result of the cancellation of a *lis pendens*. During the course of oral submissions at the hearing, the plaintiff contended that, when the bank sold the property in question, the proceeds of that sale should have been held "*in trust*" in respect of a claim by the plaintiff's husband which gave rise to the *lis pendens*. The thrust of the submission was that the plaintiff's husband made a financial contribution which the *lis pendens* recognised and which, according to the plaintiff, had been unlawfully overreached as a result of the sale by the bank, as mortgagee. There is no basis in law for this claim. Mr. White for the first named defendant bank drew the court's attention to a recent decision by Humphreys J. in *Pinfold v. Kane* [2019] IEHC 678 where, at para. 16, it was stated that: -

"A *lis pendens* is not meant to improve the position of the party against whom it is registered; and nor should removal of it be a procedure that, in principle, worsens

the position of that party or leaves him or her any worse off than they would have been if the *lis pendens* was never registered”.

118. Quite apart from the foregoing, the relevant sale by a mortgagee of a charged property results in all inferior burdens being overreached, such that the purchaser receives ‘clear’ title. That is the effect of s. 62(10) of the Registration of Title Act 1964. In short, by operation of law, the relevant *lis pendens* was removed or set aside; and, in any event, the removal of same causes neither prejudice, nor benefit. To that I would add that it was clear from the plaintiff’s submissions that the alleged prejudice was not to her but to someone who is not even a party to these proceedings.

Data protection

119. Earlier in this judgment I looked at the claims made by the plaintiff with reference to data protection legislation; and variations on this claim feature in the draft amended statement of claim. The comments I made earlier in this judgment apply with equal force to the contents of said draft.
120. It is clear that the plaintiff is, in effect, attempting in these plenary proceedings, to in some way implicate Danske Bank in the inadvertent disclosure by Grant Thornton of confidential material. Gilligan J. has already made a determination that there is no basis for any such claim against Danske Bank. That approach was upheld by the Court of Appeal.
121. It will be recalled that all that remains of a Counterclaim, which is brought by Ms. Scanlan in proceedings entitled *Grant Thornton & Anor. v. Gerardine Scanlan* (bearing record no. 2015/9954 P) is Ms. Scanlan’s pleaded claim (at para. 1 of the Amended revised defence and counterclaim) wherein she seeks damages pursuant to s. 7 of the Data Protection Acts arising out of an alleged breach of s. 4 of same. Thus, any claim with its basis in the Data Protection Acts falls to be determined in those 2015 proceedings. Neither Danske Bank, nor Mr. Tennant, are parties to those proceedings. Furthermore, it is perfectly clear that, insofar as the plaintiff seeks, in the present proceedings, to advance claims based on alleged data protection legislation breaches, it is with a view to mounting attack on the lawfulness of the appointment of the receiver in the context of asserting that final judgments by this Court made by Fullam J. should be set aside. That is clear from the pleas in the draft amended statement of claim (paras. 31 and 36 being examples).
122. Apart from the claims made with reference to data protection legislation in the 2015 proceedings (to which Grant Thornton and the plaintiff herein are parties) the plaintiff seeks to advance, in the present proceedings, a claim (per para. 15 of her statement of claim) that the “*receiver operated outside of statute and the primary EU Directive 95/46/EC from the outset of this business, contrary to law and the plaintiff’s constitutional fundamental rights regarding the use of personal data. The receiver was not lawfully entitled nor authorised in this jurisdiction for request, storage and processing of such personal data*”. The essence of the claim made against the receiver is that there was a failure to comply with statutory provisions. Leaving aside the fact that, as averred by Ms. Shaw in her affidavit sworn on 4 August 2020 grounding the third named defendant’s

motion, the plaintiff has made multiple complaints which have been determined by the Data Protection Commissioner, the claims which the plaintiff seeks to advance against the receiver in the present proceedings are bound to fail. I say this because, on any analysis, the plaintiff is seeking to usurp the statutory role of the Data Protection Commissioner. As well as being bound to fail, it was a claim which was open to the plaintiff to articulate in the 2014 proceedings.

An impermissible attack on the validity of final orders

123. In reality, the entire aim of the present proceedings which the plaintiff commenced on 17 July 2017, (of which her draft amended statement of claim, dated 30 November 2021 constitutes the latest articulation is to attack the validity of final orders made by this Court on 5 July 2016. That this is so can be very clearly seen from the following pleas in the draft amended statement of claim: -

"73. In the interests of constitutional justice, the plaintiff requests an order of certiorari to set aside the judgment of Fullam J. on the grounds that the material evidence before the court on the defendant receiver as manager and sale of the plaintiff's private property were incorrect and untrue in that the defendant receiver did not conduct management, rental activity, or a sale as contracted and all court considerations regarding same are inapplicable and void in the circumstances.

74. In the interests of constitutional justice, the plaintiff requests an order of certiorari setting aside the judgment of Fullam J. in 2015 in that the alleged borrower delinquency was not subject to scrutiny (sic) in that the defendant bank wholly failed to adequately particularise the claim or provide proper demand of the plaintiff and is not commensurate with the legal requirements for summary judgment pursuant to the findings of the Supreme Court in the case of Bank of Ireland Mortgage Bank v. O'Malley [2009] SC and required by RSC Order 4, rule 4, in circumstances absent the full consideration of the legal principles of proportionality and fairness in the pursuit of the plaintiff.

75. In the interests of constitutional justice, the plaintiff seeks an order of certiorari setting aside the judgment of Fullam J. in 2015 in that the judgment was vitiated from the outset by negligent misrepresentation by the defendants regarding the actual facts of the plaintiff's private property sale, to enable the plaintiff to formulate an adequate case based on fact.

76. In the interests of constitutional justice, the plaintiff seeks an order of certiorari setting aside the judgment of Fullam J. in 2015 in that the defendant receiver did not request or apply for an O. 19, r. 28 application for strike out of the proceedings in 2015, to which they were party.

77. In the interests of constitutional justice, the plaintiff seeks an order of certiorari setting aside the judgment of Fullam J. in 2015 in the mortgage account on which the defendant bank and receiver relied for summary award was not in arrears at the point of calling in the loan or the appointment of receiver".

Direct attack

124. As is clear from the foregoing, the present proceedings do not so much constitute a *collateral* attack on final orders made by this Court, as a very *direct* attack on same. It is also appropriate to contrast the foregoing pleas with the averments made by the plaintiff at para. 4 of the replying affidavit sworn by her on 19 November 2020: "*I say this is a Plenary case and is nothing to do with debt or reckless lending. There is no challenge or collateral challenge to the judgment of Fullam J.*" (emphasis added). Two comments seem appropriate to make in light of the foregoing averment. Firstly, although a claim of "reckless lending" featured large in the plaintiff's 2014 proceedings, this was by no means the only claim she made. In the manner previously examined, the plaintiff's 2014 proceedings, which were pleaded with no little skill and sophistication, made a very wide range of claims, the vast majority of which, with the exception of the allegation of reckless lending, are reflected, in substance, in the 2017 proceedings of which the draft amended statement of claim constitutes the latest iteration. Secondly, plaintiff's sworn statement that "*There is no challenge or collateral challenge to the judgment of Fullam J.*" is impossible to square with the contents of the draft amended statement of claim. The opposite is true. In reality, a challenge to the Judgment of Fullam J. is the *raison d'être* for the present claims.
125. The present proceedings challenge the judgment and orders made by Fullam J., which are final, and I am entirely satisfied that all pleas made in the draft amended statement of claim seek to further that aim, with a view to 'recovering' the property (long since sold) and/or securing 'damages', in particular for the loss of that property. The claim with its genesis in an inadvertent disclosure by Grant Thornton of certain material to the defendant and all claims made with reference to alleged data protection breaches cannot be brought in the present proceedings in light of the determinations by Gilligan J. and the Court of Appeal.
126. Even if it was the case that Fullam J. was under the impression that the sale of the relevant property had been by the receiver as opposed to the bank, this provides no basis for setting aside the court's judgment and subsequent orders. I say this for several reasons. In the manner previously explained, the bank had, without doubt, the power of sale as mortgagee. In truth, nothing turns on whether the sale was by a receiver or by a mortgagee in light of the powers which, by virtue of the mortgage contract which the plaintiff entered into with the bank, applied both to the appointment of a receiver and a sale. Furthermore, in the manner previously explained, the plaintiff was informed that the bank had sold the property long before (a) judgment was delivered (b) a contested costs hearing took place and (c) orders were perfected. Despite all the foregoing, the plaintiff chose to appeal neither order. It is also perfectly clear that, leaving any statute of limitations aspect to one side, were the plaintiff to commence "fresh" proceedings today in respect of that issue, same would be entirely unstateable having regard to the powers of the bank, as mortgagee, pursuant to Clause 6 of the relevant mortgage which the plaintiff executed, as mortgagor.

127. Insofar as the plaintiff in the present proceedings seeks to make claims for breach of contract as against the receiver, there was never a contractual nexus between the plaintiff (being the *mortgagor* of the relevant property) and the receiver (appointed by the *mortgagee*). Furthermore, all such claims could and should have been brought in the 2014 proceedings, where a wide range of pleas are made against both the receiver and the bank.
128. The fact that the plaintiff, as mortgagor of the relevant property contracted with the bank, as mortgagee is not in doubt. It is also appropriate to note, in the context of the claims made by the plaintiff against the bank with reference to data protection legislation, that s. 2 (a) of the Data Protection Act in force at the relevant time expressly provided that it was lawful to process data where such processing was necessary for "*the performance of a contract, to which the data subject is a party*". In circumstances where the plaintiff had a mortgage with Danske, which deed provided for an express power to appoint a receiver, the provision of data to that receiver for the purposes of his appointment plainly came within s. 2(a) of the Data Protection Acts 1988 – 2003. Thus, there can be no cause of action. More importantly, the matter has already been determined by Gilligan J. and by the Court of Appeal in the context of the 2015 proceedings brought against the plaintiff by Grant Thornton.
129. In addition to the foregoing it is appropriate to refer to the following sequence of events. It is plain from para. 13 of the plaintiff's draft amended statement of claim that she received her data in September 2015. This is also confirmed by the plaintiff at para. 7 of her affidavit sworn on 24 May 2021. The affidavit grounding Danske's application to dismiss the plaintiff's 2014 proceedings was not heard by Fullam J. until 19 October 2015.
130. Thus, if the plaintiff took the view that any of the documents with which she was furnished over a month *earlier* affected the claim she sought to advance in the 2014 proceedings, it was entirely open to her to introduce those documents in evidence. Alternatively, it was open to her to seek to adjourn the hearing of the proceedings, if she contended that additional time was essential in the context of reviewing that data. Furthermore, although the hearing took place in October 2015, judgment was not delivered until February 2016. Moreover, this was followed by a contested costs-hearing and it was not until July 2016 that final orders issued. As of July 2016, the plaintiff had been in possession of the response to her data request for almost *ten months*. Despite this, she lodged no appeal against either order. Self – evidently, she did not contend that any new evidence was of any relevance to such an appeal.

Decision to dismiss

131. The plaintiff is someone who has pleaded her case under multifarious headings with obvious ingenuity and commitment. During the hearing, at which she represented herself, she presented her case with skill. This was also true in respect of the detailed written submissions which she furnished. These comprised (i) a 37 – page document entitled "*Formal Legal Submissions of Gerardine Scanlon 12th June 2021*"; as well as (ii) a 54 – page document entitled "*Plaintiff's Treatment of Defendant Authorities in the matter of Scanlan v. Danske Bank 2017 / 6470 P*". The latter was furnished during the course of the

hearing and neither defendant took issue with its late delivery. I have carefully considered the entirety of those written submissions, as well as the oral submissions made by the plaintiff. Having taken full account of the contents of the foregoing, I am entirely satisfied that they cannot avail the plaintiff. Regardless of how sincerely the plaintiff may believe in her entitlement to litigate the present proceedings, permitting same runs contrary to fundamental principles, compliance with which reflects the interest of justice and its proper administration.

132. I have no hesitation in holding that the defendants are entitled to the reliefs sought in their respective motions. The plaintiff's claim is one which must be dismissed because the plaintiff is seeking to litigate, for a second time, the same or substantially the same issues as arose in previous proceedings which, by virtue of two orders made by Fullam J. in July 2016, have been determined with finality. This constitutes an abuse of process.
133. Insofar as the plaintiff seeks to litigate issues which did not form part of the 2015 proceedings all such issues could and should have been raised in those same proceedings. Thus, those additional claims should be struck out as an abuse of process
134. Apart from the foregoing, I am satisfied that there are no other claims which survive. Even if I am wrong in that view, and even if there are some residual matters which were (a) not raised or determined in previous proceedings and (b) could not, with reasonable diligence, have been raised by the plaintiff in previous proceedings, same should be struck out as being frivolous, vexatious and bound to fail.
135. This is in circumstances where it is perfectly clear that any residual claim is advanced in the context of an effort to bypass the validity of final orders made by this Court and, by so doing, seek to have returned to her property to which the plaintiff has no entitlement. That this is the underlying objective of the present proceedings is perfectly clear from the terms of the draft amended statement of claim and might best be illustrated by quoting *verbatim* the final plea made therein: -

"101. The plaintiff claims damages and/or compensation (subject to the inherent constitutional jurisdiction of the Court for such matters) for pain and suffering, violation of their dignity, loss, defamation and/or any other damages and/or compensation as the court sees fit in this precise manner and/or including immediate return of the plaintiff's private property". (emphasis added)
136. There is no question of the judgment or orders of Fullam J. having been procured by fraud. There is simply no basis for the proposition that a final judgment and final orders made by this Court can or should be set aside in the present proceedings.
137. Nor can the plaintiff's purported reliance on the Supreme Court's decision in *Bank of Ireland v. O'Malley* [2019] IESC 84 avail her. In that decision, the Supreme Court clarified the level of detail in respect of a debt which must be set out in a summary summons issued by a financial institution, as well as the evidence which should be put before the court to substantiate such a claim. Such a refinement of the law provides no basis to set

aside final orders of this Court. Nor did the plaintiff assert, in opposition to the bank's claim in the 2014 proceedings, that she had an *insufficient* level of detail in relation to the claim. Furthermore, and in the manner previously referred to, in response to the summary proceedings, the plaintiff pleaded, explicitly, that she was unable to "*service the full indebtedness to the defendant*" as regards the mortgage in question.

138. A principal theme in the plaintiff's oral submissions was that she had "*enshrined rights*" in respect of the property. Although put in a variety of different ways, the thrust of the plaintiff's submission was that the sale of her property was unlawful having regard to those rights, a breach of which was alleged to have taken place arising out of the alleged failure of the receiver and bank to engage with her in a manner she contended was required. This argument, also featured large in the 2014 proceedings which have been determined with finality.
139. Similarly, there is simply no validity to the plaintiff's submission that "*you cannot sell what you do not have*", the plaintiff's assertion being that a sale was unlawful unless the bank was physically in possession of the property. For the reasons detailed in this judgment, the plaintiff is mistaken in her view.

Why the plaintiff did not appeal

140. In submissions to this Court, the plaintiff asserted that, in the wake of the judgment and orders made by Fullam J., it was not open to her to bring an appeal on the basis that she was in possession of new evidence, because, she submitted, such an application would not have been granted. Her submission was that, instead of an appeal it was "*more than appropriate to bring those issues before the court in separate proceedings*". I cannot agree with that submission. It is a patent abuse of process for someone who is in a position to appeal a judgment, and who maintains that they had "new" evidence of relevance to such an appeal, to refuse even to file a notice of appeal and to fail even to raise the question of the allegedly "new" evidence but, instead, to issue "fresh" proceedings, long after the fact seeking, six years *later*, to have the judgment of a court of equivalent jurisdiction set aside, with reliance on material said to be relevant to the appeal they spurned.

Delay

141. In the third named defendant's motion, an order is also sought that the plaintiff's claim be dismissed on the grounds of inordinate and inexcusable delay. The jurisprudence is well settled and the proper approach for this Court to take is as per the principles set out by the then Chief Justice Hamilton in *Primor plc. v. Stokes Kennedy Crowley* [1996] 2 IR 459 where, from p. 475 of his decision, the learned judge stated as follows: -

"The principles of law relevant to the consideration of the issues raised in this appeal may be summarised as follows: —

- (a) *the courts have an inherent jurisdiction to control their own procedure and to dismiss a claim when the interests of justice require them to do so;*

- (b) *it must, in the first instance, be established by the party seeking a dismissal of proceedings for want of prosecution on the ground of delay in the prosecution thereof, that the delay was inordinate and inexcusable;*
- (c) *even where the delay has been both inordinate and inexcusable the court must exercise a judgment on whether, in its discretion, on the facts the balance of justice is in favour of or against the proceeding of the case;*
- (d) *in considering this latter obligation the court is entitled to take into consideration and have regard to*
 - (i) *the implied constitutional principles of basic fairness of procedures,*
 - (ii) *whether the delay and consequent prejudice in the special facts of the case are such as to make it unfair to the defendant to allow the action to proceed and to make it just to strike out the plaintiff's action,*
 - (iii) *any delay on the part of the defendant — because litigation is a two party operation, the conduct of both parties should be looked at,*
 - (iv) *whether any delay or conduct of the defendant amounts to acquiescence on the part of the defendant in the plaintiff's delay,*
 - (v) *the fact that conduct by the defendant which induces the plaintiff to incur further expense in pursuing the action does not, in law, constitute an absolute bar preventing the defendant from obtaining a striking out order but is a relevant factor to be taken into account by the judge in exercising his discretion whether or not to strike out the claim, the weight to be attached to such conduct depending upon all the circumstances of the particular case,*
 - (vi) *whether the delay gives rise to a substantial risk that it is not possible to have a fair trial or is likely to cause or have caused serious prejudice to the defendant,*
 - (vii) *the fact that the prejudice to the defendant referred to in (vi) may arise in many ways and be other than that merely caused by the delay, including damage to a defendant's reputation and business”.*

142. It is the foregoing principles which must guide this Court. As can be seen from the above, *Primor* lays down a three – limb test, in that the court is required to ask (a) is the delay inordinate? (b) is the delay inexcusable? and (c) if the delay is both inordinate and inexcusable, is the balance of justice in favour of, or against the case being allowed to proceed?

143. I am entirely satisfied that the delay in this case is inordinate. It is irregular. It is outside the norm. It is excessive. As regards the ‘time-line’ of relevant events, it is appropriate to note that the objective of the claim is to have returned to the plaintiff, a charged property in respect of which mortgage she defaulted in *July 2013* resulting in a receiver being appointed by the bank in *August 2013*. These facts are not in doubt. Para. 2 of the judgment of Fullam J. delivered on 25 February 2016 records that:

- "2. *Ms. Scanlan failed to comply with the terms of an arrears notice from the bank dated the 17th July 2013. By letter dated 7th August 2013 the bank demanded repayment of the outstanding balance on the loan then standing at €84,599.44. Ms. Scanlan failed to discharge the amount due. Pursuant to the powers conferred by para. 6(2) of the mortgage, the bank appointed Mr. Stephen Tennant receiver over the property by deed of appointment dated 15th August 2013.*
3. *These events gave rise to two sets of proceedings. In the first on the 6th June 2014 the bank issued a summary summons seeking judgment in the sum of €84,439.80. In the second, Ms. Scanlan issued plenary proceedings on the 21st October 2014 against the bank and the receiver Mr. Tennant, claiming €600,000 damages on various grounds including gross negligence and misrepresentation. A statement of claim was delivered on the 23rd February 2015 wherein she claims damages in the sum of €100,000". (emphasis added)*
144. Leaving aside the fundamentally important matter that, in the manner examined earlier in this judgment, the plaintiff repeats in the present proceedings, numerous claims which were the substance of her 2014 proceedings, it is a fact that 4 years elapsed between the demand which flowed from her default on the mortgage in respect of the relevant property, and the issuing of the present proceedings. Moreover, the property was sold in June 2015 and the plaintiff has acknowledged on affidavit that, as of September 2015, she was notified that the property had been sold by the bank as mortgagee. Despite this, it was not until 2 years *later* that the plaintiff instituted the present proceedings. In light of the foregoing, there has undoubtedly been pre-commencement delay on the plaintiff's part.
145. In addition, once the plaintiff issued the present proceedings on 17 July 2017, she essentially did *nothing* to progress them. This is perfectly clear from the fact that the plaintiff delivered a 'Notice of intention to proceed', dated 31 March 2020, which was filed in the High Court Central Office on 28 April 2020. The foregoing constitutes inordinate delay post-commencement, against a backdrop of pre-commencement delay.
146. I am also satisfied that the plaintiff has put nothing forward which would constitute an acceptable reason or excuse for this delay. Furthermore, whilst the plaintiff delivered a statement of claim dated 27 April 2020 it was a further year and seven months until she delivered a draft amended statement of claim. It is also fair to say that this was obviously prepared in response to the motions issued by the first and third named defendant on 17 June 2020 and 4 August 2020, respectively.
147. Thus, almost 3 years elapsed between the issuing by the plaintiff of her plenary summons and the delivery of her first statement of claim, whereas 3 years and four months elapsed between the issuing of the plenary summons on 19 July 2017 and the production of a draft amended statement of claim dated 30 November 2021.
148. I invited submissions from both sides on the specific issue of this aspect of the case and, in oral submissions, the plaintiff contended that her delay was neither inordinate, nor

inexcusable and did not meet the test under *Primor* which would justify a dismissal. She also submitted that there was no basis for dismissing her claim under the test derived from *O'Domhnaill v. Merrick* [1984] IR 151. Of the foregoing authorities, the plaintiff made the following submission: "*I do not meet those tests. And in any event the Supreme Court has been very clear that even in situations where somebody has been deplorably negligent in pursuing a case, they've often again, on the balance of justice provided a litigant an opportunity to proceed*".

149. By way of attempting to explain and excuse delay, the plaintiff made reference to (i) her data being amongst a very large volume of records which she received in 2015; (ii) being a litigant in person and not having the resources of a large legal firm; and (iii) Covid-19 issues. The plaintiff also submitted (iv) that "*I brought my proceedings once I understood how the bank had disposed of my property and the process involved*".
150. The foregoing neither explains nor excuses the delay involved. As to (i), it is a matter of fact that the data access request was replied to in September 2015 which was a month before the hearing before Fullam J. and several months before his judgment. There is no evidence before this Court which would entitle me to take the view that, because the plaintiff's data was accompanied by other data, it was impossible for her to identify or make such use of her own data as she wished. That seems to me to hold true in respect of the determination of the 2014 proceedings. It is all the more true in respect of the present proceedings which were not issued until almost 2 years *after* the data access request was responded to by Grant Thornton. Moreover, over 5 years elapsed between the plaintiff receiving her data and the furnishing of a draft amended statement of claim in these proceedings. In short, the data issue provides no reason or excuse for the plaintiff's delay.
151. As to (ii), the plaintiff is a litigant in person, and that is her choice. This Court is very conscious that the plaintiff is conducting her litigation personally but, on any analysis, she is doing so vigorously, comprehensively, and with no little skill and ingenuity. That she may not have the resources of a large legal firm has in no way prevented the plaintiff from delivering, for example, very lengthy submissions which are obviously reflective of the commitment on her part of large amounts of time and effort. There is simply no evidence that an "inequality of arms" explains or excuses the plaintiff's delay.
152. As to (iii), restrictions resulting from the Covid-19 pandemic did not become a feature until March 2020, whereas the plaintiff issued her plenary summons in July 2017. Covid-19 restrictions self-evidently did not prevent the plaintiff from delivering a 'Notice of intention to proceed', dated 31 March 2020, which was subsequently filed in the High Court Central Office, on 28 April 2020. Her delay *prior* to March 2020, which was already inordinate, simply cannot be explained or excused with reference to Covid-19 issues.
153. As to (iv), the plaintiff has been aware since *September 2015* that the bank sold her property as mortgagee. She has sworn to this on affidavit. Thus, the facts wholly undermine the proposition that the plaintiff issued the present proceedings once she knew how the bank had disposed of her property and the relevant process. In truth, she knew

this or had available to her the means of knowledge, a month before Fullam J. heard the 2014 proceedings and many months *before* the judgment was delivered and final orders were made, none of which were appealed.

154. As to why the plaintiff did not appeal against those orders, she proffered a materially *different* reason during submissions at the end of the hearing namely: - "*the judgment was not appealed because it was reckless lending against the bank, it was bound to fail. And the rest of the judgment against the receiver is irrelevant and obsolete and incorrect because he didn't sell the property*". To characterise the 2014 proceedings against the bank as merely concerning an allegation of reckless lending is a gross oversimplification. A very wide range of different claims were made against both bank and receiver, including that both had breached what the plaintiff asserted to be was a legal obligation on them to "*negotiate any possibility for alternatives*" (per para. 20 of the 23 February 2015 statement of claim). Similarly, it was pleaded in the 2015 statement of claim that "*the plaintiff requested positive dialogue regarding a new agreement which was ignored by the defendant*" (para. 21). Claims against the bank and the receiver included "*'unjust enrichment' by the defendants and its agent by a rush to repossess the aforementioned property and abuse of process through the courts system*" (para. 27, 2015 statement of claim). Personal injuries were also claimed in the 2014 proceedings, i.e. it was pleaded that "*the plaintiff's health and relationship have suffered greatly as a result of the defendants, its agents and servant's actions*" (para. 9).
155. It is unnecessary to repeat the analysis conducted earlier in this judgment. Suffice to say that over two dozen claims can be identified in the 2014 proceedings brought against the bank and the receiver and the explanation given by the plaintiff, as to why she did not appeal against the order granting summary judgment in the bank's favour and the order dismissing her 2014 proceedings, are wholly undermined by the facts.
156. It is fair to say that the application to dismiss on delayed grounds was a relatively minor feature of the third named defendant's application. Even so, it was not relief which was ever abandoned; and I am satisfied that the balance of justice would favour dismissing the plaintiff's claim against the third named defendant on an application of the *Primor* principles. It is self-evident that Mr. Tennant has suffered at least moderate prejudice as a result of these proceedings "hanging over" him. Mr. Tennant has a reputation and his involvement in the underlying events was as a professional retained by a bank to act as receiver. He was entitled to take comfort, as was the bank, from the fact that the 2014 proceedings against both parties had been determined with finality. The fact that the plaintiff instituted and maintained the present proceedings in the wake of her 2014 proceedings having been dismissed seems to me to add to the prejudice suffered by Mr. Tennant as regards the potential damage to reputation which this Court is entitled to presume as flowing from High Court litigation in which multifarious claims of a very serious nature are made against him.
157. The authorities make clear that the burden of establishing inexcusable and inordinate delay rests on the moving party in an application of this type. That burden has been

discharged. That being so, the onus of proof shifts to the plaintiff to demonstrate that the 'balance of justice' favours the action being permitted to continue. The authorities also make clear that where, as in this case, inordinate and inexcusable delay has been established, a plaintiff is required to point to "countervailing circumstances" which would tip the balance in favour of the claim being allowed to proceed. That this must be "something weighty" is also clear from the authorities (see. Henchy J. in *O'Domhnaill v. Merrick* [1984] IR 151 and Fennelly J. in *Anglo Irish Beef Processors Ltd. v. Montgomery* [2002] 3 IR 510 at p. 519). In the present case, the plaintiff has not proffered anything material which could be weighed in the balance against her claim being dismissed as against the receiver. In my view, the balance of justice tips decidedly in favour of the plaintiff's claim against the receiver being dismissed.

158. It is appropriate to make very clear that, in circumstances where the application to dismiss on delay grounds was, it is fair to say, a very minor feature of the hearing which took place, I engaged with the foregoing principles in circumstances where the relevant relief was not abandoned. Even if this relief had neither been sought nor granted, the outcome of the present application would be the same.

Stamping

159. In oral submissions, the plaintiff raised an issue with regard to the 'stamping' of the bank's application. There is no evidence that the present motions were other than issued appropriately, and that submission cannot avail the plaintiff.

In conclusion

160. The present proceedings issued by the plaintiff in 2017 must be halted and doing so reflects the interests of justice. To compare the plaintiff's plenary summons and statement of claim in her 2014 proceedings with the statement of claim and draft amended statement of claim delivered in the present proceedings illustrates that, in the present claim, the plaintiff is seeking to litigate the same, or substantially the same issues for a second time. This offends against the *res judicata* principle and constitutes an abuse of process.
161. To this day, the plaintiff remains critical of the manner in which the first named defendant bank dealt with her default in respect of her mortgage and appointed a receiver over the relevant property. The plaintiff has also made allegations arising out of an inadvertent disclosure of data to the plaintiff by Grant Thornton. The plaintiff's claims have already been the subject of three sets of proceedings namely (i) *Danske Bank A/S T/A Danske Bank v. Gerardine Scanlan* bearing record no. 2014/1456 S; (ii) *Gerardine Scanlan v. National Irish Bank, now acting in the style of Dankse Bank A/S (T/A Danske Bank) and Stephen Tennant*, bearing record no. 2014/8950 P; and (iii) *Grant Thornton (a firm) and by order Grant Thornton Corporate Finance Ltd. v. Gerardine Scanlan*, bearing record no. 2015/9954 P.
162. Earlier in this decision I referred to the judgments and orders made in the foregoing proceedings. The present proceedings constitute an attempt by the plaintiff to mount an

impermissible challenge to previous decisions made in the aforesaid 2014 and 2015 proceedings.

163. Insofar as the plaintiff seeks to re-litigate her case with reference to variations on claims made in prior proceedings or with reference to new claims, this offends the rule in *Henderson v. Henderson*. Such variations could and should have been raised by the plaintiff in her 2014 proceedings and must be struck out as an abuse of process.
164. Were it the case, and I am satisfied that it is not, that there are some residual issues (i) not raised or determined in the 2014 proceedings and (ii) which could not, with reasonable diligence, have been raised by the plaintiff in the 2014 proceedings, such residual issues require to be struck out as frivolous, vexatious and bound to fail, disclosing no reasonable cause of action.
165. On 24 March 2020, the following statement issued in respect of the delivery of judgments electronically: *"The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."*
166. My preliminary view is that there are no facts or circumstances which would justify a departure from the normal or general rule that costs should 'follow the event'. The plaintiff/respondent has been entirely unsuccessful whereas the relevant defendants/applicants have been entirely successful, and the justice of the situation would seem to me to merit orders for costs in favour of the successful parties. If any alternative order as to costs is contended for, short written submissions should be filed in the Central Office within 14 days.