THE HIGH COURT

[2022] IEHC 361

[2020/123 MCA.]

BETWEEN

DEIRDRE MORGAN

APPELLANT

AND

THE LABOUR COURT

RESPONDENT

AND

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD, TUSLA, HEALTH AND SAFETY AUTORITY, DEPARTMENT OF JUSTICE AND EQUALITY, MINISTER FOR EDUCATION AND SKILLS, AND IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

NOTICE PARTIES

THE HIGH COURT

JUDICIAL REVIEW

[2020/787 JR.]

BETWEEN

DEIRDRE MORGAN

APPLICANT

AND

MINISTER FOR EDUCATION AND SKILLS

RESPONDENT

AND

KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD

NOTICE PARTY

JUDGMENT of Mr. Justice Cian Ferriter delivered on the 1st day of June, 2022

Introduction

1. In the applications addressed in this judgment, the Minister for Education and Skills ("the Minister") and Kildare and Wicklow Education and Training Board ("KWETB" or "the Board") seek orders pursuant to the Court's inherent jurisdiction restraining Deirdre Morgan (for ease, "the appellant") from instituting any further proceedings in whatever Court or forum, including the Workplace Relations Commission ("WRC"), or from making any complaints to the WRC against the Minister or Board, concerning any matter relating to the appellant's term of employment with the Board, including any matter related to the suspension or termination of her contract of employment, and her pension and gratuity entitlements, without the prior leave of the High Court (the Minister and the Board having been put on notice of any such application for leave.) This form of order is commonly known as an *Isaac Wunder* order named after the subject of such an order by the Supreme Court in 1967. Somewhat unusually, the orders sought extend not just to the institution of court proceedings but to the making of complaints to the WRC.

2. The Minister and the Board also seek orders pursuant to the Court's inherent jurisdiction striking out a variety of complaints against them to the WRC that have not yet been finally determined in that forum, on the grounds that the complaints are frivolous and/or vexatious and/or an abuse of process, being duplicative of previous complaints arising from the appellant's removal from employment which have been the subject of final and binding determinations against the appellant.

3. Finally, the Minister and the Board also seek orders pursuant to the Court's inherent jurisdiction striking out proceedings instituted by the appellant against them in the Circuit Court and the Board seeks an order striking out proceedings instituted by the appellant against it in the High Court on the basis that both these proceedings are an abuse of process.

4. All of the WRC and court proceedings relate in one form or another to the removal of the appellant from her position as an art teacher in a community college run by the Board. The appellant was removed from her position by order of the Minister of 15 June 2015, following a lengthy disciplinary inquiry process instituted by the Board (which included an appeal) and an inquiry process conducted by an inspector appointed by the Minister which culminated with the Minister taking the view that the appellant was no longer fit for office.

5. Central to the processes which culminated in the appellant's removal from her teaching position was an allegation made by her to the Board (then Wicklow VEC) in August 2010 that she was being sexually harassed by a male student in one of her art classes. She subsequently withdrew this allegation when it was being investigated by an independent barrister appointed by the VEC.

6. When that barrister concluded that the allegation was without foundation, the VEC commenced disciplinary proceedings. The commencement of those proceedings led to the appellant's first complaint to the WRC (then the Labour Relations Commission), made on 22 March 2011, to the effect that the VEC had penalised her for making the sexual harassment complaint. That complaint to the WRC was dismissed by an adjudication officer. For reasons which will be explained in more detail later, the appellant's appeal to the Labour Court against the adjudication officer's decision was not concluded until April 2020. In a ruling given on 22 March 2022 (in High Court proceedings record no. 2020/123MCA) I dismissed the appellant's appeal to this Court on a point of law from the Labour Court determination. Accordingly, any question of penalisation arising from her complaint and the initiation of the disciplinary process against her has been finally and conclusively determined.

7. The appellant did not issue any proceedings (whether by way of complaint to the WRC, plenary proceedings or judicial review) challenging her removal within the permitted time limits for same. She did, belatedly, lodge complaints with the WRC on 9 June 2016, almost 12 months after her removal. On that date, she lodged separate complaints against the Minister and the Board based on identical grounds (being alleging discrimination on grounds of disability under the Employment Equality Act 1998 as amended ("EEA")). These claims were rejected as being out of time by both adjudication officers and the Labour Court. Accordingly, her claims to have been unlawfully removed from her position stood rejected in final and

binding determinations as of 17 January 2018. She did not appeal those Labour Court determinations to the High Court.

8. As we shall see, notwithstanding those final and binding determinations, the appellant has persisted with a barrage of identical or materially equivalent claims purporting to challenge her removal. One of her tactics, in order to get around the obvious barriers to fresh claims presented by those determinations, was to claim that, contrary to what she accepted in her initial complaints, she was not in fact dismissed on 15 June 2015 but rather that her dismissal took place at much later points (e.g., in one set of complaints, she alleges to have been dismissed at a hearing before the WRC on 12 February 2019). As we shall see, this contention had been properly rejected in a number of WRC decisions.

9. The other line of complaint repeatedly pursued by the appellant is that she was unlawfully denied an "injury gratuity" under her pension scheme. As a VEC teacher, the appellant was a member of the ETB Teachers' Superannuation Scheme ("the scheme"). The appellant in fact applied for and was granted an ill-health retirement pension under the scheme. Notwithstanding that she was never injured in the course of her employment as a teacher, she sought to maintain that she was entitled to an injury gratuity under the scheme. Her first claim of discrimination/victimisation in relation to pension matters (where she alleged discrimination contrary to s.81E Pensions Act 1990 as amended ("s.81E PA")) was launched on 16 November 2017. The appellant walked out of a hearing into this complaint before an adjudication officer of the WRC on 7 November 2018 and the adjudication officer thereafter delivered a decision (on 11 December 2018) ruling against the complaint.

10. On the day she walked out of the WRC, 7 November 2018, she lodged a further complaint alleging discrimination in respect of her pension. Following a hearing on 12 February 2019, an adjudication officer ruled on 19 March 2019 that there was no evidence that the appellant had been victimised in relation to her pension and dismissed that complaint. The appellant made yet further complaints alleging discrimination in relation to her pension (injury gratuity) on 7 January 2019. In a decision of 17 July 2019, an adjudication officer determined that this complaint and related victimisation complaints were *res judicata*.

11. On 15 April 2019, the applicant lodged yet another set of complaints, including a complaint that she had been discriminated against, penalised or victimised in respect of her

pension entitlements. An adjudication officer dismissed those complaints as *res judicata* in a decision of 23 October 2019. The appellant appealed to the Labour Court which issued a determination on 9 February 2021 rejecting her appeal. She appealed that determination to the High Court (High Court proceedings record no. 2021/37 MCA**)**. I have held in a decision delivered separately today that there was no error of law in the Labour Court decision and have dismissed an appeal on a point of law pursuant to s.46 Workplace Relations Act 2015 in relation to that Labour Court determination. I have also held in a further decision delivered separately today (being in High Court proceedings record no. 2021/103JR) that the appellant is not entitled to leave to apply for judicial review of a decision by the Minister (in an internal review process) upholding the Board's decision not to grant the appellant an injury-related gratuity or pension under the superannuation scheme.

12. Accordingly, the question of any unlawfulness in relation to the appellant's pension entitlements, including any alleged entitlement to an injury gratuity, has been finally and conclusively determined against the appellant.

13. While I will provide further detail in this judgment as to the various complaints lodged against the Minister and the Board with the WRC and the various court proceedings which the appellant has launched, it can readily be seen that there is no continued justification for the appellant seeking to further prosecute any still-pending complaints or proceedings which relate to her removal from office (including any pension matters related to that removal). For reasons which I will elaborate upon in this judgment, I am quite satisfied that any remaining unresolved complaints of proceedings should be struck out in accordance with the Court's inherent jurisdiction to prevent abuse of process. Furthermore, I am satisfied that the appellant should not be allowed to institute any further proceedings, or make any further complaints to the WRC, or any other forum, against the Minister or the Board relating to her employment as an art teacher without the leave of the Court.

Background to removal

14. The appellant was employed by County Wicklow Vocational Education Committee (VEC) as a post-primary teacher of art. She worked in Abbey Community College. She commenced that employment in September 2000 and was made permanent in February 2003. In July 2013, County Wicklow VEC was dissolved and replaced by Kildare and Wicklow

Education and Training Board ("KWETB" or "the Board"), and KWETB became her employer from that date as a result.

Investigation into sexual harassment allegation made by appellant

15. On 20 August, 2010, the appellant reported an allegation of sexual harassment against a male student in one of her art classes. In response to the allegation, the VEC notified her on 20 September, 2010 that she was being put on protective, paid leave to ensure that she was not exposed to any potential acts of sexual harassment. The VEC appointed a barrister, Gearoid O'Brádaigh BL to conduct an investigation. During the course of that investigation, the applicant withdrew her allegation of sexual harassment. Mr. O'Brádaigh issued a report on 10 December, 2010 in which he noted the withdrawal of the application but went on to find that, in any event, the allegation was unfounded. He stated as follows:

> *"The allegations of sexual harassment as set out by the Complainant* [i.e. Ms. Morgan] *against the Complaint Subject are without foundation and this investigator would so find even in circumstances where the Complainant had let her allegations stand: and*
>
> *The allegations are vexatious and malicious and, on the balance of probability, were made to victimise the Complaint Subject as a means of vindicating the Complainant's objections to his admission into her art classes."*

16. Notwithstanding the withdrawal of her complaint, it appears that the appellant submitted a complaint to the Rights Commissioner under the Protection for Persons Reporting Child Abuse Act, 1998 at the end of December, 2010.

17. Following the conclusion of Mr. O'Brádaigh's investigation, the VEC wrote to the applicant on 4 January, 2011 advising of its intention to commence disciplinary action.

March 2011: first complaint to Labour Relations Commission

18. On 22 March, 2011, the appellant made a complaint to the Labour Relations Commission alleging that Wicklow VEC was in breach of s.27 of the Safety, Health and Welfare at Work Act, 2005 ("s.27 SHWWA") on the basis that she had been subject to penalisation by the VEC. The alleged penalisation was said to arise from the *"protective acts"*

of *"obeying an order from the CEO to complete a risk assessment questionnaire 8th October 2010"*, or being *"a health and safety order from the CEO to remain off the school premises from 31st September 2010 to present so that a risk assessment can be deducted"* and that she made complaints to the Health and Safety Authority (HSA) from January, 2009 onwards.

19. The Rights Commissioner determined, in a decision of 22 September, 2011 that:

> *"The claimant made a very serious complaint against the student, which an independent investigator found to be without foundation and to be vexatious and malicious. Based on this the VEC is reviewing the situation and continues to require the claimant to remain off work. Based on the evidence I am satisfied that the VEC are aware of the serious responsibility that they have in this matter and I do not consider any action that they have taken to constitute penalisation."*

20. The appellant appealed this matter to the Labour Court. The matter came before the Labour Court in early January 2012. It was adjourned pending the outcome of an Equality Tribunal hearing (addressed below) which was scheduled to take place not long thereafter. Ultimately, the Labour Court recorded the matter as having been settled at hearing. Many years later, the appellant sought to re-enter her appeal and the Labour Court agreed to re-enter the appeal and heard the appeal on 2 March, 2020. The appeal was heard on the basis that the appellant was confined to the submissions she had made in support of her original appeal. In a decision of 1 April, 2020, the Labour Court concluded that *"the complainant has failed to establish a set of facts on which it could be concluded that she has been penalised within the meaning of the Act"* and affirmed the decision of the Rights Commissioner.

21. The appellant brought an appeal against that decision, pursuant to s.46 of the Workplace Relations Act, 2015 ("the 2015 Act"). The appeal bore High Court record number 2020/123 MCA**.** I heard that appeal on Tuesday, 22 March, 2022. I delivered an *ex tempore* decision following the hearing of that appeal in which I held that the appellant had not demonstrated any error of law in respect of the Labour Court's determination. That matter is, accordingly, finally concluded.

Complaints to Equality Tribunal 2009 and 2011

22. The appellant had referred a complaint against the Board to the Equality Tribunal on 11 March 2009 alleging discrimination on the grounds of gender, contrary to s.6(2)(a) EEA, in relation to access to employment, conditions of employment, promotion/regrading and training. She also alleged harassment on grounds of gender contrary to s.14A EEA, and victimisation contrary to s.74(2) EEA. She made a further complaint of victimisation on 6 September 2011. These complaints were the subject of an oral hearing on 25 January 2012 and 7 February 2012. The complaints focused on allegations made by the appellant against her principal, including a contention that the principal took disciplinary action against her arising out of her allegations that she had been sexually harassed by a student and that the report of Mr O'Brádaigh constituted harassment.

23. The complaints were addressed in a written decision of the Equality Officer Gary Doherty, on 30 March 2012. The Equality Officer in his decision dismissed various of the complaints, including that the investigation and conclusions of Mr O'Brádaigh constituted victimisation, noting that that investigation was set up on foot of a complaint made by her (Equality Officer decision, paragraph 5.29). The Equality Officer also noted that he was satisfied that Mr O'Brádaigh was independent in his investigation (decision, paragraph 5.30).

24. The Equality Officer ruled in the appellant's favour in respect of one issue namely that the Board had been guilty of victimisation of the appellant for making a claim to the Equality Tribunal. He concluded "*I consider that the inclusion of a complaint to the Tribunal as a reason for taking disciplinary action against her is adverse treatment arising out of her making a complaint to the Tribunal. It was, and remains, victimisation within the meaning of the Acts".* (paragraph 5.51).

25. The Equality Officer ordered the Board to pay the appellant €500 in respect of this victimisation. It transpired, during the course of the hearing before me, that in fact this sum had not been paid. It was explained that the matter had been overlooked by the Board amid the barrage of other claims which the Board had to deal with, at great cost to it. I pointed out that this did not appear to me to be a justification for non-compliance with the terms of the Equality Officer's decision. Counsel for the Board reverted before the end of the hearing (the relevant exchanges took place on the final day of the hearing on Friday, 29 April 2022) to confirm that this sum would be paid within 14 days. The Board subsequently confirmed that this sum has now been paid and the order therefore complied with.

26. The Equality Officer also directed the Board to cease including the making of this complaint to the Equality Tribunal as a matter the subject of investigation as part of the disciplinary action against the appellant which was ongoing at that time. I was informed that the Board had complied with this latter aspect of the Equality Officer's decision and that is borne out in the papers before me.

27. It is clear from the Equality Officer's decision that he was deeply unimpressed with the appellant's approach to the presentation and prosecution of her complaints at the hearings including noting that "*at one point, the complainant stated that she wished to leave the hearing*" and noting her complaint that she had not sufficient time to make her case in circumstances where the Equality Officer stated that he informed her that "*she had almost three years to prepare for her complaint and was aware of the first hearing almost three months before it took place and that this was ample time for her to prepare*" (at paragraph 5.58)**.** The Equality Officer noted "*it is clear that the approach of the complainant to the rights of other parties with respect to defending the complaints she has made against them is highly problematic to say the least*" (paragraph 5.44). He also noted that "*the complainant has made serious accusations against almost every person involved in the matters before the Tribunal, often with little or no evidence to support these accusations, and without regard to the consequences of doing so.*" (paragraph 5.43). The Equality Officer also noted that "*it is also clear that the* [Board] *has invested enormous resources in dealing with the complainant. The complainant is undoubtedly litigious… I have every sympathy for the* [Board] *with respect to the work, effort and difficult dealings that it has had to put in to addressing this matter*". (paragraph 5.45).

2011 VEC Disciplinary Proceedings commence

28. In September, 2011, a subcommittee of the VEC was established, at the request of the CEO of the VEC, in accordance with s.4.2 of circular CL59/2009. That circular is a circular of the Department of Education and Skills which governs disciplinary proceedings against VEC employees.

29. The appellant was represented by a solicitor, David O'Riordan of Sherwin O'Riordan Solicitors, throughout this process. She also had access to support from representatives of her union, ASTI, throughout the process.

30. The subcommittee investigated a series of disciplinary complaints, including that she had made unfounded, malicious and vexatious allegations of sexual harassment against a student in her art class.

31. A number of oral hearings were heard and a series of submissions were made on the appellant's behalf.

32. I note that in addition to the withdrawal of the allegation of sexual harassment in the course of the investigation by Mr. Ó'Brádaigh, the allegation was also withdrawn by the appellant on 5 September 2012 in the course of a subcommittee meeting the VEC, as recorded in the minutes of that meeting which were in evidence before me.

33. On 27 March, 2013, the VEC issued its final decision determining a sanction for five of the original complaint grounds.

34. The appellant appealed to a Department of Education and Skills Disciplinary Appeal Panel in accordance with stage 5 of circular CL59/2009. The appellant was legally represented at this appeal also. Her appeal was dismissed.

35. On 23 July, 2013, KWETB formally notified the applicant of her suspension from duties following the disciplinary findings. The Department of Education and Skills (the "Department") were also formally notified.

s.105 Vocational Education Act 1930 Inquiry

36. On 8 August, 2014, Mr. Declan Cahalane was appointed as an Inquiry Officer by the Minister to conduct an inquiry in accordance with s.105 of the Vocational Education Act, 1930.

37. Mr. Cahalane's terms of reference, as authorised by the Minister were *"to carry out an inquiry into the fitness/unfitness of Ms. Deirdre Morgan to hold office under the Kildare and Wicklow ETB and to report to the Minister the outcome of the inquiry as speedily and in as efficient a manner as possible"*.

38. The applicant was legally represented during this inquiry.

39. In his 25-page report of 8 May 2015, Mr. Cahalane stated in his *"Final Conclusions"* section that:

> *"This report is based on the evidence provided to me in written submissions from both parties i.e. submissions of KWETB (26 September 2014), submission of Sherwin O'Riordan (15 December 2014), and response of KWETB (26 January 2015)."*

40. The submission of KWETB on 26 January 2015 ("the KWETB January 2015 submission") was the subject of an application for leave to apply for judicial review in High Court proceedings 2020/787JR. In a ruling of today's date, I have separately determined that this application for leave to apply for judicial review should be refused.

41. In order to put in context the issues arising in the barrage of complaints and proceedings which have arisen from the applicant's removal from her post at the VEC by the Minister on 15 June 2015, it is helpful to set out the conclusions in Mr. Cahalane's report, as follows:

> *"This report examines and comes to conclusions with respect to the five issues which led the VEC to have concerns regarding Ms Morgan's fitness to hold office and on which the VEC based its decision to suspend her from the performance of her duties in accordance with Section 7 of the Vocational Education (Amendment) Act, 1944. With respect to those five issues, I am satisfied that there is sufficient uncontested evidence to reach the following conclusions:*
>
> - *In August 2010, Ms Morgan made an allegation and complaint of sexual harassment against a student in her Art class.*
> - *She subsequently withdrew that allegation and complaint.*
> - *The evidence made available to me is not sufficient to draw any definite conclusion as to whether or not the complaint and allegation had a foundation in fact.*

- *That through Ms Morgan's action in making an allegation and complaint of sexual harassment against a student in her Art class, she did expose County Wicklow VEC to potential legal action and loss.*
- *Ms Morgan accessed material from the Facebook accounts of students.*
- *That access was for the purpose of supporting her own position on no less than two occasions.*
- *That access was inappropriate.*
- *Ms Morgan wrote the statements complained of in the Notice of Complaint Form to the Rights Commissioner Service under the form "Protections for Persons Reporting Child Abuse Acts, 1998."*
- *The statements contained in the Notice of Complaint Form were untrue.*
- *Ms Morgan was aware of her responsibilities under the Child Protection Guidelines in place at the relevant time in respect of her duty to report the alleged child abuse observed in class and an incident of alleged child rape including, but not limited to, her duty to report to the VEC and/or her school principal.*
- *Ms Morgan did not honour those responsibilities.*

Ms Morgan's conduct can also be looked at from the viewpoint of the standards one would expect of a professional teacher. Such standards were formally set out in the "Codes of Professional Conduct for Teachers" first adopted by the Teaching Council in 2007.

Ms Morgan's actions in making and subsequently withdrawing a complaint and allegation of sexual harassment against a named student and using material from students' Facebook accounts to support her case demonstrates a lack of judgment and integrity which is contrary in whole or part to several statements and objectives set out in the Code, namely:

- *Teachers should take care of students under their supervision with the aim of ensuring their safety and welfare insofar as is reasonably practicable;*

- *Teachers should respect confidential information relating to colleagues, students and families gained in the course of professional practice, unless the wellbeing of an individual or a legal imperative requires disclosure;*
- *Teachers should uphold the reputation and standing of the profession. They should act with honesty and integrity in all aspects of their work;*
- *Teachers should respect students, parents, colleagues, school management, co-professionals and all in the school community;*
- *Recognising the unique and privileged relationships that exist between teachers and the students entrusted to their care, teachers should conduct these relationships in a way that is professional, respectful, and appropriate;*
- *Teachers should exercise their professional integrity and judgement in communicating with students and parents.*

Ms Morgan's actions in making and subsequently withdrawing a complaint and allegation of sexual harassment against a named student and using material from students' Facebook accounts to support her case and exposing VEC to potential legal action and loss are clearly contrary in whole or part to the Code's statement that:

- *Teachers should uphold the reputation and standing of the profession.*

Ms Morgan's actions (including absence of appropriate action at the appropriate time) in respect of her responsibilities to report child protection concerns are clearly contrary in whole or part to the Code's statements that:

- *Teachers on their professional role work within the framework of relevant legislation and regulations,*
- *Teachers should take care of students under their supervision with the aim of ensuring their safety and welfare insofar as is reasonably practicable."*

Appellant's removal from office on 15 June 2015

42. Following consideration of Mr. Cahalane's final report, the Minister made a decision on 15 June 2015, pursuant to s. 8(2) of the Vocational Education (Amendment) Act, 1944 to remove the appellant from office.

43. The "Order for Removal from Office", signed by the Minister and dated 15 June 2015, provides as follows:-

> *"I, Jan O'Sullivan, T.D. Minister for Education and Skills, having considered the findings of the Inquiry established under Section 105 of the Vocational Education Act 1930 into the matters which led to the suspension of Ms. Deirdre Morgan, an officer of Kildare and Wicklow Education and Training Board, formerly County Wicklow Vocational Education Committee, am of the opinion that Ms Morgan is unfit to hold office and, as empowered by me under Section 8(2) of the Vocational Education (Amendment) Act 1944, do hereby order her removal from office with immediate effect."*

44. It is important to note that the appellant was legally represented throughout all stages of the process which culminated in her removal from her teaching position by this order of 15 June 2015. Notwithstanding same, no challenge was made at the time of her removal whether by way of judicial review, plenary proceedings for wrongful dismissal or an application to the Employment Appeals Tribunal under the Unfair Dismissals Act, 1977 (being the relevant employment legislation which applied at that time).

45. It is clear that the applicant's removal was the culmination of a lengthy process of investigation and inquiry throughout which she was afforded full fair procedures and had the benefit of legal advice.

The appellant's 6-year campaign of complaints and litigation since her removal from office

46. I propose now to record in a little more detail the chronology of all complaints lodged against the Minister and KWETB by the appellant to the WRC since her removal from office and, separately, those complaints contained in Court proceedings against the Minister and KWETB since her removal.

The appellant challenges her removal before the WRC in separate complaints against the Minister and KWETB

9 June 2016 complaints against Minister and KWETB – dismissed by AO, Labour Court and High Court

47. On 9 June 2016, the appellant belatedly made a complaint to the WRC against the Minister in which she stated that she had been removed from her office as a teacher of art employed by County Wicklow VEC (now KWETB) on 15 June, 2015, that she was notified of this on 24 June 2015 and that she believed *"that the Minister discriminated against me on the grounds of disability in ordering my immediate removal from office"*.

48. On 14 June 2017, a WRC adjudication officer ("AO") determined, following a hearing, that the appellant had not shown reasonable cause as to why there was a delay in her lodging her complaint outside the six-month time limit. The adjudication officer, accordingly, ruled that her claim was out of time and dismissed it.

49. The appellant appealed that decision to the Labour Court. The hearing took place on 11 January 2018. In a determination of 17 January 2018, the Labour Court affirmed the decision of the adjudication officer on the basis that the appellant had not established reasonable cause for the delay in presenting her complaint to the WRC. S.77(5)(a) EEA provides that *"a claim for redress in respect of discrimination or victimisation may not be referred under this section after the end of the period of 6 months from the date of the occurrence or, as the case may require, the most recent occurrence"*. S.77(5)(b) confers a power on the WRC to extend that period to up to twelve months for *"reasonable cause"*. In its careful five-page determination, the Labour Court fully engaged with the applicant's stated reasons for being out of time, including that she had been suffering from mental health issues.

50. The Labour Court noted that:-

> *"The appellant secured full time employment shortly after her removal from office and that she remains in that full time employment. The court notes the appellant's assertion that she underwent a training programme in that employment following recruitment. The court notes her assertion at the hearing of the court that she was well in period from 15th June to 14th December 2015. The court notes the appellant's submission which confirms that she was in receipt of professional advice in September 2015 from her trade union and from a legal senior counsel in relation to the set of facts which*

gave rise to her complaint to the WRC. Finally, the court takes account of medical detail in the form of medical notes from an outpatient department attended by the appellant made in October 2015. The appellant agreed at the hearing of the court that those notes confirm that the appellant was well at that time."

51. The Labour Court went on to state that, taking these matters into account, it did not accept that the appellant had established that her failure to present her complaint to the WRC within the time limit provided that s.77(5)(a) EEA was for reasonable cause.

52. The Labour Court, accordingly, dismissed her claim.

53. The appellant did not appeal that decision of the Labour Court and it therefore became final and binding.

54. On 9 June, 2016, the appellant also lodged a complaint with the WRC against KWETB claiming that by her removal from office on 15 June, 2015 KWETB discriminated against her on the grounds of disability. This was effectively the same complaint made against the Minister on that date.

55. The adjudication officer, in a decision dated 14 June, 2017, held that the claim was out of time in circumstances where the last alleged contravention of the EEA was on 15 June, 2015 and the complaint was made on 9 June, 2016.

56. The appellant appealed that decision to the Labour Court. In its determination of 17 January, 2018, the Labour Court did not accept that her failure to present her complaint to the WRC within the six-month time limit provided for in s.77(5) EEA was for reasonable cause and, therefore, ruled that her application for an extension of time failed and affirmed the decision of the AO.

57. The appellant did not seek to appeal that determination to the High Court. Therefore, the Labour Court's decision was final and binding.

58. Since the above two final and binding determinations, as we shall see, the appellant has sought to repeatedly re-agitate complaints against the Minister and the Board in relation to her

alleged unlawful removal from office for, variously, grounds said to amount to discrimination or penalisation or victimisation.

16 November 2017 complaint against Minister – appellant walks out of AO hearing and AO dismisses – Labour Court appeal pending

59. In the period between the adjudication officer's decisions of 14 June 2017, in respect of her first complaint alleging discrimination on grounds of disability in relation to her removal from office, and the Labour Court's determinations of the appeals against those decisions on 17 January 2018, the appellant lodged a further complaint against the Minister with the WRC on 16 November 2017. This complaint comprised two parts.

60. The first part again alleged *"gender discrimination and harassment and victimisation from 2004 onwards"*. It was alleged this led to the Department *"holding me removed from my office as teacher on the basis of gender and disability and withholding actual access to illness gratutity"*. This complaint was said to be pursuant to s.77 EEA.

61. The second part of complaint alleged that the appellant had been *"discriminated against by way of an occupational pension. I have been discriminated against as I will not allowed to join, and was treated less favourably, victimised or other"*. This complaint was made pursuant to s.81E PA.

62. A hearing took place before an adjudication officer in relation to these complaints on 7 November 2018. During the course of this hearing, the appellant walked out of the hearing.

63. On 11 December 2018, the adjudication officer delivered her decision. As is clear from the AO's decision, the respondent Department raised a number of preliminary issues, namely *"time limit, res judicata and whether the correct respondent was named in the complaint referral form. The respondent also sought to have the complaints dismissed on the grounds that they were frivolous and vexatious."*

64. The AO in her decision stated that she had explained to the parties at the outset of the hearing that the first matter for her to decide was if she had jurisdiction and that she indicated that she would be dealing with the preliminary issues before hearing evidence in relation to the substantive matters. The complainant objected to that approach and said she wished to deal

with the substantive matters first. She also objected to the number of representatives who were present on behalf of the Department. The AO records in her decision that she explained that it was not possible to deal with the substantive matters without first establishing if she had jurisdiction to hear the case and that, accordingly, she was obliged to hear evidence in relation to the preliminary issues before proceeding to hear evidence in relation to the substantive matters. The decision then notes that *"the complainant then said that she was unable to continue and walked out of the hearing"*.

65. The AO, accordingly, ruled in her decision that *"as no evidence was given at the hearing in support of the allegations of discrimination, I conclude the investigation and find against the complainant"*. Accordingly, she dismissed the complaints.

66. The appellant appealed that decision to the Labour Court on 21 January, 2019. The Minister is contesting that appeal on the basis that the complaints are frivolous and vexatious, *res judicata* and out of time. A case management hearing took place on 24 June 2021 before the Labour Court but was adjourned, I understand, in light of the pending High Court litigation. This appeal has not yet come before the Labour Court.

7 November 2018 complaints against Minister (withdrawn) and KWETB (AO dismisses), Labour Court appeal pending

67. It is also necessary to note that, on 7 November, 2018, the date of the AO's hearing into her second set of complaints (being the hearing at which the applicant walked out), the appellant lodged a further two complaints that she had been discriminated against in her employment, contrary to s.77 EEA and that she had been discriminated against in respect of her occupational pension. In this complaint form, in respect of her pension related complaint, she states that she has sought access to an injury gratuity under the pension scheme and that she had never been given any information on how to access it. The pension complaint was stated to be under s.81E PA.

68. It can be seen that these complaints sought to raise matters which had been previously the subject of complaint and determination.

69. The appellant subsequently withdrew both of these complaints.

70. On 7 November, 2018, the appellant also lodged a complaint with the WRC against KWETB alleging a breach of s.77 EEA claiming discrimination on the grounds of gender and disability, including in relation to her access to an injury gratuity. She also alleged victimisation on account of her making complaints.

71. The AO, in her decision of 19 March, 2019, held that the complaints were referred outside the statutory timeframe provided for in s.77(5) EEA by almost three years and dismissed the claims on that basis.

72. The AO also dismissed the applicant's claims of discrimination on gender and disability in relation to access to benefits under the pension scheme pursuant to the provisions of the Pensions Act, 1990, as amended. In relation to her pension-related complaints, the AO held that she was:-

> *"satisfied that the complainant has failed to provide any evidence that the treatment of her by the respondent as regards her application for pension benefits under the Superannuation Scheme constituted discriminatory treatment on either the gender or disability grounds. If there was any delay in processing her application, it was directly attributable to the complainant as she did not return the application form after it was sent to her on 6th October 2017 until 6th June 2018. In relation to the complainant's contention that it was discriminatory treatment not to provide her with benefits under section 23 of the Superannuation Scheme, it is a matter for the respondent, as administrators of the Scheme, to process applications for benefits under the Scheme in the most appropriate manner within the rules of the Scheme. The complainant has failed to establish that she was treated less favourably on the gender or disability ground than another person of a different gender or a person without a disability was or would have been treated in a comparable situation."*

The AO also noted that the Board had pointed out that the appellant *"was directed towards the most appropriate part of the Scheme for her i.e. retirement and medical under the Superannuation Scheme"*.

73. The AO also held that, having examined the evidence presented by the appellant to support her contention that she was victimised, she could find no evidence that KWETB

subjected the applicant to any adverse treatment as set out in the definition of victimisation in s.22(3) of the Pensions Act, 1990, as amended.

74. The applicant appealed the decision of the AO of 19 March, 2019 to the Labour Court. This appeal has yet to be heard and determined by the Labour Court.

7 January 2019 complaint against Minister – AO decides complaints are res judicata (Labour Court appeal pending)

75. On 7 January, 2019, the applicant lodged further complaints with the WRC against the Minister. The complaint was also said to be in respect of s.77 EEA and the complaint was stated to be that *"the Minister's refusal to correct his mistake against me because I complained against him is explicit victimisation. This is ongoing. Also, I have sought access to an injury gratuity for the past year and four months to help pay for medical treatment – I cannot get any information on this. Overall the Minister has been acting unlawfully under the Employment Equality Act continuously since 2009"*.

76. A separate complaint against the Minister was also lodged with the WRC on the same date. This again alleged discrimination contrary to s.81E PA in respect of the applicant's occupational pension. The applicant sought to assert, in her submissions in support of these complaints, that *"I am on approved leave since 2010 and that position was never changed other than I was removed from an office I did not hold"*.

77. On 28 March, 2019, the CSSO on behalf of the Minister made a detailed submission to the WRC inviting the adjudication officer to whom these complaints were assigned to dismiss the complaints under s.42 of the Workplace Relations Act, 2015. ("s42 WRA").

78. S.42 provides:

> *"(1) An adjudication officer may, at any time, dismiss a complaint or dispute referred to him or her under section 41 if he or she is of the opinion that it is frivolous or vexatious."*

79. The assigned AO, replied by letter of 4 April, 2019 stating that he had decided to proceed with the hearing of the complaints.

80. The matter proceeded to a hearing and the AO then gave his decision on 17 July, 2019. In respect of both complaints, the AO determined that the complaints were *res judicata*. Having explained the doctrine of *res judicata*, and having made reference to *Henderson v. Henderson*, he held that:

> *"case law provides for finality in proceedings and to protect a party for being harassed by successive actions by another party when the issues between them were determined in the first proceedings in this instance, I find that the respondent is entitled to be a protected party from being harassed by successive actions by the complainant and it is not in the public interest to convene successive hearings on the same issues. I find the complaints are res judicata where the complaints have already been decided and I find the complaints to not be well founded. I find that this complaint has been dealt with in* [the adjudication officer decision of Ms. Flynn of 11 December, 2018] *and was therefore res judicata"*.

81. The applicant appealed that decision of Mr. McGrath on 22 August, 2019. That appeal has yet to be scheduled for hearing.

15 April 2019 complaint against KWETB – dismissed by AO, Labour Court and High Court

82. On 15 April 2019, the appellant lodged a further complaint against KWETB with the WRC, alleging discrimination on the grounds of gender and disability contrary to s.77 EEA and s.81E PA. In this complaint, the appellant sought to contend that she was not in fact removed from office by the Minister on 15 June, 2015 as she was not an office holder at the time. She alleged that if there was a dismissal, it could only have happened at a hearing on 12 February, 2019 before AO Marian Duffy (being the hearing of the complaints which were the subject of the decision by the AO on 19 March, 2019 referred to at paragraph **[insert]** above).

83. It will be noted that these complaints were lodged less than four weeks after the AO's decision of 19 March 2019. These complaints sought, in substance, to agitate the same grievances which had been the subject of her earlier complaints.

84. The AO dealing with this matter issued a decision on 23 October 2019. In her decision, in relation to the EEA complaints, she stated:

> *"I have concluded that the complainant was dismissed on June 15th 2015 and not on February 10th 2019. I have also concluded that the complainant's allegation on discriminatory dismissal has been adjudicated upon already by the WRC and the Labour Court. As the matters have already been heard, considered and decided upon, the principle of res judicata applies and I decide therefore that this complaint is dismissed."*

85. In relation to her Pensions Act complaint, the AO determined that she had found *"no evidence that the complainant has been discriminated against, penalised or victimised in respect of her entitlements under the ETB Teachers' Superannuation Scheme"* and dismissed that complaint.

86. That decision was appealed to the Labour Court. The Labour Court issued separate decisions in respect of the EEA discrimination claim and the Pensions Act discrimination claim (each determination of the Labour Court issued on 9 February 2021).

87. The Labour Court determined, in respect of the appellant's EEA complaint, that she had not made out a *prima facie* case and her claim could not, therefore, succeed within the *"cognisable period"* i.e. the period of six months before her complaint, being the period 16 November 2018 to 15 April 2019. The Labour Court accordingly dismissed this appeal.

88. The appellant appealed to the High Court on a point of law in respect of that Labour Court decision (High Court record number 2021/37MCA). I heard that appeal on Wednesday, 24 March and have issued a separate decision today holding that there was no error of law in the Labour Court's determination and dismissing the appeal.

89. The Labour Court, in its decision of 9 February, 2021 in relation to the Pensions Act discrimination claim, determined that the appellant had failed to make out a *prima facie* case of discrimination in relation to her Pensions Act allegation that she was forced to take an ill health early retirement pension.

90. This was appealed to the High Court on a point of law (record number 2021/38MCA). That appeal was also heard by me on 24 March, 2022. In a decision delivered separately on that appeal today, I hold that there was no error of law in the Labour Court decision and dismiss that appeal.

Further series of complaints to WRC still pending and the subject of strike out applications

8th August 2019 complaints against KWETB

91. On 8 August, 2019, the appellant lodged three further complaints against KWETB. These purported to be complaints under s.28 SHWWA and s.9 of Unfair Dismissals Act, 1977; specifically, the appellant alleged that she was *"penalised for complying with and making a complaint under the Safety, Health and Welfare at Work Act"*. This was the same complaint she made in her first complaint to the then Labour Relations Commission on 22 March, 2011 which was finally determined in my ruling of 22nd March 2022 in High Court proceedings record number 2020/123MCA referred to at paragraph [**insert]** above.

92. In her complaint form, the appellant states *"since 2015 my employment status was that I was removed from an office that I did not hold i.e. my employment status was an administrative bubble from 2019"*. She then alleges that she was dismissed at a hearing in the WRC on 12 February 2019 (being the hearing before the AO of her complaints lodged on 7 November, 2018, as referred to earlier).

93. She further asserted that *"the fact is that no dismissal occurred in 2015 – I have several sources of proof that up to the hearing on 12th February 2019 that only a removal from an office occurred and that no dismissal or termination of contract had occurred from my employer or the Minister"*. She then proceeded to claim that she was unfairly dismissed on 12 February 2019, and asserted complaints under s.8 of the Unfair Dismissals Act, 1977.

94. These complaints are plainly an attempt to reopen the question of the lawfulness of her removal from office on 15 June 2015.

10 August 2019 complaints against the Minister

95. On 10 August, 2019, the appellant made further complaints against the Minister to the WRC. In these complaints she complains that she was unfairly dismissed on *"10/04/2019"*. She alleges penalisation under s.28 SHWWA (this is the matter which was dealt with in High Court proceedings record no MCA123 on the equivalent complaint against KWETB). In this complaint, she asserted "*the Minister for Education has not terminated my contract in 2015 or at any time before* [the hearing at the WRC on 10 April 2019]. *My employment status since 2015 was that I was removed from an office I did not hold. Nobody had ever terminated my contract of employment".* She claims she was protected from dismissal by the Safety, Health, and Welfare at Work Act, 2005. In the third part of this complaint, she claimed discrimination *"by my employer, prospective employer, employment agency, vocational training or other bodies"* pursuant to s.77 EEA. She claimed to be dismissed *"at the Workplace Relations Commission"* in circumstances of victimisation. She alleges in respect of her pension that she *"was corralled, tricked into unwanted retirement in November 2018 and since then was refused any reversal of this"*. In the fourth part of her complaint, she claimed discrimination in respect of her pension again grounded on the untenable assertion that she was *"recently dismissed at the Workplace Relations Commission in circumstances of victimisation"*.

96. I understand that the WRC has not progressed these complaints pending the determination of the various litigation before the Court, including these applications of the Minister and KWETB.

97. These complaints are a clear attempt, to re-agitate matters which have already been finally determined by the WRC and/or this Court.

26 August 2019 complaints against the Minister

98. On 26 August 2019, the appellant lodged a further unparticularised complaint with the WRC against the Minister under s.13 of the Industrial Relations Act, 1969 notwithstanding that s.23 of the Industrial Relations Act, 1990, as amended, specifically excludes teachers from the ambit of the Industrial Relations Act. This is clearly an unsustainable complaint.

30 August 2019 complaints against the Minister

99. On 30 August 2019, the appellant filed a further complaint under s.13 of the Industrial Relations Act, 1969. The complaint made allegations of failure of the Minister and the VEC to

deal with her allegations of child abuse. These are the matters considered in the context of the VEC's disciplinary inquiry and Mr. Cahalane's inquiry on behalf of the Minister.

100. The Minister wrote to the WRC on 17 October 2019 asking that all of the foregoing complaints be dismissed pursuant to s.42 as being legally frivolous and vexatious.

25 February 2020 complaints against KWETB

101. The appellant lodged further complaints against KWETB on 25 February 2020 again making complaints under s.77 EEA and s.81E PA of discrimination on the grounds of gender and disability and victimisation in relation to injury gratuity. In her complaint form, she referred to *"green victimisation"*, a phrase which recurred repeatedly in the material before me during the hearing. When asked by me to explain what she meant by *"green victimisation"*, the appellant was not able to give a coherent answer. In her complaint form, she says *"in this new decade 2020 I intend to improve my health enough so that I can question you about the denial and cover up of child abuse/harassment of a sexual nature against my female students and myself that you are presently still participating in"*.

102. The complaints have been deferred at the appellant's request.

29 June 2020 complaints against Minister and KWETB

103. On 29 June 2020 the appellant lodged a further complaint against KWETB alleging discrimination on the grounds of gender and disability, and victimisation, contrary to the EEA. The respondents to this complaint are specified to be *"Minister for Education, KWETB, Workplace Relations Commission, Irish Human Rights and Equality Commission"*. The complaints, again, reference *"green victimisation"*. The applicant further asserts that she was *"free to enter my complaint of sexual harassment by adult X in future complaints, such as the one I make here"*. She asserts ongoing discrimination and victimisation.

5 February 2021 complaints against Minister

104. On 5 February, 2021, the appellant submitted two further complaints to the WRC against the Minister which again seek to ventilate complaints of discrimination contrary to s.77

EEA in relation to her employment and discrimination contrary to s.81 EEA in respect of her pension. These again clearly replicate in substance the complaints already ventilated which have been finally dealt with by the WRC (or, on appeal to the High Court) in the case of materially identical complaints levelled against KWETB arising from the same facts.

3 August 2021 complaints against Minister and KWETB

105. On 3 August 2021, the appellant lodged yet a further complaint against the Minister to the WRC in which she alleges penalisation *"for complying with or making the complaint under the Safety, Health and Welfare to Work Act"* pursuant to s.28 SHWWA. The basis of the complaint is that KWETB and the Minister's servants *"circulated documents about me to the Labour Court and the High Court"*.

106. The appellant also lodged yet a further complaint against KWETB on 3 August 2021 with the WRC again seeking to invoke s.28 SHWWA and alleging penalisation for making a complaint.

107. These complaints are again a clear attempt to re-litigate matters already finally determined.

29 December 2021 complaints against Minister

108. Finally, on 29 December 2021, the appellant lodged a further complaint against the Minister in which she alleged discrimination under s.77 EEA (*"the Minister keeps making me ill by making false allegations about child sexual abuse, has engaged in ongoing different treatment of me as a teacher further to sexual harassment that occurred in 2010, including different pension treatment"*). A complaint in identical terms alleging discrimination under s. 81E is also included in this complaint.

109. These complaints are again clearly an attempt to re-litigate matters already disposed of.

3rd March 2022 complaints against KWETB

110. The appellant lodged two further complaints with the WRC against KWETB on 3 March 2022 (i.e. just a few weeks before the hearings scheduled before the High Court on 22

March 2022). These two complaints both purport to be further complaints pursuant to s.77 EEA.

Court applications/proceedings

111. In addition to the barrage of complaints against the Minister and the Board lodged by the appellant with the WRC, she has also instituted various Court proceedings against the Minister and the Board during the same period.

Statutory appeals

112. I have already addressed the various statutory appeals against Labour Court decisions, including statutory appeals which are the subject of separate decisions given by me today and one decision given *ex tempore* on 22 March 2022**.** There are accordingly no outstanding statutory appeals on matters which have been the subject of determination by the Labour Court.

Judicial review proceedings

113. The appellant also sought to launch judicial review proceedings against KWETB, in proceedings High Court record number 2020/787JR and High Court record number 2021/103JR. I have given separate rulings on the applications for leave to apply to judicial review in respect of each of these matters, also delivered today. I have refused the appellant leave to apply for judicial review in both proceedings.

Circuit Court proceedings

114. The appellant issued proceedings on 4 February 2021 against the Minister and KWETB in the Circuit Court (Eastern Circuit, Co. Kildare, proceedings record number 2021/00033) seeking redress pursuant to s.77 EEA in which the appellant seeks, *inter alia*, payment of her salary since 1 July 2015 and annulment of *"the unwanted resignation imposed on me in 2019"*.

115. In her Civil Bill, the appellant claims that *"both respondents have engaged in gender discrimination in relation to sexual harassment and victimisation arising from my complaint against County Wicklow VEC now KWETB to the Equality Tribunal"*. She also seeks to assert

enforcement of the decision of the Equality Tribunal. A series of orders are sought which are clearly outside any legitimate relief which could be sought from the Circuit Court including *"an order to cause the respondents to inform adult X that I have withdrawn my complaint of his sexual harassment"*, *"payment of my salary owed to me since 1st July 2015 and a levelling up of my pension contributions"*, *"affirmation of my employment contracts as a teacher grade iii and as an assistant principal grade ii"*.

116. It is manifest that these proceedings are an improper attempt to reopen the question of her removal from her teaching position by ministerial order of June, 2015 and are an abuse of process. These proceedings are vexatious and, as I shall come to shortly, it is appropriate that the Court exercises its inherent supervisory jurisdiction to prevent abuse of process including an abuse of process in the Circuit Court (which lacks the inherent jurisdiction to make such orders of its own accord).

High Court summary proceedings

117. The appellant issued High Court summary proceedings against KWETB on 29 June 2021 (High Court record number 2021/404S) in which she claims *"unpaid salary from 1 July 2015 to 31 October 2018"* in the amount of €210,255. The appellant's claims in these proceedings are premised on her being employed from 1 July 2015 onwards in circumstances where she was not employed by the Board in that period, following her removal by the Minister from her position with KWETB on 15 June 2015. These proceedings are an abuse of process as the appellant has previously brought complaints challenging her removal and those matters were the subject of final and binding determinations. I order that these proceedings be struck out pursuant to the Court's inherent jurisdiction to prevent prosecution of vexatious claims and to prevent abuse of process.

Legal principles

Introduction

118. In light of the foregoing history of the campaign of complaints and litigation which the appellant continues to seek to maintain, the first issue that arises is whether the Court should grant the *Isaac Wunder*-type orders sought by the Minister and the Board to

prevent the appellant launching any fresh proceedings (whether in the courts or before the WRC) without the prior leave of the Court.

119. Having considered that issue, it is then necessary to turn to the question of whether the appellant's remaining court proceedings should be struck out as an abuse of process and, further, whether the court has jurisdiction (and, if so, whether it should exercise that jurisdiction) to strike out as an abuse of process the appellant's remaining proceedings before the WRC against both the Minister and the Board which have yet to be finally determined by the WRC.

Isaac Wunder-type applications

120. While the jurisdiction of the Court to grant *Isaac Wunder* orders in respect of the institution of court proceedings is well established, there is in fact a dearth of Irish authority on the question of whether the Court has jurisdiction to grant *Isaac Wunder* type orders in respect of the institution of proceedings before non-court statutory tribunals such as the WRC. In order to put the issues arising in that regard in context, it is necessary to first examine the Court's jurisdiction to grant such orders in respect of the institution of court proceedings.

121. The authorities make clear that the basis of the *Isaac Wunder* order jurisdiction is to protect the integrity of the administration of justice by providing a filter to weed out the issue and prosecution of proceedings where such proceedings would amount to an abuse of process.

122. In *Superwood Holdings plc v Sun Alliance and London Insurance plc* [2017] IECA 76, McDermott J. explained that *Isaac Wunder* order is made to protect the administration of justice from further abuse of process and stated as follows:

> *"Though the courts must be cautious to ensure the right of access to the courts under Article 40.3 of the Constitution and Article 6 of the Convention is assured, nevertheless the principle of finality of litigation and the resources of the courts and fair procedures to all parties in the proceedings must also be considered. The making of such an order is not a denial of the right of access to the affected party who is required to seek the court's leave before initiating further*

proceedings. It provides a filter to ensure that a litigant is prevented from initiating further proceedings. It provides a filter to ensure that a litigant is prevented from initiating any further frivolous, vexatious or scandalous proceedings and to protect the administration of justice from further abuse of process. It is a proportionate response to that party's proven abuse of process."

123. In *Kearney v Bank of Scotland* [2020] IECA 92, Whelan J. stated at paragraph 131 of her judgement:

"Isaac Wunder type orders can be orders can be made by the High Court pursuant to its inherent jurisdiction to restrain the further prosecution by a party to proceedings without leave of the court. The power of a superior court to attach such restraint to the institution or continued prosecution of civil litigation extends to existing proceedings and to new proceedings and also to proceedings before any of the lower courts. In the case of new proceedings, such restraint may, in an appropriate case, include an order restraining the institution of proceedings against present, former or anticipated legal representatives of parties to the litigation."

124. In *McMahon v WJ Law & Co LLP* [2007] IEHC 51 (at paragraph 20), MacMenamin J. stated as follows:

"Among features identified by Ó Caoimh J. in Riordan v. Ireland (No. 5) [2001] 4 I.R. 463 as justifying such an order, or militating against the vacating of such an order already granted are:—

1. The habitual or persistent institution of vexatious or frivolous proceedings against parties to earlier proceedings.

2. The earlier history of the matter, including whether proceedings have been brought without any reasonable ground, or have been brought habitually and persistently without reasonable ground.

3. The bringing up of actions to determine an issue already determined by a court of competent jurisdiction, when it is obvious that such action cannot succeed, and where

such action would lead to no possible good or where no reasonable person could expect to obtain relief.

4. The initiation of an action for an improper purpose including the oppression of other parties by multifarious proceedings brought for the purposes other than the assertion of legitimate rights.

5. The rolling forward of issues into a subsequent action and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings.

6. A failure on the part of a person instituting legal proceedings to pay the costs of successful proceedings in the context of unsuccessful appeals from judicial decisions."

125. Haughton J. cited and applied those principles in the *Irish Aviation Authority and DAA plc v Monks* [2019] IECA 309 ("*Monks*") at paragraph 26.

126. At paragraph 132 of her judgment in *Kearney*, Whelan J. offered a more detailed list of factors to which the court can have regard in determining whether an *Isaac Wunder* order is appropriate, which in substance replicates the factors cited by McMenamin J in *McMahon.*

127. In his judgment in *Monks*, Collins J. emphasised the exceptional nature of the *Isaac Wunder* jurisdiction, when stating as follows (at paragraph 7):

It is, therefore, critically important that a court asked to make an Isaac Wunder order should anxiously scrutinise the grounds advanced for doing so. It should not be seen as some form of ancillary order that follows routinely or by default from the dismissal of a party's claim, whether on its merits or on a preliminary strike-out motion. That is so even if considerations of res judicata and/or Henderson v Henderson arise. The court must in every case ask itself whether, absent such an order, further litigation is likely to ensue that would clearly be an abuse of process. Unless the court is satisfied that such is the case, no such order should be made. It is equally important that, where a court concludes that it is appropriate to make such an order, it should explain the basis

for that conclusion in terms which enable its decision to be reviewed. It is also important that the order made be framed as narrowly as practicable (consistent with achieving the order's objective).

128. While, as we shall see, the WRC enjoys a statutory power to strike out proceedings before that are frivolous or vexatious, it has no statutory power to make an *Isaac Wunder*-type order. As noted earlier, the parties were unable to identify an Irish authority in which *Isaac Wunder* type order had been made preventing the institution of proceedings before a statutory tribunal without the prior permission of the Court.

129. The issue has arisen in the English courts. Counsel for the Minister and the Board brought my attention to two separate English High Court decisions addressing the question of the making of *Isaac Wunder*-type orders in respect of applications to English employment tribunals.

130. The first such decision was that of Hamblem J. in *Nursing and Midwifery Council v Harrold* [2015] EWHC 2254 (QB) (*"Harrold"*). As is clear from the judgment of Hamblem J. in that case, the power of the English courts to make *Isaac Wunder*-type orders in respect of the institution of court proceedings had been recognised as far back as 1887 in the case of *Grepe v Loam* (1887) 37 CHD 168. This power was placed on a statutory footing in 2004 in the English civil procedure rules (CPR) which gave power to the civil courts to make civil restraint orders (CROs), which includes the power to make a general CRO restraining a party from issuing any claim are making any application in the High Court or County Court without first obtaining the permission of the relevant court. However, CROs are not available under the CPR in respect of non-court proceedings.

131. In *Harrold*, Hamblem J. discussed the earlier case of *Law Society of England and Wales v Otobo* [2011] EWHC 2264 ("*Otobo*"). As explained by Hamblem J, Proudman J. in *Otobo:*

"*identified four principles of particular relevance, which she derived from Sir Jack Jacob's article in [1970] Current Legal Problems 23: "The Inherent Jurisdiction of the Court", namely:*
(1) "As a matter of principle the general jurisdiction of the High Court is unlimited save insofar as it has been taken away by statute".

(2) "The inherent jurisdiction derives historically from coercion, that is to say punishment for contempt of court and of its process, and regulation, that is to say regulating the practice of the court and preventing abuse of its process".

(3) "Under its inherent jurisdiction the High Court has the power, not to review the decisions of inferior courts, but (1) to prevent interference with the due course of justice in those courts and (2) to assist them so that they may administer justice fully and effectively".

(4) "The powers of the court under the inherent jurisdiction are complementary to its powers under the Rules and are not replaced by them".”

132. Hamblem J. went on to state at paragraph 20:

> *“There is clearly a need for inferior courts to be protected from vexatious proceedings, just as there is for the High Court to be so protected, as reflected in the development of CROs and explained by the Court of Appeal in Bhamjee v Forsdick. As is common ground, an inferior court, such as the [Employment Tribunal], has no power itself to make a CRO or equivalent order. It is entirely consistent with High Court’s jurisdiction in matter of contempt for it to be able to make orders to protect the inferior courts in such circumstances. It can be regarded as another example of the High Court’s power “to prevent any person from interfering with the due course of justice in any inferior court.”*

133. Hamblem J. then noted (at paragraphs 21 and 22):

> *“that the High Court's supervisory jurisdiction in relation to inferior courts extends to the grant of CROs is supported by the decision of the Court of Appeal in Ebert v Venvil….Whilst the ET and similar tribunals are not part of the civil justice system in the same way as a County Court, as inferior courts they are still part of that system and of an inter-related jurisdiction.”*

134. He concluded accordingly that he did have power to grant the *Isaac Wunder*-type orders sought, Laing J. granted those orders on the facts in the follow-up matter of *Nursing and Midwifery Council v Harrold (No.2)* [2016] EWHC 1078 (QB).

135. Similarly, in *Law Society of England and Wales v Sheikh* [2018] EWHC 1644 (QB) ("*Sheikh"*), Jay J. held at paragraph 17 of his judgment that he was:

> *"entirely satisfied that the court has an inherent jurisdiction in this sort of case to impose its coercive or injunctive powers on a vexatious litigant if she persists, without reasonable cause, in litigating in and inferior tribunal".*

136. In that case, the Law Society of England and Wales applied, *inter alia,* for the defendant to be *"restrained from issuing any claim or making any applications in any court, Employment Tribunal or the Employment Appeal Tribunal, or in any other tribunal against their defendants, employees, servants or agents without first obtaining the permission of this court"* and Jay J. granted that order.

137. In my view, while the English authorities are helpful, the jurisdiction of the Irish High Court to make orders preventing abuse of the system of administration of justice including the administration of justice in non-court statutory tribunals such as the WRC is arguably on a stronger constitutional footing in light of the provisions of articles 34 and 37 of the Constitution and the supervisory role of the High Court to ensure proceedings of statutory tribunals are conducted in accordance with law.

138. Article 34 of the Constitution provides (in article 34.1) that "*Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public*."

139. Article 37 provides (in article 37.1) that "*Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.*"

140. O'Donnell J. (as he then was) held in the majority decision in the Supreme Court in *Zalewski v. An Adjudication Officer* [2021] IESC 24 that the function of the WRC and the

Labour Court on appeal is the administration of justice (paragraph 109) and that the WRC was administering justice as a body within article 37 of the Constitution (paragraphs 110 to 117 and 138).

141. It is, further, well established that the High Court has a broad original jurisdiction to ensure that the proceedings of lower courts and tribunals are conducted in accordance with law: see e.g. the judgment of Henchy J. in *Tormey v Ireland* [1985] IR 289.

142. In my view, it follows as a matter of principle that the High Court has the jurisdiction in appropriate cases to prevent abuse of process before statutory tribunals which are administering justice, such as the WRC, by the making of *Isaac Wunder* type orders preventing the institution of proceedings before such tribunals without the Court's permission if the criteria set out in the case law for the making of *Isaac Wunder* orders in respect of the institution of court proceedings are also satisfied as regards the question of institution of proceedings before such tribunals.

Application of *Isaac Wunder* principles to the facts here

143. An application of the factors enumerated by MacMenamin J. in *McMahon v WJ Law* and cited with approval by Haughton J. in *Monks* to the facts before me it demonstrates that this is a manifestly appropriate case in which to make *Isaac Wunder* orders in the terms sought. As we have seen, the appellant has engaged in the habitual and persistent institution of proceedings both before the WRC and in the courts in respect of issues related to her removal from her office as teacher with the Board, notwithstanding that hose issues have been the subject of binding and conclusive prior determinations. She has repeatedly engaged in the vexatious re-packaging of claims already determined against her. Indeed, she made clear to the Court during the hearing of the various matters before me that she intended to continue her campaign of proceedings.

144. In my view, it is entirely appropriate that an *Isaac Wunder* order now be made to prevent the applicant from bringing any further court proceedings, or complaints or applications to the WRC (or any other statutory tribunal engaged in the administration of justice), on matters related to her employment and removal from her employment, including any pension matters relating to same, without the Court's prior leave. This filter is necessary

to ensure that the appellant is prevented from initiating any further frivolous or vexatious proceedings or applications. The administration of justice has to be protected.

145. In my view, the facts of this matter are an exemplar of abuse of the important right of access to the courts which is protected under article 40.3 of the Constitution and article 6 of the European Convention of Human Rights. The appellant's obsessive campaign of litigation by way of the serial lodging of complaints with the WRC, and by way of Circuit Court and High Court proceedings, including High Court appeals on supposed points of law and applications for leave to apply for judicial review, have occasioned an enormous drain of resources on the Department and the Board. Both the Minister and the Board put evidence before the Court of the very significant time and costs incurred by them in dealing with the appellant's barrage of proceedings. The Minister's Department and the Board, which are ultimately funded by the taxpayer, are entitled to be protected from further unnecessary harassment and expense. The appellant's campaign of abuse of process has to be brought to an end.

146. I will accordingly grant the *Isaac Wunder*-type orders sought by the Minister and the Board.

Abuse of process strike out applications

147. The Court's inherent jurisdiction to strike out proceedings which are an abuse of process is well established. Abuse of process can arise where claims are brought which seek to raise issues that have previously been litigated. As stated by Irvine J. (as she then was) in *Fox v McDonald* [2017] IECA 189 at paragraph 26:

> *"It is in the public interest that there should be finality in litigation. The defendant or defendant should not be put to the expense of having to defend for a second time claims which they have successfully defended in earlier proceedings"*

148. Abuse of process also embraces cases raising issues which should have been litigated in earlier proceedings, as reflected in the seminal case of *Henderson v Henderson* (1843) 3 Hare 100 which has been approved in numerous Irish cases: see e.g. *A.A. v Medical Council* [2003] 4 I.R. 302 and *Re Vantive Holdings* [2010] 2 IR 118.

149. Abuse of process also encompasses case which are "frivolous" or vexatious". *In O'N v McD* [2013] IEHC 135, Birmingham J. (as he then was) explained that it was "frivolous" to bring a case where the plaintiff had no reasonable chance of succeeding. A case is regarded as "vexatious" where it imposes a hardship on the defendant if he/she has to expend time, effort and money in defending an action which cannot succeed.

150. The jurisprudence makes clear that the strike out jurisdiction is a jurisdiction to be exercised sparingly.

151. Whelan J. in *Kearney* (at paragraph 127) quoted the following passage from *Kelly: The Irish Constitution* (5th ed., Bloomsbury Professional, 2018) at paragraph 7.3.194, which underscores the links as a matter of principle between the bases of the Court's jurisdiction to strike out proceedings as an abuse of process and the Court's jurisdiction to grant *Isaac Wunder* orders:

> *"The right to litigate must be read subject to the judicial power to strike out an action so as to prevent an abuse of the judicial process. If it is clear that the plaintiff's claim must fail or that he can derive no tangible benefit from the litigation, a court has an inherent jurisdiction to stay the action (in addition to a similar jurisdiction conferred by the Rules of the Superior Courts relating to frivolous or vexatious proceedings), though this jurisdiction must be exercised sparingly and only in clear cases. The court may also strike out an action if it has been taken for a purpose that the law does not recognise as a legitimate use of the remedies sought, if there has been egregious misconduct in the manner in which the proceedings have been conducted, if there has been an inordinate and inexcusable delay in pursuing a claim and the balance of justice requires dismissal of the action, or even where the plaintiff is not culpable, if the passage of time means that there is a real or substantial risk of an unfair trial or an unjust result. Moreover any court may restrain a person from instituting legal proceedings without first obtaining the consent of the court where this is necessary in order to prevent the abuse of court processes or the pursuit of vexatious litigation, a so-called 'Isaac Wunder' order".*

Application of strike out principles to the facts

152. I have no doubt but that it would be an appropriate exercise of the Court's inherent jurisdiction to prevent abuse of process to strike out the High Court summary proceedings and the Circuit proceedings. Both the High Court and Circuit Court proceedings are premised on the wholly invalid premise that the appellant remained employed by the Board after 15 June 2015 when she was not so employed. Furthermore, the Circuit Court proceedings, as already noted earlier, seek a series of orders which are clearly outside any legitimate relief which could be sought from the Circuit Court.

153. As is the case in respect of the Court's jurisdiction to make *Isaac Wunder* orders, the policy underpinning the Court's inherent jurisdiction is one of protection of the administration of justice from abuse. In my view, it follows, that in principle this Court has an inherent jurisdiction to strike out claims before statutory tribunals such as the WRC which are themselves administering justice if such claims constitute an abuse of process.

154. I have no doubt but that all of the remaining proceedings before the WRC are an abuse of process as they all involve attempts to relitigate matters which the WRC (and this Court, an appeal from the WRC) has already conclusively determined. The question that arises is whether I have should exercise my jurisdiction to strike out those proceedings in circumstances where the WRC is itself vested with a statutory power to strike out proceedings before it which are vexatious or frivolous.

155. The WRC's power to dismiss frivolous or vexatious proceedings is contained in s.42 of the 2015 Act which empowers an adjudication officer to dismiss a complaint or dispute if he or she is of the opinion that it is frivolous or vexatious. S.42 also provides a right of appeal to the Labour Court from such a decision. Separately, s.77A EEA empowers the director of the WRC to dismiss a claim if the director is of the opinion "that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter". Under s.77A there is also a right of appeal to the Labour Court against such a dismissal.

156. It will be clear that these provisions cannot apply to those cases where complaints have been dealt with on their merits at first instance by an AO but where a decision to the Labour Court is pending (being the cases summarised at paragraphs 59 to 80 above). For the reasons outlined above, in my view it is appropriate that the Court grant an order striking out those complaints.

157. In respect of those complaints to the WRC which have not yet been addressed by an AO being the cases summarised at paragraphs 91 to 110 above), either the Director or the assigned AOs would have a power to dismiss these complaints as vexatious given the analysis contained in this judgment. However, any such dismissals would inevitably be appealed by the appellant to the Labour Court given her approach to date.

158. I am conscious that the WRC is not a party to these applications and that I have not heard its view as to whether it would be appropriate for this Court to exercise jurisdiction to strike out proceedings before the WRC when it has such powers itself. I do note, however, that the Labour Court and the WRC have effectively pressed pause on the various outstanding complaints and appeals pending the outcome of these applications to this Court.

159. In my view, the facts here are sufficiently exceptional for the Court to intervene in exercise of its inherent jurisdiction at this point to direct that all of the appellant's remaining proceedings before the WRC be struck out without the need for the Director of the WRC or individuals AOs or, on appeal, the Labour Court to spend further hearing time on the matters.

160. In deciding to exercise the Court's inherent jurisdiction in this way, I am relying on the fact that the continued maintenance of these proceedings would clearly constitute an abuse of process and that to allow the proceedings to continue to what could only be lawfully one conclusion before the WRC would be to impose further unwarranted time and cost and on the Minister and the Board, given the number of remaining unresolved complaints and given the appellant's proven propensity to drag such proceedings out. The appellant can have no valid complaint by the Court making such strike out orders now as the continued prosecution of these complaints would clearly amount to an abuse of process. The Board and the Minister (and therefore the public purse) would benefit from the making of such orders now by being spared further expenditure of time and human and financial resources. The WRC's processes will not be undermined in any way by the Court adopting that course of action and rather its resources can be more appropriately deployed to deal with cases which do not involve an abuse of process.

Conclusion and Orders

161. The facts of this case exemplify the importance in the public interest of the availability of tools such as *Isaac Wunder* orders and orders striking out proceedings which are an abuse of process. It is vital that the Court has such powers as part of its inherent jurisdiction to protect the integrity of the administration of justice and to prevent harassment of parties by repeated claims on matters which have already been the subject of final determination.

162. My own experience of the appellant during the three days of court time allocated to her appeals, her applications for judicial review and the Minister's and KWETB's applications for relief pursuant to the Court's inherent jurisdiction graphically underscored the benefits which will flow from the orders I now propose to make. The appellant threatened to walk out of the hearing at various points over the first two days of the hearing and the potential consequences of such a course of action had to be explained to her. The appellant came in on the second day of the hearing and sought leave to issue five new sets of proceedings claiming breaches of the European Convention on Human Rights Act, 2003. Her erratic behaviour on the morning of the third day of the hearing led to both security and the on-site Garda in the Four Courts having to be called. Matters culminated in particularly disgraceful behaviour by the appellant in the afternoon of the third day of the hearing (Thursday, 24 March) which forced me to abandon the hearing. The conclusion of the hearing had to proceed by remote hearing a number of weeks later at further expense to the parties and further use of the Court's time and resources. The appellant in fact turned up in court for the remote hearing despite me directing that the hearing proceed remotely because of the risks to the other parties and their lawyers presented by a physical hearing. When she did join the remote hearing, she was again disruptive during the hearing.

163. The necessarily arid language of judgments as to the legal principles in relation to abuse of process may not fully convey the unwarranted strain on resources and human patience represented by proceedings which constitute an abuse of process. In this case, a considerable number of lawyers and respondents' personnel had to devote their time and energies to addressing the manifestly vexatious claims sought to be maintained by the appellant. There was also a considerable call on the Court's resources and time; apart from the three and a half days of Court time taken up with these matters, a considerable amount of time had to be spent in preparing the judgments arising from the various applications before the Court, including this judgment.

164. In the circumstances, it is hard to imagine a set of cases and facts more fitting for the orders I am now going to make.

165. Accordingly, I will make the following orders:

1. An order pursuant to the Court's inherent jurisdiction restraining the appellant from instituting any further proceedings in whatever Court or forum, including the Workplace Relations Commission ("WRC"), or from making any complaints to the WRC against the Minister for Education and Skills, concerning any matter relating to the appellant's term of employment with Kildare and Wicklow Education and Training Board, including any matter related to the suspension or termination of her contract of employment, and her pension and gratuity entitlements, without the prior leave of the High Court (the Minister and the Board having been put on notice of any such application for leave.)

2. An order pursuant to the Court's inherent jurisdiction restraining the appellant from instituting any further proceedings in whatever Court or forum, including the Workplace Relations Commission ("WRC"), or from making any complaints to the WRC against Kildare and Wicklow Education and Training Board, concerning any matter relating to the appellant's term of employment with Kildare and Wicklow Education and Training Board, including any matter related to the suspension or termination of her contract of employment, and her pension and gratuity entitlements, without the prior leave of the High Court (the Minister for Education and Skills and the Board having been put on notice of any such application for leave.)

3. An order pursuant to the Court's inherent jurisdiction striking out all complaints made by the appellant to the WRC against the Minister for Education and Skills which have not yet been finally disposed of by the WRC.

4. An order pursuant to the Court's inherent jurisdiction striking out all complaints made by the appellant to the WRC against Kildare and Wicklow Education and Training Board which have not yet been finally disposed of by the WRC.

5. An order pursuant to the Court's inherent jurisdiction striking out all appeals brought by the appellant to the Labour Court which are still pending.

6. An order pursuant to the Court's inherent jurisdiction striking out High Court proceedings record number 2021/404S between Deirdre Morgan as plaintiff and Kildare and Wicklow Education and Training Board as defendant.

7. An order pursuant to the Court's inherent jurisdiction striking out Circuit Court proceedings record number 2021/00033 between Deirdre Morgan as plaintiff and Kildare and Wicklow Education and Training Board and Minister for Education and Skills as defendants.