APPROVED **[2022] IEHC 624**

THE HIGH COURT

2022 No. 163 J.R.

BETWEEN

A.J.A.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 15 November 2022

INTRODUCTION

1. These proceedings involve a challenge to a decision to refuse an application for a certificate of naturalisation pursuant to the Irish Nationality and Citizenship Act 1956 (as amended). The Minister for Justice and Equality refused the application on the grounds that the Applicant had not satisfied the "*good character*" criterion under Section 15(1)(b) of the Act in circumstances where the passport, which had been submitted as part of the application, had been falsified by the inclusion of a counterfeit page.

2. The principal issue for determination in these judicial review proceedings is whether fair procedures were observed in the decision-making process. In particular, complaint is

made that the formal submission and recommendation furnished to the ultimate decision-maker did not make adequate reference to the fact that the Applicant herself had informed the Minister that the passport, which she says she had obtained in good faith, might not be valid nor that she had offered an explanation for the submission of same.

LEGAL FRAMEWORK

3. Part III of the Irish Nationality and Citizenship Act 1956 (as amended) makes provision for the acquisition of citizenship by naturalisation. Section 15 of the Act provides that the decision on whether to grant a certificate of naturalisation is to be made by the Minister for Justice and Equality. Upon receipt of an application for a certificate of naturalisation, the Minister may, in his or her "*absolute discretion*", grant the application, if satisfied that the applicant fulfils the conditions of naturalisation.

4. The conditions of naturalisation are defined for the purpose of the Act as follows:

   (a) The applicant must either (i) be of full age, or (ii) be a minor born in the State;

   (b) The applicant must be of good character;

   (c) The applicant must have had a period of one year's continuous residence in the State immediately before the date of the application, and, during the eight years immediately preceding that period, must have had a total residence in the State amounting to four years;

   (d) The applicant must intend in good faith to continue to reside in the State after naturalisation; and

   (e) The applicant must (i) have made a declaration, in the prescribed manner, of fidelity to the nation and loyalty to the State, and (ii) undertaken to faithfully observe the laws of the State and to respect its democratic values.

5. The Act provides that the decision on whether or not to grant a certificate of naturalisation is one within the "*absolute discretion*" of the Minister. This does not mean, however, that the Minister's decision is immune from judicial review. The Supreme Court in *Mallak v. Minister for Justice Equality and Law Reform* [2012] IESC 59, [2012] 3 I.R. 297 emphasised that persons affected by administrative decisions should have access to justice, that they should have the right to seek the protection of the courts in order to see that the rule of law has been observed, that fair procedures have been applied and that their rights are not unfairly infringed. On the facts of *Mallak*, the Supreme Court held that the Minister was under a duty to provide reasons for a decision to refuse an application for naturalisation. It further held that the Minister's failure to do so deprived the applicant of any meaningful opportunity either to make a new application for naturalisation or to challenge the decision on substantive grounds.

6. The Court of Appeal, in *M.N.N. v. Minister for Justice and Equality* [2020] IECA 187 (at paragraph 52), has since provided the following authoritative statement of the principles governing the exercise of the "*absolute discretion*" to grant or refuse a certificate of naturalisation:

> "The following emerges from the caselaw:
>
> (i) in describing the Minister's discretion as 'absolute', the Oireachtas intended to emphasise that the grant of a certificate of naturalisation involves the conferring of a privilege;
>
> (ii) the fact that naturalisation is the grant of a privilege does not mean that an applicant enjoys inferior legal protection when pursuing such an application;
>
> (iii) the Minister's absolute discretion to grant naturalisation only arises if satisfied that an applicant is of 'good character' and, extensive as that competence may appear, it does not release the Minister of the obligation to operate within the rule of law and his determination is amenable to judicial review;

(iv) in determining the criteria to be considered when assessing 'good character' an applicant's character and conduct must be assessed against reasonable standards of civic responsibility gauged by reference to contemporary values;

(v) the connection between character and criminality can only be established when the Minister has all relevant information, including, context and mitigating factors, in connection with a crime;

(vi) information that is presented to the Minister in a Submission or recommendation must be accurately recorded, complete and seen in context and considered in full by the decision maker before reaching a determination; and

(vii) in deciding whether an applicant fulfils the 'good character' requirement of the Act, the Minister must undertake a comprehensive assessment of an applicant as an individual and must consider all aspects of character."

7. Point (vi) above is of especial relevance to the present case, having regard to the arguments advanced by the Applicant. It is necessary, therefore, to consider this aspect of the Court of Appeal's judgment in more detail. On the facts of the case, an internal document, described variously as a "*submission*" or "*recommendation*", had been prepared by more junior officials within the Minister's department and then furnished to the ultimate decision-maker. The Court of Appeal (*per* Power J.) emphasised the need for such an internal document to be accurate and complete. The Court of Appeal held that where serious and damaging allegations appear on the face of a submission or recommendation, basic fairness and natural justice require that any information that may assist in ruling out concerns in respect of an applicant's good character should be highlighted, specifically, for the decision-maker's attention. In principle, it is not sufficient that important contextual and exculpatory information in relation to an applicant's character is to be found somewhere in the file to which a submission is attached.

8. Similar sentiments had been expressed by the Court of Appeal in its earlier judgments in *A.A. v. Minister for Justice and Equality* [2019] IECA 272 and *Talla v. Minister for Justice and Equality* [2020] IECA 135. Both of these judgments also emphasise the importance of the Minister considering all relevant material, and that the information in any summary or recommendation prepared to assist the Minister in making the decision should be accurate.

JUDICIAL REVIEW PROCEDURAL HISTORY

9. The within proceedings are the second set of proceedings taken by the Applicant in respect of her application for a certificate of naturalisation. The Applicant had issued a first set of judicial review proceedings in 2021 challenging the delay in processing her application: High Court 2021 No. 956 J.R. Those proceedings were struck out on 24 January 2022 following the making of a decision on the naturalisation application in December 2021.

10. The within proceedings were instituted on 2 March 2022. The High Court (Meenan J.) granted leave to apply for judicial review on 7 March 2022. The hearing of the substantive application took place on 8 November 2022. Each side had filed detailed written legal submissions in advance, and I had an opportunity to read these and the pleadings in full prior to the hearing. This allowed counsel to direct their oral submissions to the key issues in dispute. Judgment was reserved until today's date.

THE IMPUGNED DECISION-MAKING PROCESS

11. It should be explained that on the facts of the present case the decision to refuse to grant a certificate of naturalisation was not made by the Minister personally, but rather by a senior official within the Minister's department. This approach was adopted in

accordance with the so-called *Carltona* principle, i.e. the principle that departmental officials are the alter-ego of the Minister, and that their decisions are, legally and constitutionally, the Minister's acts and decisions. See, generally, *W.T. v. Minister for Justice and Equality* [2015] IESC 73, [2015] 2 I.L.R.M. 225. The Applicant has raised no objection to this approach and, accordingly, this judgment proceeds on the assumption that the relevant departmental official had legal authority to make the decision.

12. The Applicant submitted her application for a naturalisation certificate on 29 May 2017. The application had been accompanied by a Somalian passport in the Applicant's name. (An earlier application had been deemed ineligible for the reason that it had been accompanied by an incorrectly completed statutory declaration form).

13. The Applicant subsequently retained a firm of solicitors to assist her in respect of her then pending application for a certificate of naturalisation.

14. On 6 November 2017, the Applicant's solicitors sent an unprompted letter to the Minister. This letter raised a concern on behalf of the Applicant as to the genuineness of the passport which had been submitted as part of her application. The letter sets out an explanation as to the circumstances in which the passport was obtained through a member of the Somali Community in Ireland. The letter then continues as follows:

> "[The Applicant] instructs us that she does not know whether this Passport is genuine or not. She went about applying for one in the only way that she knew, in good faith. As you are aware, there is still no functioning central government in Somalia, and it is not possible for our Clients to obtain passports form (*sic*) Somalia or through an Embassy abroad."

15. There does not appear to have been any substantive response to this letter.

16. On 10 May 2018, the Applicant's solicitors sent a second unprompted letter. This letter set out the updated position in respect of the passport as follows:

> "[The Applicant] instructs us that she does not know whether her Passport is genuine or not. She and her husband applied for their Passports in good faith, in the only way that they knew. As you are

> aware, there is still no functioning central government in Somalia, and it is not possible for our Clients to obtain passports form (*sic*) Somalia, not least because they have a fear of being persecuted and/or of suffering serious harm there, and also because they do not have a passport or a travel document that would enable them to travel there (their Irish Travel Document would not allow them to travel to Somalia).
>
> [The Applicant] instructs us that last Sunday 6 May 2018, she and her husband, [name redacted], travelled to Holland with their Irish Travel Documents with the intention of travelling on to Belgium in order to apply for new Somali Passports at the Somali Embassy in Brussels. They intended to travel through Holland because they had been told that Belgium would probably refuse them entry if they travelled with their Travel Documents, and they knew of many Somalis who had not had difficulties entering Holland with their Travel Documents.
>
> Our Clients wanted to apply for new Somali passports through the Somali Embassy in Belgium because they were informed that passports issued by the Somali Embassy in Belgium are deemed to be authentic there is no question of their validity for the purpose of establishing their identity and nationality. To their surprise and shock, Holland refused them entry because they did not have Schengen Visas, and they were returned to Ireland, to their great frustration and at a great cost. We enclose copies of the refusal to land notices issued by the Dutch authorities to [the Applicant] and her husband."

17. An official in the Minister's department responded by letter dated 29 May 2018. In relevant part, the response reads as follows:

> "Your client has applied for a certificate of naturalisation and in support of that application she provided her Somali passport. Having been subjected to the normal verification procedure certain anomalies for (*sic*) detected with the passport that required further investigation. By letter dated 6th November, 2017 you provided representations on behalf of your client which provided an explanation as to why and how your client might be in possession of a false Somali passport. At no point did the Division request such submissions and at no point did citizenship state that the passport provided was false. The explanation provided was that your client made contact with a member of the Somali community in Ireland who offered to obtain passports from Mogadishu. Having paid a fee for the individuals services your client obtained a passport in the post.
>
> It is perfectly clear that having provided a passport that in her own view may not be genuine and having provided an explanation that she obtained the passport through unofficial channels that both the authenticity of the passport and the explanation provided required investigation and careful consideration before a submission can be

> provided to the Minister. It would clearly not be in the common good to grant a certificate of naturalisation in these circumstances without a thorough investigation of the case.
>
> I note the date of application and the time the application is with the Department but the reason for this delay can be attributed to the issues as stated above."

18. As appears, the official sought to rely on the need to carry out a "*thorough investigation of the case*" as justifying the ongoing delay in processing the application and as the basis for resisting a threatened judicial review on the grounds of unreasonable delay. The application had been made in May 2017, and, as of the date of the letter, remained undetermined some twelve months later.

19. In the event, it appears that no further investigation was ever carried out. In truth, an investigation into the genuineness of the passport had already been completed as of the date of the letter. Specifically, the passport had been referred to the Garda Technical Bureau on 1 June 2017 for examination. A report from the Bureau, dated 24 August 2017, recorded a finding that whereas the passport was a genuine Somali passport, the bio-data page had been substituted with a counterfeit page thus rendering the document false.

20. It should be explained that the outcome of this examination was never formally put to the Applicant nor to her solicitor. It should also be reiterated that the letters from the Applicant's solicitors of 6 November 2017 and 10 May 2018 were *unprompted* and had not been written in response to the Minister's department raising a query as to the genuineness of the passport.

21. There was a significant period of further delay in the processing of the naturalisation application. (As noted earlier, the Applicant instituted a first set of judicial review proceedings on the grounds of delay). A decision was eventually made on the

naturalisation application. The principal officer made the decision on 1 December 2021, and it was formally notified to the Applicant by letter dated 7 December 2021.

22. The process leading up to this decision appears to have been as follows. A submission and recommendation in respect of the application for naturalisation had been prepared by an executive officer within the Minister's department on 26 November 2021.

23. This internal document was next approved by two more senior officials, i.e. a higher executive officer and an assistant principal officer on 26 November and 30 November 2021, respectively. The submission and recommendation was then sent to the ultimate decision-maker, Mr. Aonghus O'Connor, on 1 December 2021. Mr. O'Connor is a principal officer within the Minister's department.

24. Pointedly, the covering email to the decision-maker reads as follows:

> "Another submission and supporting documents for a JR case for signing".

25. As counsel for the Applicant correctly observes, this language is inappropriate in circumstances where the principal officer was required to exercise a statutory discretion in the name of the Minister and not merely to sign off on a recommendation made by more junior officials.

26. Mr. O'Connor replied to this email the very same day, stating that he had read the submissions and supporting documents and agreed with the recommendation.

27. Mr. O'Connor has chosen not to swear an affidavit in these proceedings. The verifying affidavit on behalf of the Minister was, instead, sworn by the assistant principal officer, Mr. Ray Murray. It is unclear from the affidavit as to what documents were furnished to the ultimate decision-maker. This is so notwithstanding that the Applicant's solicitors, by letter dated 26 January 2022, had expressly sought copies of any information attached to the submission and recommendation.

28. There is an obligation upon a public authority, which is a respondent to judicial review proceedings, to lay its cards face up on the table. The failure of the respondent in the present case to take the basic step of identifying the precise documents which had been submitted to the ultimate decision-maker is regrettable. This is especially so in circumstances where similar shortcomings in opposition papers had previously been highlighted by the Court of Appeal in its judgments in *Talla v. Minister for Justice and Equality* [2020] IECA 135 and in *M.N.N. v. Minister for Justice and Equality* [2020] IECA 187. The opposition papers in the present case were prepared some two years after those judgments had been delivered and had been prepared by some of the same officials.

THE DEPARTMENT'S SUBMISSION/RECOMMENDATION

29. The internal document prepared on 26 November 2021 consists of two typed pages. For ease of exposition, this document will be referred to as the "***submission/recommendation***". Having set out the personal details of the Applicant, her immigration history, and the procedural history of her first abortive application for a naturalisation certificate, the submission/recommendation continues as follows:

> "All passports submitted in support of an application for naturalisation are subject to examination and verification procedures. The contractor engaged by the Department for this purpose can verify and validate the authenticity of ID documents against the world's most comprehensive ID reference database. The passport submitted by the applicant [Number redacted] failed the document verification technology test administered on 31/05/2017. The report attached in relation to this passport raised 'Doubt' and standard procedure in such cases is that the passport in question, is then sent to Garda Technical Bureau for further examination.
>
> Following an investigation by the Garda Technical Bureau, it was determined that passport number […] was a genuine Somali Republic Passport, however the bio-data page had been substituted with a counterfeit page, thus rendering the passport false. The matter has been referred to An Garda Siochana in order to investigate whether the

applicant has committed an offence under Section 29A of the Irish Nationality and Citizenship Act 1956 as amended.

A letter was received from the applicants Solicitor Daly Lynch Crowe & Morris dated 06/11/2017, in which the applicant states 'That the applicant is concerned that the passport which she submitted may not be deemed genuine, she has noticed that the word 'Kismayo' in her passport appears altered by hand'. An explanation was also enclosed. The Solicitor wrote again to the Department in a letter dated 10/05/2018 in relation to this issue. Citizenship Division issued correspondence to Daly Lynch Crowe & Morris Solicitors on 29/5/2018 which noted the representations provided as to why and how the applicant might be in possession of a false Somali passport and advised that at no point was a submission requested from the applicant and at no point did Citizenship Division state that the passport provided was false. This correspondence also advised that in the circumstances the matter would require a thorough investigation. Further correspondence was received from the applicant's Solicitor, dated 18/6/2020 which has been considered when making the recommendation. In order for an application for naturalisation to be successful the Minister must be satisfied that the applicant fulfils the statutory conditions specified in the Irish Nationality and Citizenship Act 1956, as amended, particularly the good character criterion."

30. The formal recommendation is then set out as follows:

"Recommendation:

The relevant information-is attached to this submission. The Minister will be aware that this matter is the subject of a Judicial Review before the courts. I have considered the entirety of the file, including the report provided by the Garda Technical Bureau and the explanation provided by the applicant. The Minister requires each applicant for a certificate of naturalisation to submit a current, in-date and valid passport. A passport is recognised worldwide as a primary identifier. In. this case, the applicant submitted a passport which has been determined, after investigation, to be a false document. The matter has been referred to An Garda Siochana in order to investigate whether the applicant has committed an offence under Section 29A of the Irish Nationality and Citizenship Act 1956 as amended. The Garda investigation has not yet concluded. The Minister can only make a decision on the basis of the facts laid before her. In this instance, the applicant has submitted a false Somali passport in support of her application for naturalisation. I am not satisfied that the applicant satisfies the criteria provided in section 15(1)(b) of the Irish Nationality & Citizenship Act 1956, as amended on the basis of not satisfying the good character criterion. Therefore, I recommend the Minister refuse the application for a certificate of naturalisation."

DISCUSSION

31. The principal issue for determination in these judicial review proceedings is whether the standard of fair procedures, as identified by the Court of Appeal in the case law discussed earlier, was complied with in the decision-making process. In particular, an issue arises as to whether the submission/recommendation presented to the ultimate decision-maker was accurate, complete and contextualised.

32. Again as emphasised by the Court of Appeal, in deciding whether an applicant fulfils the "*good character*" requirement under Section 15 of the Irish Nationality and Citizenship Act 1956 (as amended), the decision-maker must undertake a comprehensive assessment of an applicant as an individual and must consider all aspects of character. The submission of a false passport is, of course, a very serious matter. In the absence of a reasonable explanation, such conduct could certainly justify the refusal of a certificate of naturalisation on the grounds of character. It is crucial, however, that the decision-maker be informed of, and carefully consider, any explanation or exculpatory factors put forward by an applicant.

33. The submission/recommendation in the present case failed to meet the prescribed standard of fair procedures. The principal deficiency is that the submission/recommendation fails to record, even in the most cursory form, the explanations offered by the Applicant, through her solicitors, for the submission of the false passport. There is no reference to the practical difficulties asserted by the Applicant in obtaining a passport from Somalia given what is said to be the absence of a functioning central government there. Nor is there any reference to the efforts made by the Applicant to travel to the Somali Embassy in Belgium for the purpose of obtaining a passport. Although these events occurred after the submission of the false passport, they are,

arguably, indicative of the practical difficulties which a Somalia national, who has been long-term resident in the Irish State, faces in obtaining a passport from that country.

34. There is a second, subsidiary deficiency in the submission/recommendation as follows. It is not apparent from the summary of events provided that the Applicant herself raised a concern as to the genuineness of the passport in correspondence in November 2017. On one reading at least, the chronology in the submission/recommendation might, mistakenly, be interpreted as meaning that the solicitor's letter of 6 November 2017 was in reaction to the investigation by the Garda Technical Bureau. In truth, whereas the correspondence does, indeed, postdate that investigation, neither the Applicant nor her solicitors had been informed of that investigation. The fact that the Applicant herself had raised a concern unprompted is a factor which should have been considered by the decision-maker in assessing her character. The weight to be attached to same is largely a matter for the decision-maker.

35. The Minister's written legal submissions very fairly describe the Applicant as having pre-empted the issue in respect of the genuineness of the passport and as having taken proactive measures. None of this is reflected in the submission/recommendation.

36. The omission from the submission/recommendation of an accurate record of the explanation and exculpatory factors is fatal to the validity of the decision made. Where serious and damaging allegations appear on the face of a submission or recommendation, basic fairness and natural justice require that any information that may assist in ruling out concerns in respect of an applicant's good character should be highlighted, specifically, for the decision-maker's attention. In principle, it is not sufficient that important contextual and exculpatory information in relation to an applicant's character is to be found somewhere in the file to which a submission is attached.

37. Counsel on behalf of the Minister sought to distinguish the case law of the Court of Appeal on the grounds that those judgments involved allegations of criminal wrongdoing or criminal convictions. With respect, even if this factual distinction did exist, it would not affect the application of the principles enunciated by the Court of Appeal to the circumstances of the present case. The submission/recommendation in the present case expressly cited the provision of a false passport as the singular factor which justified a finding that the Applicant lacked "*good character*". From the perspective of fair procedures, it makes little practical difference whether this is categorised as a criminal or non-criminal matter once it is a factor which is likely to result in the refusal of the application. Fair procedures dictate that, before any decision adverse to the Applicant is reached, she has a right to be heard. This is achieved, principally, by ensuring that any exculpatory factors relied upon by the Applicant are fairly summarised in the submission/recommendation.

38. In any event, the supposed distinction between criminal and non-criminal matters, which is urged by counsel, does not actually arise in the present case. The submission/recommendation expressly flags the possibility of a criminal offence having been committed under Section 29A of the Irish Nationality and Citizenship Act 1956 (as amended). The inclusion of an allegation of criminality means that the circumstances of the present case are factually indistinguishable from those before the Court of Appeal.

39. Counsel for the Minister sought to stand over the adequacy of the submission/recommendation, contending that the failure to provide a narrative discussion does not equate to a failure to consider relevant information. Counsel cited, in particular, the judgment in *G.K. v. Minister for Justice* [2002] 2 I.R. 418. Counsel very properly went on to acknowledge that the Court of Appeal's judgments in *Talla v. Minister for Justice* [2020] IECA 135 and *M.N.N v. Minister for Justice and Equality*

[2020] IECA 187 have set the standard for fair procedures in naturalisation applications. Counsel contended that these judgments do not go so far as to require the Minister to set out every single representation in the decision. With respect, the deficiencies in the submission/recommendation in the present case are far more fundamental. The complaint made by the Applicant is not that the submission/recommendation did not contain an exhaustive recitation of the representations made. Rather, the complaint is that the explanation and exculpatory factors are omitted entirely from the submission/representation. The Minister is not being held to an exalted standard, rather she is being held to that clearly prescribed by the Court of Appeal in the three judgments discussed earlier.

40. The reliance on *G.K. v. Minister for Justice* is misplaced. The principal issue in the present case is one of fair procedures, not one of inadequate reasons. The Court of Appeal firmly locates the requirement to prepare an accurate, complete and contextualised submission/recommendation in the realm of fair procedures.

41. In any event, the judgment in *G.K. v. Minister for Justice* has to be read in light of more recent judgments including, in particular, *Mallak v. Minister for Justice Equality and Law Reform* [2012] IESC 59, [2012] 3 I.R. 297 and *Balz v. An Bord Pleanála* [2019] IESC 90, [2020] 1 I.L.R.M. 637. The former judgment has already been discussed. In the latter judgment, O'Donnell J. (as he then was) observed that the recitation of a formula to the effect that the decision-maker has considered everything it was obliged to consider, and nothing it was not permitted to consider, may charitably be dismissed as little more than administrative throat-clearing before proceeding to the substantive decision.

42. Returning to the circumstances of the present case, one inevitable consequence of the failure to record the exculpatory factors in the submission/recommendation is that the

ultimate decision does not contain an adequate statement of reasons. The procedure adopted within the Minister's department whereby the ultimate decision-maker either approves or rejects the recommendation as drafted—and does not add his or her own reasons—means that the submission/recommendation must fulfil a dual function. It serves not only as a summary for the assistance of the ultimate decision-maker, thereafter it constitutes a record of the reasons for "*the decision*" on the application for naturalisation, in the event that the recommendation is approved. As such, the document must meet the legal test for the adequacy of reasons as set out by the Supreme Court in *Mallak*, and, more recently, in *A.P. v. Minister for Justice and Equality* [2019] IESC 47, [2019] 3 I.R. 317.

43. In the present case, the decision fails to engage with the representations made on behalf of the Applicant by her solicitors. The reader of the decision does not know, for example, what view the decision-maker reached on the assertion that it is difficult to secure an authentic passport because of the (supposed) lack of a functioning central government in Somalia.

CONCLUSION AND FORM OF ORDER

44. The submission of a false passport in support of an application for naturalisation is, of course, a very serious matter. In the absence of a reasonable explanation, such conduct could certainly justify the refusal of a certificate of naturalisation on the grounds of character. It is crucial, however, that the decision-maker be informed of, and carefully consider, any explanation or exculpatory factors put forward by an applicant.

45. The decision to refuse to grant a certificate of naturalisation in the present case is invalid on two grounds as follows. First, the submission/recommendation furnished to the ultimate decision-maker did not comply with the standard of fair procedures identified

by the Court of Appeal in *A.A. v. Minister for Justice and Equality* [2019] IECA 272, *Talla v. Minister for Justice and Equality* [2020] IECA 135, and *M.N.N. v. Minister for Justice and Equality* [2020] IECA 187. Secondly, the decision does not meet the legal test for the adequacy of reasons as set out by the Supreme Court in *Mallak v. Minister for Justice Equality and Law Reform* [2012] IESC 59, [2012] 3 I.R. 297, and, more recently, in *A.P. v. Minister for Justice and Equality* [2019] IESC 47, [2019] 3 I.R. 317.

46. Accordingly, I will make an order of *certiorari* setting aside the decision of 7 December 2021, and will remit the matter to the Minister, pursuant to Order 84, rule 27, with a direction to reconsider it and reach a decision in accordance with the findings of the High Court.

47. As to costs, my provisional view is that the Applicant, having been "*entirely successful*" in her proceedings, is entitled to recover her costs as against the Minister in accordance with the default position under Section 169 of the Legal Services Regulation Act 2015. Such costs would be adjudicated, in default of agreement, pursuant to Part 10 of the Legal Services Regulation Act 2015.

48. If either party wishes to contend for a different form of order than that proposed, then the matter will be listed for hearing on 29 November 2022 at 10.45 am. If, conversely, the parties are in agreement with the proposed orders, then they should notify the Registrar accordingly and the date will be vacated.

Appearances

Conor Power, SC and Tríona Jacob for the applicant instructed by Daly Lynch Crowe & Morris
Sarah Cooney for the respondent instructed by the Chief State Solicitor

Approved Garrett Simons