APPROVED **[2024] IEHC 265**

THE HIGH COURT
JUDICIAL REVIEW

2023 943 JR

BETWEEN

CHRISTOPHER PRENDERGAST

APPLICANT

AND

LEGAL AID BOARD

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 10 May 2024

INTRODUCTION

1. This judgment is delivered in respect of an *inter partes* application for leave to apply for judicial review. The Applicant seeks to challenge a decision of the Legal Aid Board to revoke or terminate a previously granted legal aid certificate.

THRESHOLD FOR THE GRANT OF LEAVE TO APPLY

2. The legal test governing an application for leave to apply for judicial review has recently been considered by the Supreme Court in *O'Doherty v. Minister for*

Health [2022] IESC 32, [2022] 1 I.L.R.M. 421. The Chief Justice, O'Donnell C.J., explained at paragraph 39 of his judgment that the threshold to be met is that of arguability:

> "The threshold is a familiar one in the law. It is, in essence, the same test which arises when proceedings are sought to be struck out on the grounds that they are bound to fail, or the test that is normally required in order to seek an interlocutory injunction. It must be a case that has a prospect of success (otherwise it would not be an arguable case) but does not require more than that. While, inevitably, individual judges may differ on the application of the test in individual cases at the margins, the test itself is clear. This test – it must be stressed – is solely one of arguability: it is emphatically not a test framed by reference to whether a case enjoys a reasonable prospect of success, still less a likelihood of success. Any such language obscures the nature of the test and may on occasion lead to misunderstanding, appeal and consequent delay."

3. The Chief Justice also confirmed, at paragraph 40, that the same threshold test pertains irrespective of whether the application for leave is made *ex parte*, or, as in the present case, is made on notice to the respondent.

STATUTORY FRAMEWORK

4. Section 24 of the Civil Legal Aid Act 1995 provides as follows:

> "Without prejudice to the other provisions of this Act a person shall not be granted legal aid or advice unless, in the opinion of the Board—
>
> (a) a reasonably prudent person, whose means were such that the cost of seeking such services at his or her own expense, while representing a financial obstacle to him or her would not be such as to impose undue hardship upon him or her, would be likely to seek such services in such circumstances at his or her own expense, and
>
> (b) a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense."

5. In brief, "*legal aid*" is defined as meaning representation by a solicitor or barrister in any civil proceedings; and includes all such assistance as is usually given in contemplation of, ancillary to, or in connection with such proceedings, whether for the purposes of arriving at or giving effect to any settlement in the proceedings or otherwise.

6. Section 28 of the Civil Legal Aid Act 1995 provides as follows at subsections (1) and (2):

> "(1) A person shall not be granted legal aid unless the person is granted a legal aid certificate under this section in respect of the legal aid sought.
>
> (2) Subject to sections 24 and 29 and the other provisions of this section and to regulations (if any) made under section 37, the Board shall grant a legal aid certificate under this section to a person, other than a person referred to in subsection (2A), if, in the opinion of the Board—
>
> (a) the applicant satisfies the criteria in respect of financial eligibility specified in section 29,
>
> (b) the applicant has as a matter of law reasonable grounds for instituting, defending, or, as may be the case, being a party to, the proceedings the subject matter of the application,
>
> (c) the applicant is reasonably likely to be successful in the proceedings, assuming that the facts put forward by him or her in relation to the proceedings are proved before the court or tribunal concerned,
>
> (d) the proceedings the subject matter of the application are the most satisfactory means (having regard to all the circumstances of the case, including the probable cost to the applicant) by which the result sought by the applicant or a more satisfactory one, may be achieved, and
>
> (e) having regard to all the circumstances of the case (including the probable cost to the Board, measured against the likely benefit to the applicant) it is reasonable to grant it."

7. The Legal Aid Board may revoke a legal aid certificate where it considers that it is no longer reasonable for the person to continue to receive legal aid (sub-section 28(7)).

8. Regulation 9 of the Civil Legal Aid Regulations 1996 obliges the Legal Aid Board to notify the beneficiary of a legal aid certificate of its intention to terminate the certificate. The beneficiary must be afforded a period of one month "*to show cause in writing*" why such termination should not be proceeded with.

9. In principle, a decision by the Legal Aid Board to refuse to grant, or to revoke, a certificate of legal aid is amenable to judicial review. It should be explained, however, that judicial review is concerned with the lawfulness of the decision: it does not represent an appeal on the merits. This principle has been most recently summarised by the High Court (Phelan J.) in *B.A. v. Legal Aid Board* [2023] IEHC 569 (at paragraph 32):

> "Suffice to say that the Board is entitled under the statutory scheme within which it operates to refuse legal aid where it considers that the maintenance or defence of proceedings for which a legal aid certificate is sought lacks merit such that there are no reasonable grounds for maintaining or defending the proceedings, the proceedings are not reasonably likely to succeed and all the circumstances of the case including the cost versus the likely benefit mean that it is not reasonable to grant it. While the Board's opinion as to the merits of granting a legal aid certificate must be a reasonably held opinion informed by relevant considerations and must not be irrational, to ultimately succeed in a challenge to a decision to refuse legal aid on rationality or reasonableness grounds the Applicant must meet a high test. The court cannot interfere with the decision of an administrative decision-making authority merely on the grounds that (a) it is satisfied that on the facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decision made by the authority was much stronger than the case for it. The governing principles have been identified in by the Supreme Court in *Meadows v. Minister for Justice and Equality* [2010] IESC 3; [2010] 2 I.R. 701."

10. This approach resonates with the case law of the European Court of Human Rights. The ECtHR has consistently held that, in the context of civil legal aid, it is legitimate to have regard to the prospects of success in the proceedings in deciding whether or not to grant legal aid (*Steel v. United Kingdom*, Application No 68416/01). A similar approach has since been adopted by the CJEU.

MATTER IN RESPECT OF WHICH LEGAL AID IS SOUGHT

11. The Applicant seeks to set aside a judgment delivered by the High Court (O'Hanlon J.) on 3 June 1988. The judgment is entitled *W.J. Prendergast & Son Ltd v. Carlow County Council* and was delivered in the context of an application for compensation pursuant to the Malicious Injuries Act 1981. The claim for compensation had been made by a company controlled by the Applicant and his parents. The claim arose out of damage caused to the company's premises by a fire. The matter had come before the High Court by way of an appeal from the Circuit Court. The High Court refused the application for compensation on the basis that the fire had not been caused by a third party.

12. The Applicant contends that the implication of the judgment is that the fire had been caused deliberately by him and his father. The Applicant contends that it was improper for the High Court to have purported to make a finding of criminality against him in the context of civil proceedings in which he was not even a party but only a witness of fact. The Applicant contends that the finding was made in breach of his right to the presumption of innocence and, more generally, in breach of fair procedures. The Applicant points out that he was never informed of his right to privilege against self-incrimination.

13. The Applicant alleges that the judgment of the High Court was procured by fraud on the part of an expert witness called by the respondent local authority. More specifically, it is alleged that the expert witness gave perjured evidence to the High Court. The Applicant relies, in particular, on two reports from *other* experts which have since been obtained by him. The Applicant states that these two experts are willing to provide oral evidence in any proceedings.

14. The company made two unsuccessful attempts to set aside the judgment of the High Court. First, the company sought to pursue an appeal to the Supreme Court against the judgment. This appeal was rejected as inadmissible by the Supreme Court on the grounds that any decision of the High Court under the Malicious Injuries Act 1981 is final and unappealable: *W.J. Prendergast & Son Ltd v. Carlow County Council* [1990] 2 I.R. 482.

15. Secondly, the company instituted plenary proceedings against Carlow County Council and their expert witness. The proceedings were dismissed as against the local authority on the grounds that no cause of action had been shown and that the company had failed to apply to amend its pleadings (*W.J. Prendergast & Son Ltd v. Carlow County Council*, Supreme Court, unreported, 8 March 2005). The proceedings were subsequently dismissed as against the expert witness on the basis that he had immunity from suit in respect of his evidence given in the malicious injury application (*W.J. Prendergast & Son Ltd v. Carlow County Council* [2007] IEHC 192, [2007] 4 I.R. 362). This judgment was not appealed by the company.

16. It is relevant to note that, in each instance, the Supreme Court and High Court judgments reference complaint having been made against the company in relation to inordinate and inexcusable delay. It is inevitable that delay will also

be raised as a defence to any proceedings now taken by the Applicant personally. More than three decades have elapsed since the date of the High Court judgment which it is sought to set aside.

17. Separately, the Supreme Court held, in *Belton v. Carlow County Council* [1997] 1 I.R. 172, that the Applicant and his father are not properly regarded as the privies of the company. This holding was made in the context of an attempt by Carlow County Council to obtain an indemnity or contribution from the Applicant and his father in respect of statutory compensation which the local authority was liable to pay to a neighbouring landowner affected by the fire. The Supreme Court appeared to leave open the possibility that any proceedings taken by the Applicant and his father to set aside the judgment of the High Court (O'Hanlon J.) might be precluded by the maxim *interest rei publica ut sit finis litium*.

PROCEDURAL HISTORY BEFORE THE LEGAL AID BOARD

18. The Applicant approached the Legal Aid Board in March 2019 seeking a legal aid certificate in respect of intended proceedings to set aside the judgment delivered by the High Court (O'Hanlon J.) on 3 June 1988. In effect, the Applicant is seeking to set aside what he regards as a tacit finding that he and his father had caused the fire. This supposed finding had been reached in a judgment delivered more than thirty years previously.

19. The Kilkenny Law Centre sought and obtained an opinion from counsel. A very comprehensive opinion, running to some 27 pages, was provided by counsel on 28 April 2020. Counsel identified, in detail, the "*substantial legal obstacles*"

which the Applicant would have to overcome in order to set aside the High Court judgment. The opinion concluded by outlining a potential litigation strategy.

20. On foot of counsel's opinion, the solicitor handling the file made a recommendation, on 28 September 2020, that a legal aid certificate not be granted. On 3 November 2020, the Applicant was notified that his application for a legal aid certificate had been refused. This decision was upheld on an internal review. It seems that the outcome of this internal review was informed by a supplementary opinion provided by counsel on 3 March 2021.

21. The decision on the internal review was notified to the Applicant on 5 March 2021. Thereafter, the Applicant submitted an appeal to the Appeals Committee of the Legal Aid Board. This appeal was successful, and a legal aid certificate granted on 7 May 2021. The Appeals Committee did not deign to explain its rationale for reversing the executive's decision to refuse to grant a legal aid certificate. The Appeals Committee's decision does not engage at all with the "*substantial legal obstacles*" identified by counsel. It is difficult to understand the basis upon which the Appeals Committee could have concluded that proceedings to set aside a judgment of the High Court some thirty-three years after the event were reasonably likely to be successful as required under Section 28 of the Civil Legal Aid Act 1995. This is especially so given that the expert evidence upon which the proposed proceedings are to be based has, seemingly, been available to the Applicant since October 1997, or at the very latest, October 2006.

22. The Applicant participated in a telephone consultation with solicitor and counsel in June 2021. Thereafter, in October 2021, the solicitor instructed counsel to draft proceedings on behalf of the Applicant. Counsel replied, by letter dated

19 January 2022, explaining that, having regard to his professional code, he was unable to sign off on the proposed proceedings. The Code of Conduct of the Bar of Ireland provides that a barrister shall not settle a pleading claiming fraud without express instructions and without having satisfied himself that there is or will be available at the trial of the action evidence to support such a claim.

23. The Legal Aid Board wrote to the Applicant on 24 January 2022 and explained that counsel would not be proceeding with the case. The Applicant asserts that he was given the choice of either (a) dropping the case altogether, or (b) starting over again with a different counsel and applying to the Legal Aid Board as if anew. Thereafter, there was extensive correspondence between the Applicant and the Legal Aid Board over the next twelve months. This culminated in a letter dated 19 January 2023 wherein the Legal Aid Board notified the Applicant of its intention to terminate his legal aid certificate. The Applicant was afforded a period of one month within which to show cause in writing as to why the intended termination should not be proceeded with. The Applicant made submissions in response.

24. A decision to terminate was notified to the Applicant by letter dated 4 April 2023. Having summarised the procedural history, including the concerns raised by counsel, the letter states as follows:

> "The parameters within which legal aid can be granted are set out in the Civil Legal Aid Act 1995 and in particular in Sections 24 and 28 of the Act. These are known as the merits criteria for legal aid. There must be reasonable grounds to institute or defend proceedings and, there must be reasonable prospects of success in the matter. There must be no alternative more satisfactory method by which the issues can be dealt with and the likely benefit to the legal aid applicant and the costs of providing representation in the matter are further considerations. It must be considered whether a solicitor or barrister acting reasonably would advise an applicant to expend his or her own resources on the matter

> and whether a reasonable person would do so in the circumstances of the case.
>
> Where Counsel cannot draft the pleadings in the absence of the required evidence of fraud/perjury, it is considered that there are not reasonable grounds to continue to pursue the matter, the requirement of proof of fraud/perjury being a central element to any proceedings which might be brought. If Counsel is not satisfied to the required evidence of fraud/perjury it cannot be said that there are reasonable prospects of success. The prospects of success are further questionable given the issues arising in relation to the doctrine of *res judicata*, difficulties with the statute of limitations and the Court's consideration of a likely abuse of process argument. Given these issues it is not considered that there is any likely benefit to you in the proceedings but rather there would be a significant risk of costs being awarded against you. The costs to the Board would be significant in such a matter and could result in the Board having to make an ex gratia payment in respect of any such award of costs.
>
> It is therefore unreasonable in the particular circumstances of the case (including the cost of the proceedings) that that you should continue to receive legal aid or to advise you to further pursue this matter. A solicitor or barrister acting reasonably would not advise you to do so where you do not meet the legal grounds in such a case, where there are such limited prospects of success; and therefore, no likely benefit to you in pursuing the proceedings, and where there is a strong likelihood of you being fixed with significant legal costs. It is not considered reasonable therefore in all the circumstances to continue to provide you with legal aid."

25. Thereafter, the Applicant exercised his right of appeal to the Appeals Committee pursuant to the appeals procedures provided for under Part IV of the Civil Legal Aid Regulations 1996. The appeal was refused on 15 May 2023. The terms of the Appeals Committee's decision are discussed under the next heading below.

26. These judicial review proceedings were issued on 15 August 2023. Following various case management directions, the leave application ultimately came on for an *inter partes* hearing on 19 April 2024. Judgment was reserved until today's date.

DISCUSSION AND DISPOSITION

27. The Applicant seeks to challenge the Appeals Committee's decision of 15 May 2023 ("*the impugned decision*") by way of judicial review. The grounds of challenge are set out in a revised statement of grounds dated 4 December 2023. For ease of exposition, it is proposed to group the grounds pleaded by the Applicant under three broad headings as follows.

(i). Adequacy of reasons

28. The first category of grounds relates to the adequacy of reasons. The impugned decision reads as follows:

> "Please note that your appeal was considered at the May 2023 Appeal Committee Meeting. The Committee has issued the following decision on the appeal:
>
> *The Committee has upheld the decision to terminate the legal aid certificate on the same grounds and for the same reasons as the Executive.*
>
> Regrettably, in the circumstances we are now closing our file."

29. As appears, the Appeals Committee has simply adopted the same reasons as had been provided, at first instance, by the executive of the Legal Aid Board. Having regard to the very unusual procedural history to date, there are arguable grounds for saying that this formulation does not represent an adequate statement of reasons in this specific case. The following aspects of the procedural history, in particular, are relevant to an appraisal of the adequacy of the statement of reasons. This is a case where the decision to *grant* a legal aid certificate had itself been a matter of controversy within the Legal Aid Board. The certificate was only granted on appeal and in the face of a finding, at first instance, that the statutory criteria were not met. Relevantly, the decision, on appeal, to grant the

legal aid certificate was made at a time when the Legal Aid Board already had the benefit of the detailed opinion of external counsel setting out his concerns in relation to the reasonable prospects for success in any proceedings taken by the Applicant. Notwithstanding these concerns, the (first) Appeals Committee made an (unreasoned) decision to grant a legal aid certificate on 7 May 2021.

30. It would appear from the limited papers before the High Court on this leave application that the only material change in circumstances which has occurred since the date of that decision was the subsequent indication by external counsel that he would not be in a position, for reasons of professional ethics, to sign off on proceedings alleging fraud. Whereas this was, undoubtedly, a material change, it is, on one view at least, confined to a single aspect of the Applicant's claim. To elaborate: an application to set aside the High Court judgment of June 1988 on the grounds of (alleged) fraud was only one of a number of potential remedies identified by counsel in his opinion. Counsel had also adverted to the possibility of the Applicant pursuing other remedies, including, for example, a claim for an (alleged) breach of his rights under the Constitution of Ireland, the European Convention on Human Rights, and the EU Charter of Fundamental Rights. It is not immediately apparent from the terms of the (second) Appeals Committee's decision as to what view, if any, it took in relation to these matters. Put otherwise, no explanation has been provided as to why it is that the Appeals Committee considered that the alternative avenues of redress posited by counsel do not meet the statutory threshold of a reasonable likelihood of success.

31. It should be emphasised that this judgment is delivered in the context of a leave application only. By definition, it does not involve a final determination of the legal issues raised. This judgment should not, therefore, be understood as

authority for a broader proposition that the Appeals Committee of the Legal Aid Board is precluded from ever using a formulation of the type employed in this case. It may well be that in the context of a decision to *refuse to grant* a legal aid certificate, which is delivered in a straightforward case, it would be appropriate for the Appeals Committee simply to say that it agreed with the reasons set out in the first instance decision. It may be that an enhanced duty to give reasons on appeal only arises in the case of the revocation or termination of a previously granted certificate. The change in position may call for greater explanation.

32. The assessment of the adequacy of reasons in any given case requires consideration of the overall information available to the recipient of a decision. The proper approach to the assessment of the adequacy of the statement of reasons for an administrative decision has been set out authoritatively by the Supreme Court in *Connelly v. An Bord Pleanála* [2018] IESC 31, [2021] 2 I.R. 752. There, the Supreme Court held that it is not necessary that all of the reasons must be found in the decision itself or in other documents expressly referred to in the decision. The reasons may be found anywhere, provided that it is sufficiently clear to a reasonable observer carrying out a reasonable enquiry that the matters contended actually formed part of the reasoning.

33. Applying these principles to the context of decision-making by the Legal Aid Board, it will be necessary to consider the entirety of the material available to the person who complains that the reasons are inadequate. This will include all of the material furnished to an applicant during the course of the process. If an applicant has already been provided with detailed and consistent advice from

solicitor and/or counsel which clearly explains why their proposed proceedings do not meet the statutory threshold of a reasonable likelihood of success, then there might not be any need for elaboration by the Appeals Committee. The unsuccessful applicant will understand the reasons for the refusal of a certificate of legal aid.

34. In the present case, leave is only being granted because of the very unusual features identified above and the existence of what, on one view at least, appears to be a discrepancy between the decision of the first and second Appeals Committees. It is, of course, open in principle to the Legal Aid Board to review an earlier decision to grant a legal aid certificate and to resolve to terminate or revoke the certificate for good and sufficient reason. This is a necessary corollary of the Legal Aid Board having been conferred with an express statutory power to revoke a previously granted certificate. The Legal Aid Board must, however, provide an adequate statement of reasons for any such discordant decision.

(ii) Legal standard: reasonable likelihood of success?

35. The second category of grounds relates to the legal standard to be applied by the Legal Aid Board in deciding whether or not to terminate a legal aid certificate. The Applicant's challenge to the Legal Aid Board is predicated upon the premise that a legal aid certificate may only be terminated where the intended proceedings are "*manifestly unfounded*" or "*manifestly inadmissible*". This contention is radical. The ordinary and natural reading of the Civil Legal Aid Act 1995, and the implementing regulations, would appear to be that the same legal test governs both the grant of, and revocation/termination of, a legal aid certificate. It would appear that, in each instance, the Legal Aid Board is only

entitled to provide legal aid where there are "*reasonable grounds*" for instituting the intended proceedings and where the applicant is "*reasonably likely*" to be successful in the proceedings.

36. The Applicant attaches especial importance to the provisions of the Charter of Fundamental Rights of the European Union ("*EU Charter*"). Article 47 of the EU Charter provides as follows:

> "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
>
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
>
> Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

37. The Applicant purports to find support for his contended-for threshold, i.e. "*manifestly unfounded*" or "*manifestly inadmissible*", in the case law of the Court of Justice of the European Union ("*CJEU*") and the European Court of Human Rights ("*ECtHR*"). The Applicant has cited, both in his oral submissions and his written submissions, a number of judgments of both courts which he suggests are relevant.

38. It has to be said that most of the judgments cited by the Applicant appear to relate to legal aid in the context of criminal proceedings or in extradition/surrender proceedings. For example, the Applicant refers to judgments delivered in the context of EU legislation such as Directive 2013/48/EU and Directive (EU) 2016/1919 which regulate the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings. As appears from the recitals to each

of these Directives, Ireland did not take part in the adoption of same and is not bound by it or subject to its application.

39. The Legal Aid Board has, for the purposes of the leave application, chosen not to engage at all with the detail of the case law cited by the Applicant. In the circumstances, it would not be appropriate for the High Court to dismiss the Applicant's reliance on this case law peremptorily, by refusing leave to apply in respect of this category of grounds. It would be unsatisfactory for the High Court to reach a concluded view on these issues in the absence of detailed argument from both sides.

40. It will be a matter for the trial judge to determine what is the legal test to be applied in deciding to revoke or terminate a legal aid certificate. One issue which will have to be addressed as part of this overall consideration is whether, as a matter of law, the Applicant may rely on the Charter of Fundamental Rights of the European Union in respect of the historical events complained of. The provisions of the EU Charter are addressed to the Member States only when they are implementing EU law (Article 51). The gravamen of the Applicant's complaint is that the High Court made a tacit finding on 3 June 1988 that he and his father had committed arson by setting the factory on fire. An obvious question arises as to whether or not the judicial determination of the application under the Malicious Injuries Act 1981 was made pursuant to national legislation lying within the scope of EU law.

(iii). Subsection 28(5)(a) of the Civil Legal Aid Act 1995

41. The third category of grounds relates to the provisions of the Civil Legal Aid Act 1995 which address the obligation to provide legal aid in the context of an

international instrument. Subsection 28(5)(a) of the Civil Legal Aid Act 1995 provides as follows:

> "Notwithstanding any other provision of this Act, the Board shall grant a legal aid certificate to a person—
>
> (a) where the State is, by virtue of an international instrument, under an obligation to provide civil legal aid to the person:
>
> Provided that the person shall, before being granted such certificate, comply with such requirements (if any) as are specified in the international instrument and relate to him or her,".

42. The Applicant seeks to argue that the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union each represent an "*international instrument*" within the meaning of this subsection. On this analysis, the Legal Aid Board is *obligated* to provide legal aid, as a matter of domestic law, where an individual is entitled to same under either the Convention or the EU Charter. The Applicant submits that to require a lay litigant, such as himself, to conduct complicated proceedings *without* legal aid is contrary to Articles 6 and 13 of the Convention and Articles 47 and 48 of the EU Charter.

43. Notwithstanding that the Applicant has consistently cited this provision of the Civil Legal Aid Act 1995 throughout his dealings with it, the Legal Aid Board has never stated what it says is the correct interpretation of subsection 28(5). Nor has the Legal Aid Board referred to any case law which addresses the interpretation of same. In the circumstances, the Applicant has met the, admittedly low, threshold of arguability in respect of this category of grounds.

CONCLUSION AND PROPOSED FORM OF ORDER

44. The Applicant has met the low threshold governing an application for leave to apply for judicial review under Order 84 of the Rules of the Superior Courts. Leave to apply for judicial review is granted in respect of an order of *certiorari* setting aside the Legal Aid Board's decision of 15 May 2023 purporting to terminate the previously issued legal aid certificate. Leave to apply for judicial review is also granted in respect of the declaratory reliefs sought at paragraphs (2) to (5) of the revised statement of grounds dated 4 December 2023. Leave is granted on all grounds pleaded in the revised statement of grounds.

45. As to the legal costs of the leave application, such costs will be reserved to the trial judge. Having regard to the limited argument to date from the Legal Aid Board, the trial judge will be better placed than me, as the leave judge, to determine the proper allocation of legal costs.

46. The Applicant is to file, in the Central Office of the High Court, an amended statement of grounds which substitutes, in lieu of the relief sought at paragraph (1) of the revised draft of 4 December 2023, a prayer for an order of *certiorari* setting aside the Legal Aid Board's decision of 15 May 2023 purporting to terminate the previously issued legal aid certificate.

47. If this has not already been done, the Applicant is to file, in the Central Office of the High Court, a copy of the written legal submissions delivered in respect of the leave application. The Applicant is also to issue and serve a notice of motion seeking the reliefs in the amended statement of grounds. This motion is to be made returnable to the Judicial Review List on Tuesday 4 June 2024 for case management.

48. For the avoidance of doubt, there is no requirement for the Applicant to re-serve any of the affidavits and voluminous exhibits which have already been served on the Legal Aid Board's solicitor. The Applicant is, however, required to serve the amended statement of grounds and the notice of motion.