THE HIGH COURT

IN THE MATTER OF SECTION 75 OF THE PROPERTY SERVICES (REGULATION) ACT 2011

[2023] IEHC 282

[Record No. 2022/50 MCA]

BETWEEN:

DESMOND HAYES

APPELLANT

AND

THE PROPERTY SERVICES APPEAL BOARD

RESPONDENT

JUDGMENT of Ms. Justice Siobhán Phelan, delivered on the 23rd day of May, 2023

INTRODUCTION

1. This is an appeal on a point of law pursuant to s. 75(1) of the Property Services (Regulation) Act, 2011 [hereinafter "the 2011 Act"] against a decision of the Respondent, on appeal from the Property Services Regulatory Authority [hereinafter "the Authority"], to uphold a refusal by the Authority to carry out an investigation into a complaint received from the Appellant.

2. The Appellant's complaint related to the service on him of a letter by a licensed property services provider [hereinafter "the Licensee"] on behalf of a receiver in which it was stated that unless the Appellant contacted him by a specified time and date that his property would be deemed to be vacant and the locks would be changed on the property. The nub of the Appellant's complaint is that the service of such a letter containing a threat to change the locks of the property if the steps indicated were not taken constitutes "*improper conduct*" within the meaning of the 2011 Act in the absence of a lawful authority to change the locks.

BACKGROUND

3. The Appellant made a complaint to the Authority using the form provided for that purpose on the 12th of October, 2021. On the form the Appellant advised that he had received a letter from the Licensee on the 27th of September, 2021. The letter referred to in the Complaint (a copy of which was submitted in support of the complaint) was in standard form and addressed to "*the Occupant(s)*" at a residential address in West County Dublin. The letter stated:

> *"As advised under the Terms of a Deed of Appointment dated 17/00/2014, Luke Charleton and Andrew Dolliver of Ernst and Young was appointed Receiver over the above property.*
>
> *I note that no contact as requested has been made with our office to date. If we do not have contact made by you before 17.00 p.m. on 01/10/2021, we will have deemed the property to be vacant and the locks will be changed on the property.*
>
> *As such I should be obliged if you would now immediately contact me on [telephone number] to provide your contact details together with a copy of your tenancy/lease agreement."*

4. In the complaint referred to the Authority, the Appellant states:

> *"My complaint is that [name of licensee, a real estate management company] had no lawful authority or legal instrument such as a court order, either to make this threat or worse still to carry it out."*

5. The Appellant further referred the Authority to a ruling of the Master of the High Court dated 11th of February, 2009 in relation to the discretionary powers of the court to grant possession orders, enclosing a copy of the ruling. He further confirmed that no court determination had been made in respect of his property, invoked the protection of his dwelling under Article 40.5 of the Constitution and then requested the Authority to investigate his complaint.

6. By decision dated the 26th of October, 2021, the Authority refused to investigate the Appellant's complaint. In the letter of refusal the Appellant was referred to s. 63(2) of the 2011

Act in relation to the power of the Authority to refuse to investigate complaints made and s. 2(1) of the Act in relation to the definition of "*improper conduct*". The Authority advised the Appellant that it was required to make a preliminary determination of whether the behaviour complained of, if shown to have actually taken place, or to be taking place, would fall within the definition of "*improper conduct*" under the 2011 Act before appointing an Inspector to carry out a formal investigation. The Authority proceeded to summarize the Appellant's complaint as follows:

> *"The allegations you made in your complaint are as follows:*
>
> 1. *On 27 September 2021, you received a letter from the licensee advising you that unless you contact them by 5 p.m. on Friday 1 October 2021, they will deem your property vacant and the locks will be changed on the property.*
> 2. *You state that the licensee had no lawful authority or legal instrument such as a court order to make this threat or to carry it out."*

7. The Authority then proceeded to decline to carry out a full investigation under s. 63(2)(b) of the 2011 Act on the basis that the complaint was without foundation and gave reasons as follows:

> *"the allegations contained in your complaint do not fall under the listed contraventions of the Act which constitute improper conduct. Neither are they such as render the licensee no longer a fit and proper person to provide a property service. As per the letter dated 24 September 2021 submitted as part of your complaint, the licensee has been contracted by the Receiver of [property address] and is acting under the Receiver's instructions and in their best interests."*

8. The Authority added:

> *"It is important to note that declining to investigate a complaint, as it is not under the Act, is not making a judgement on the merits of your complaint or an attempt to undermine the substance of your grievance, neither of which I am in a position to make a determination on as the complaint is not being brought to the investigation stage, rather it is simply the case that the Authority has no remit to investigate the matter."*

9. The Appellant was advised that a decision to decline to investigate under s. 63(2)(b) of the 2011 Act could be subject to an appeal to the Property Services Appeal Board [hereinafter "the Board"]. The Appellant duly appealed against the refusal to investigate his complaint using the form provided for that purpose. His appeal was dated the 23rd of November, 2021. In providing his grounds of appeal he stated as follows:

> *"Estate agent issued a letter stating he was going to change the locks on my home, at a specific day, date and time, unless I made contact, with him. The estate agent signed this letter. I enclose a High Court decision given on 11 February 2009 stating possession orders are made at the discretion of the court. The estate agent issued a threat to take possession of my property at 5 PM on 1 October 2021 in the absence of the correct legal instrument, which is a court order. There must in all instances, be a correct procedure to follow. In this instance it is clear the estate agent, licensed by the Property Services Regulatory Authority was taking matters into his own hands, in the absence of the required court order. The Property Services Regulatory Authority has found my complaint to fall under s. 63(2)(b), frivolous, vexatious, or without substance, or foundation. The PSRA, has stated the estate agent was acting under contract, in the best interests of the receiver. The estate is now free, to issue more notices to home-owners, of his intent to change locks on their properties, in the full knowledge the PSRA will not investigate. I think this is a very dangerous precedent to set, as we now have a situation where estate agents licenced by PSRA, are taking matters into their own hands. The client who contracted the estate agent, should have made the correct legal application in the first instance to obtain a court order, and subsequently instructed the estate agent appropriately."*

10. It appears that the Licensee was provided with a copy of this appeal on the 9th of December, 2021 and was afforded an opportunity to make a submission. By email dated the 15th of December, 2021, the Licensee replied as follows:

> *"As you may be aware, we are acting on a residential property platform where we are appointed on behalf of a Receiver. At the time of the initial appointment the Receiver does not typically have visibility of the occupancy of the property with many properties being transferred vacant. Accordingly, as part of our onboarding process wherein we*

are appointed to manage a tenancy, the first step is ascertaining whether the asset is occupied. To do this we carry out several steps.

1. An initial letter is sent, explaining the appointment of the receiver and the subsequent appointment of [Estate Agent] to manage and live tenancy, and calling on the tenant to reach out to us and update their back payment details.

2. A seven-day warning letter is issued - this is issued in the event of no response to initial letters issued on the premise that the property may be unoccupied. The is seeking urgent contact be made by occupants present and is advising that, in the absence of any contact being made, the property will be understood to be vacant. In conjunction with these letters a physical inspection is carried out to externally assess whether the property is vacant or occupied. The findings of these attendances are reported to the Receiver's office.

3. We report to the receiver the findings of the investigation and advise them of the understood occupancy of the subject unit. No further action is taken if the property is believed to be occupied. If it is confirmed vacant, we would notify the receiver of same and seek further instruction.

As it is noted in the seven-day warning letter issued, this correspondence was sent after a period of no contact and it was considered that the property could potentially be vacant. The correspondence is seeking urgent contact from any occupant and any contact made would serve to put a halt to any consideration of deeming the property vacant and acting on that basis.

It is noted that the is referring to a High Court order which is discussing possession orders, and the right to progress same. In this particular situation no such attempt possession was made with correspondence only issued in order to ascertain occupancy status and to ultimately report back to the Receiver on the status of the property. Should there have been a communication from any occupant within the property we would have engaged with the occupier for the purpose of managing the tenancy per the terms of the original lease which governs same."

11. Separate submissions were received from the Authority by letter dated the 20th of December, 2021. They repeated the terms of their earlier decision and further stated:

"In addition, matters relating to court orders and receiverships are outside the remit of the Authority. The decision to decline to investigate rests on a clear premise. The Authority's remit to act is solely under its powers conferred under the Act and in this case the allegations do not, as explained above, fall within the definition of improper conduct. Accordingly, it is not within the purview of the Authority to investigate."

12. It appears that the terms of neither the response from the Authority nor the Licensee were communicated to the Appellant. Instead, by decision dated the 25th of January, 2022, the Board affirmed the Authority's decision not to investigate the complaint without further notice to the Appellant. The decision records on its face that submissions were received from the Authority and the Licensee. The reasons for the decision are recorded in the following terms:

"(i) The contravention alleged is not a contravention within the meaning of the Act of 2011.

(ii) The licensee was acting on the instructions of the receiver, the party to he was providing a property service, and in order to carry out the separately service the licensee needed to ascertain whether the subject property was occupied or not and which was the purpose of the letter dated 27 September 2021.

(iii) The allegations of the applicant regarding failure to obtain court orders for possession of the subject property matters between the government and the receiver and are outside the remit of the authority and the Board of appeal.

(iv) Whereas it declined to carry out a statutory investigation, such investigation would not further information on relevant matters than what was to hand when the authority made its decision particularly as it is not denied that the said letter dated 27 September 2021 was issued by the licensee.

(v) By determining that the complaint of the applicant was frivolous and vexatious the authority was merely quoting section 62 to be of the act the terms vexatious terms essentially mean the complaint is bound to fail per Barron J. in Farley v. Ireland and Ors. (unreported, judgement of 1st of May 1997):

"So far as the legality of the market is concerned frivolous and vexatious legal terms, they are not pejorative in any sense or possibly in the sense that Mr Farley may think

they are. It is question of saying that so far as the plaintiff is concerned if he has no reasonable chance of succeeding than the law says it is frivolous to bring the case. Similarly, it is a hardship on the defendant to have to take steps to defend something which cannot succeed and the law calls that vexatious."

13. By originating Notice of Motion dated the 10th of February, 2022, the Appellant seeks orders on an appeal on a point of law under s. 75 of the 2011 Act. From his Affidavit grounding his appeal the essence of the Appellant's appeal, as it appears to me, is that the finding made that it is not "*improper conduct*" on the part of the Licensee to write in terms which threaten to change the locks, absent a legal instrument such as a court order permitting the change of locks, is wrong in law not least in view of the constitutional protection of the dwelling under Article 40.5.

14. In his subsequent written legal submission, however, the Appellant asks me to determine the following questions:

(i) Does a property service provider licensed by the PSRA, hold the power to threaten in writing to change the locks on a dwelling house in the absence of a valid court order?

(ii) After making the threat of action in writing, does a property services provider hold the power to follow through on the threat of action, by actually changing the locks, without a valid court order?

15. The appeal is opposed by Statement of Opposition filed in June, 2022. It is denied that the decision to refuse to investigate is flawed by error of law or breach of principle but is instead a decision properly taken within the Respondent's statutory jurisdiction. The Statement of Opposition is grounded on the Affidavit of the Chairperson of the Board in which the relevant statutory provisions establishing the remit of the Board are identified. In his Affidavit, the Chairperson of the Board exhibits file documents in relation to the complaint including the submissions received from the Licensee and the Authority. With specific regard to the terms of the Appellant's complaint, it is averred (paras. 19 and 20):

"..the Respondent considered the complaint and made no error in law/or principle in determining that the conduct complained of did not amount to improper conduct as defined by the Act and in so finding declined to investigate the complaint.

...the Respondent appropriately considered the facts surrounding the complaint and determined that the Licensee was acting on the instructions of the Receiver, the party to whom it was providing a property service, for the purposes of determining whether the subject property was occupied or not."

16. The Board reiterates in the terms of the Affidavit filed in response that determining that any failure to obtain a court order for possession of the subject property is outside the statutory remit of the Authority and the Board on appeal.

17. Both the Appellant and the Board filed written submissions in support of their respective positions on this appeal.

SUBMISSIONS

18. The Appellant elaborates at considerable length in his written legal submission in relation to factual matters which had not been canvassed before the Authority or the Board arising from the terms of the Licensee's response to the Board which was seen by the Appellant for the first time when the Board's Opposition papers were filed. It should be recorded that these matters have not been put on affidavit and were not in evidence before the Authority or the Board. Accordingly, I do not propose to rehearse the detail here save to reflect that the Appellant refers in his written submission to facts, not established in evidence or before the Authority or the Board, from which he submits it would have been known to the Receiver and the Licensee that the property was occupied with the result that the purpose of the letter was not as was stated to the Board.

19. The Appellant suggests in his submissions that where the Licensee was aware that the property was occupied as he posits, that an alternative purpose served by delivering a letter in terms which suggested a power to change locks absent contact from the Appellant was to force contact from the Appellant including the provision of documentation under threat that in the event of a failure to do so the locks would be changed.

20. The Appellant maintains that the Licensee's response to the Board was false and misleading. The Appellant accepts in response to questioning from me, however, that in the terms of the complaint made to the Authority and on appeal to the Board, no reference was made to the factors which led the Appellant to believe that the Licensee was well aware that the property was occupied or had a suspicion that the letter was written not to ascertain whether the property was occupied but to procure contact from the occupant under the threat of silence being relied upon to permit a lock change at his property.

21. I was referred in submissions on behalf of the Board to principles governing an appeal on a point of law (citing *Deeley v. Information Commissioner* [2001] IEHC 91, *Fitzgibbon v. Law Society* [2014] IESC 48 and *Attorney General v. Davis* [2018] IESC 27) and specifically the fact that I must consider the conduct complained of in the context of the relevant statutory provisions which also frame the question of law arising.

22. The Board in their submissions make the point that the Appellant is inviting the Court to make determinations on the basis of matters not in evidence before the Court and not contained within the complaint presented to the Authority and on appeal to the Board. It is submitted that insofar as the Appellant relies on conduct of the Licensee beyond the sending of the letter which prompted his complaint, that this is not permissible and that I must consider the complaint on the basis of the material before the Authority and the Board.

23. I was further referred to the decision of McKechnie J. in *Law Society v. Carroll* [2016] 1 IR 676 in relation to standard of "*fit and proper person*" and it was submitted that the sending of a letter of the type in question in these proceedings could not give rise to a finding that a person was not a "*fit and proper*" person. It was submitted that the facts identified in the complaint do not establish that the Licensee could or should be found not to be a fit person as set out by the 2011 Act.

QUESTION OF LAW

24. It seems to me that the questions of law as formulated by the Appellant in his written submissions extend well beyond the remit of Authority or the Board on appeal and therefore

cannot arise as questions of law for me. As I see it the question of law which properly arises from the circumstances outlined by the Appellant is:

I. Whether the Board erred in concluding that service of a letter in the terms identified could not constitute "*improper conduct*" under the 2011 Act and accordingly the issues raised fell outside its remit.

25. In view of the fact that the Appellant is a lay litigant representing himself and in circumstances where it seems clear to me that this is the only proper question for me arising from the papers before me, I propose to consider this question.

STATUTORY PROVISIONS

26. "*Improper Conduct*" is defined under s. 2(1) of the 2011 Act as:

> *"improper conduct", in relation to a licensee, means—*
>
> *(a) the commission by the licensee of an act which renders the licensee no longer a fit and proper person to provide property services or a particular class of property service,*
>
> *(b) the commission by the licensee of a contravention of—*
>
> *(i) section28(1), 29(9), 31(5), 37(1), (2), (4), (5), (6) or (7), 41(1), 43(1), (2) or (3), 44, 45(1) or (2), 55(1) or (2), 56(1), 57(1), 58(3), 59(1), 60(1), 61, or 81(1) or (2), or*
>
> *(ii) a provision of regulations made under section 46, 62 or 95,*
>
> *or*
>
> *(c) the giving by the licensee of a statement of advised market value or advised letting value of land which is clearly unreasonable;"*

27. The Appellant did not specify a contravention of any of the provisions identified at (b) during the course of the complaint process and confirmed during the hearing before me that

the Board were correct in construing his complaint as being that the Licensee was not a "*fit and proper person*" and within the terms of (a) above.

28. The decision of the Authority to refuse to investigate was made pursuant to s. 63(2)(b) of the 2011 Act. Section 63(2)(b) permits the Authority to refuse to investigate a complaint if it is satisfied that it is frivolous or vexatious or without substance or foundation. No procedure is prescribed under the 2011 Act in relation to the taking of this decision and the Act only requires notification after a decision is made as to whether to admit the complaint for investigation or not. Where a complaint is admitted for investigation, however, a statutory investigation ensues in accordance with the provisions of s. 65 and an investigation report is prepared in accordance with s. 68 of the 2011 Act.

29. The Board is established under s. 74 of the 2011 Act and is vested with appellate jurisdiction as more particularly set out at Schedule 5 to the Act in respect of certain decisions of Authority including decisions under s. 63(2) . Paragraph 14(2) of Schedule 5 of the 2011 Act expressly provides that an appellant shall not, unless requested to do so by the Board, elaborate in writing on or make further submissions in writing in respect of the grounds of appeal stated in the notice of appeal or submit further grounds of appeal, and any such elaboration or further submission received by the Appeal Board shall not be considered by it. Paragraph 18 requires the Board to notify both the Authority and the other party to the complaint of receipt of a complaint as soon as practicable after receipt of a notice of appeal and to provide a copy of the notice of appeal. Further provision is made for submissions to be made by the Authority and the other party to the appeal (paras. 21 and 22 of Schedule 5).

30. Notably, the Board has power (para. 23) where it considers it necessary to properly determine the appeal to require a party to submit further specified information or documents. This power was not used in this case. No express requirement exists for the Appellant to be furnished with a copy of the response of either the Licensee or the Authority. The first notice the Appellant in this case had of the substance of the responses received was when they were exhibited in Opposition to the further appeal to the High Court.

31. This matter comes before me pursuant to s. 75 of the 2011 Act which provides for an appeal on a question of law arising from the determination by the Board as follows:

> *"75.— (1) Within 3 months from the date on which an appeal is determined by the Appeal Board any party to the appeal may appeal to the High Court on any question of law arising from the determination.*
>
> *(2) The High Court may—*
>
> *(a) affirm the determination,*
>
> *(b) set it aside,*
>
> *(c) make any other determination which the Appeal Board could have made, or*
>
> *(d) remit the matter to the Appeal Board for further consideration".*

DISCUSSION AND DECISION

32. It is well established that as this is an appeal on a point of law, I must consider the conduct complained of within the context of applicable statutory provisions and the competence of the Authority to determine complaints. I accept that the Authority had no jurisdiction to determine when and in what circumstances a receiver requires a court order to recover possession of a property in receivership. This question clearly falls outside the remit of the Authority and therefore cannot arise for me on an appeal on a point of law from a decision under the 2011 Act. It is important to recall that the Authority does not regulate receivers and cannot therefore investigate a receiver's conduct in respect of property repossession. Nor is the answer to the question as to whether a receiver requires a court order as straightforward as the Appellant appears to believe. The law reports are replete with cases demonstrating the complexities of this question and the factors which require to be considered in determining when a receiver may lawfully change the locks on a property.

33. The fact, however, that the Authority (or the Board on appeal) does not have competence to determine whether a receiver in any given circumstances requires a court order

to recover possession of a property in receivership, does not preclude the Authority from considering whether a deliberate action on the part of a licensee, known to be unlawful, might constitute "*improper conduct*".

34. The 2011 Act defines "*improper conduct*" as set out above and the thrust of the Appellant's case is that the Licensee was not "*a fit and proper person*", albeit that he largely advances this case on the basis of asserted facts that are not in evidence and did not form part of the original complaint to the Authority or appeal to the Board. In construing "*fit and proper person*" for the purpose of the 2011 Act, it is of assistance to consider the terms of ss. 30 and 31 of the Act which provide for the making of an application for a licence and the refusal of a licence. An application for a licence must be accompanied by references as to the applicant's character and competence (including any required levels of education training and experience) (s. 30(2)(a)). An application may be refused where an applicant is not considered a "*fit and proper person*" to provide the licensed service under s. 31. In the scheme of the licensing provisions, however, that the test is directed to factors which qualify a licensee to carry out the work but the test is not limited to vocational or educational achievement or experience. A measure of good character is self-evidently a demonstrated history of good conduct and lawful behaviour.

35. The phrase "*fit and proper person*" was considered by McKechnie J. in *Law Society v. Carroll* [2016] 1 IR 676 in the context of admission to the Roll of Solicitors. He stated (paras. 65-67):

> *"65. The phrase "fit and proper" combines two broad elements, fitness and properness. Both, whilst complimentary, are intended to convey different requirements and to cover different aspects of a person's overall suitability for the solicitors' profession.*
>
> *66. In broad terms, 'fitness', which covers the necessary academic qualifications and practical experience, also relates to matters such as knowledge, skill, understanding, expertise, competence and the like, all of which impact on one's capacity to appropriately discharge the obligations which the practice of his profession imposes. The second aspect of the term 'being a proper person' is much more directly related to character and suitability. Critical in this respect are matters such as honesty, integrity*

and trustworthiness: a person of principled standards, of honest nature and of ethical disposition; a person who understands, appreciates and takes seriously his responsibilities to the public, to the administration of justice, to individual colleagues and to the profession as a whole.

67. It is neither possible nor desirable to try and outline the acts, omissions and conduct by which such a standard should be judged: these range on the vertical scale from the trivial, negligible and inconsequential to the grave, appalling and deplorable. On many occasions the Regulatory Body, and on review the court, will have little difficulty in appropriately positioning the conduct established. On other occasions, however, a fine line and narrow call may have to be made; when that difficulty occurs the decision will be a matter of degree. Whichever may be the situation, each case will be circumstance specific, and must be individually assessed at all levels of the adjudicative process."

36. The conduct at issue here, such that the Licensee is alleged by the Applicant not to be a "*fit and proper person*", relates to the sending of the letter dated the 24th of September, 2021 and the content of that letter. As pointed out on behalf of the Board, if one examines the letter to break it down to its component parts what it says is:

1. A Receiver has been appointed over the Property;
2. Requests have been made for the occupant of the property to contact the Licensee's office;
3. No such contact has been made;
4. If no contact is made within the specified timeframe the property will be deemed to be vacant;
5. Once the property is deemed to be vacant the locks would be changed;
6. To avoid this occurrence, contact should be made with the Licensee immediately with the requested information.

37. Counsel for the Board in submissions before me sought to characterise this letter as little more than a request for information as to the occupation of the property. She maintains that there is nothing unusual or untoward about a receiver seeking to establish whether a property in receivership is in occupation or not and, if so, the basis of said occupation. It seems to me that this position must be correct.

38. The Appellant's difficulty with this letter, however, is not that the Licensee might legitimately seek to establish that the premises is vacant and where it is concluded that it is vacant proceed to change the locks on behalf of and on the instruction of the Receiver. The Appellant's difficulty is that the Licensee indicates an intention to take such steps knowing full well that the property is occupied as a means of procuring contact from the occupant who had thus far avoided engagement with the Receiver under menace that a failure to make contact will be used to justify the Licensee attending to change the locks on instruction from the Receiver in the knowledge that the property is, in fact, occupied and a lawful authority for forcible recovery of possession is required but has not been obtained.

39. What is immediately apparent, however, is that the Appellant's specific difficulty with the letter is not a difficulty which is apparent from the terms of the letter itself. Reading the letter, which is in standard terms, the Authority could not have divined that the Appellant maintained that the letter was part of a contrived stratagem designed to coerce contact under the threat of taking steps to change the locks knowing that no lawful authority for such an action existed. Furthermore, as noted above, neither the Authority nor the Board on appeal is vested with jurisdiction under the 2011 Act to adjudicate on the lawfulness of steps taken by a duly appointed receiver to change the locks on a property where reasonable grounds exist for treating the property as vacant. This would certainly be a question for a court of competent jurisdiction properly seised of the issue in proceedings before it.

40. When pressed during oral submissions before me counsel for the Board accepted that whether it would always be proper to send such a letter might depend on the surrounding circumstances, state of knowledge and purpose of the Licensee in sending the letter. There might be something on the facts of a given case which called into question the honesty or integrity of a licensee or which might suggest that a licensee was other than a law abiding person or a person of principled standards or of honest nature and of ethical disposition in sending correspondence for other than a proper purpose, in which case an investigation might be warranted. Counsel for the Board returned to the fact, however, that no collateral information was provided with the complaint in this case to suggest that the Licensee had written in the terms complained of in the letter in these proceedings for improper purposes knowing full well that the property was in fact occupied and knowing that the Receiver had no lawful authority to enter into possession and change the locks. This did not form part of the

Appellant's complaint as submitted. The Appellant has sought to develop a submission along these lines in argument before me but I am satisfied that it is not a submission which I can properly entertain. This is for two reasons. Firstly, it is not a submission grounded in evidence. Secondly, the additional information sought to be presented on the appeal before me did not form part of the complaint determined by the Authority or the Respondent on appeal.

41. It is imperative that a complainant sets out fully the basis for his or her concern when presenting the complaint which is then relied upon in making an admissibility decision. As no right of reply is provided for under the scheme of the 2011 Act in response to submissions filed by the other party and the Authority on an appeal against a decision of the Authority, the complainant's case may well stand or fall on the contents of the original complaint.

42. While it does not arise as an issue in these proceedings on the appeal as formulated, I have reflected on whether the Board properly determined the appeal on the basis of an account as to the purpose of the letter served by the Licensee on the 24th of September, 2021 without affording the Appellant an opportunity to respond to this account in circumstances where the Appellant now contends that this account is misleading. This question arises in circumstances where the Appellant sought to rely before me on asserted facts, not in evidence, to demonstrate that the Receiver and the Licensee were well aware of the fact that the premises were occupied. It seems to me that this is a case he was prompted to advance in view of the terms of Licensee's response to his complaint, which he saw for the first time after the Board had made the decision challenged in these proceedings and might therefore have been made earlier to the Board had he been aware of the Licensee's response.

43. There may be circumstances in which fair procedures require that an opportunity be furnished to a complainant to respond further where specific matters of distinct significance arise which would warrant same. It is noted, however, that the Board has power under Schedule 5 to afford an opportunity to a complainant (or other party) to provide further information in such circumstances. In circumstances, however, where the Appellant's complaint as presented was squarely framed by reference to the sending of the letter as opposed to sending the letter with particular knowledge regarding the occupancy of the house and for a purpose other than that disclosed on the face of the letter as subsequently submitted before me by the Appellant, I am satisfied that it would not be proper for me to fault the Board for not appreciating that the terms of the response received from the Licensee carried any distinct significance which might

warrant a right of reply. This is particularly so where the Appellant's fundamental issue on this appeal remains the question of the lawful authority of a receiver to threaten, through its agent in correspondence, to change locks on a property. This is a question which there is simply no competence to determine under the 2011 Act.

CONCLUSION

44. I must decide the question of law arising on the basis of material before the Authority and the Board on appeal. The Appellant's complaint as articulated was that it was unlawful to request contact on behalf of a receiver appointed to a property on the basis that absent such contact the property would be deemed vacant and the locks would be changed. Whether or not the Receiver was entitled to change the locks on a vacant property is a question of law and fact which the Authority and the Board are not competent to determine and which does not therefore properly arise as a point of law on an appeal from a decision under the 2011 Act.

45. Based on the bare contents of the letter and without additional particulars relating to the Licensee's state of knowledge and ulterior, improper purpose as alleged in submissions before me for the first time, it seems to me that there was no error of law in the decision of the Authority and the Board in turn in concluding that there was no basis for a claim of "*improper conduct*" because the Licensee was not a "*fit and proper person*" by reason of having sent the subject letter. It was correctly concluded that the lawfulness *per se* of changing the locks on a vacant property on direction for the Receiver is not a matter coming within the remit of the Authority or the Board under the 2011 Act.

46. The mere sending of the letter complained of in these proceedings cannot give rise to a finding that the Licensee is no longer a "*fit and proper person*". As the letter itself stated, the Licensee was engaged to determine whether the property was occupied or not. It is evident from the email of the 15th of December, 2021, which was before the Board that the Licensee was following a process and the letter formed part of a sequence of steps taken to establish the facts in relation to the occupation of a property in receivership. The sending of the letter does not, on its own, display a lack of knowledge or skill on the part of the Licensee nor is it conduct which displays a lack of principled standards or conduct that undermines the character of the Licensee. Something more in terms of the conduct of the Licensee would be required to justify an investigation into whether he is a fit or proper person.

47. I do not wish to be understood by the terms of this decision as finding, however, that the sending of such a letter by a Licensee could never constitute "*improper conduct*". Each case depends on the evidence submitted in support of the complaint. Here there was no evidence of the type which the Appellant sought to urge through submissions before me presented with the Complaint. Different considerations might arise were the complaint that a licensee attended to change the locks on the putative basis that the property was vacant when there was evidence before the Authority and the Board that the said licensee knew that this was not so. Those are not the facts of this case.

48. For the reasons set out above I propose to make an order pursuant to s.75(2)(a) of the 2011 Act affirming the determination of the Board challenged on this application. I will hear the parties in relation to consequential matters.