

AAPPROVED

NO REDACTION NEEDED



**THE COURT OF APPEAL
CIVIL**

Appeal No: 2026 62

Neutral Citation Number [2026] IECA 160

Allen J.

McDonald J.

Sanfey J.

BETWEEN

SAMIR MORISS GERGES FARES

APPELLANT

AND

THE INFORMATION COMMISSIONER

RESPONDENT

AND

THE DEPARTMENT OF SOCIAL PROTECTION

NOTICE PARTY

JUDGMENT of Mr. Justice Allen delivered on the 31st day of July, 2026

1. This is an appeal by Mr. Fares against the judgment and order of the High Court (Stewart J.) delivered and made on 5th September, 2025 ([2025] IEHC 482) refusing an

application by the appellant to join the Department of Social Protection as a co-respondent to a statutory appeal against a decision made by the Information Commissioner.

2. The judge gave her reasons in a clear and succinct written judgment, the gravamen of which was that the grievances which the appellant wished to pursue against the Department were wholly unconnected with the only issue which the appellant was entitled to pursue against the Commissioner, which was whether the decision made by the Commissioner was correct in law.

3. The appellant is, and in the High Court was, a litigant in person. It is not unfair to say that he is a very determined litigant. The papers are quite voluminous but the essential facts can be shortly stated.

4. For some years prior to 22nd August, 2023 the appellant was in receipt of disability allowance, which is a means tested allowance. Following a review of the appellant's means in 2023 a Social Welfare Inspector decided on 22nd August, 2023 that his means were such that he was no longer eligible. The appellant had a right of appeal against the decision of the Social Welfare Inspector, which he exercised and ultimately, for the reasons given by the Chief Appeals Officer in a written decision of 11th September, 2024, his appeal was allowed and his allowance restored.

5. On 19th September, 2023 the appellant submitted a request to the Department under the Freedom of Information Act, 2014. It was quite specific. He asked for a full copy of his file *"at the Social Welfare Inspectors SWI Cork City, from 1/1/2023 up to now, including all about report dated 14/3/2023 and dated 1/9/2023, and including all internal and external communications, and including all documentations."* The report dated 14th March, 2023 was a report of the Social Welfare Inspector in relation to the appellant's means. There followed a protracted correspondence. The Social Welfare Inspector who had prepared the report was based in Cork, but the review had been conducted by the Disability Allowance Section of the

Department, which is based in Longford. The decision on the appellant's FOI application was issued from Longford – where the relevant records were – but the appellant insisted that it should come from the Cork office – to which the request had been addressed.

6. On 26th October, 2023 the Department issued its decision on the FOI request. At the appellant's request, the Department undertook an internal review and on 20th November, 2023 affirmed the original decision.

7. On 24th November, 2023 the appellant applied to the Office of the Information Commissioner for a review of the Department's decision in accordance with s. 22(2) of the 2014 Act. During the course of that review the Department released a number of additional records to the appellant. The Department gave details to the Commissioner of the searches which had been undertaken to locate the records sought and ultimately submitted to the Commissioner that no further records existed or could be found.

8. For the reasons given in a written decision dated 10th December, 2024 the Commissioner affirmed the Department's decision under s. 15(1)(a) of the 2014 Act on the grounds that no further records existed or could be found after all reasonable searches had been carried out to locate them.

9. By notice of motion issued on 6th January, 2025 the appellant applied to the High Court for “*an order to uphold the appeal and quash (setting aside) the decision of the Information Commissioner of 10 December 2024.*” He named the Commissioner as respondent and the Department as notice party. The application did not comply with O. 84C, r. 2(3) of the Rules of the Superior Courts not least for the reason that it did not identify any point of law on which the appellant relied but whatever shortcomings there may have been in the paperwork, the application could only have been an appeal to the High Court pursuant to s. 24 of the 2014 Act, which is confined to a point of law.

10. On 19th March, 2025 the Commissioner filed a detailed statement of opposition, supported by an affidavit of the senior investigator who had conducted the review and made the impugned decision. The appellant took issue with the position adopted by the Commissioner and on 23rd April, 2025 filed a further affidavit and a notice of motion by which he sought “*to amend the ‘Department of Social Protection (DSP)’ from ‘Notice Party’ to clarifications to ‘Defendant’, and order to do clarifications and to provide a certified true copy of documents as per the plaintiff seeking in the affidavit (attached) dated 23 April 2025, and any other order(s) may apply to this Honourable Court, later.*”

11. The motion was understood by the Commissioner and the Department to be an application to join the Department as a co-respondent to the statutory appeal, and was opposed on that basis.

12. In the judgment under appeal, the High Court judge identified the principles of law applicable to an application to join a party to proceedings. These are well established and there was no complaint on the appeal that the Judge had erred in identifying the appropriate principles.

13. The starting point is O. 15 which sets out the jurisdiction of the High Court to join parties where it is necessary in order to effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. *Allied Irish Coal Supplies Ltd. v. Powell Duffryn Intl. Fuels Ltd.* [1998] 2 I.R. 519 is clear authority for the proposition that the words “*cause or matter*” in this context means the action as it stands between the existing parties, and that the court has jurisdiction to refuse to join parties for the purpose of introducing a new cause of action. Since the delivery of the judgment under appeal, the principles were reviewed in detail and applied by Sanfey J. in a case cited in the respondent’s submissions on this appeal of *People Centre Inc. [B/D/A Rippling] v. O’Brien (No. 1)* [2026] IEHC 178. Technically, the statutory appeal is not an action but a matter, but the same principle must apply.

14. In the High Court the Department also opposed the application to join it on the ground that the appellant had no direct cause of action against it but the motion was not decided on that basis and the alleged absence of a cause of action against the Department is not relied upon as an additional ground on which the High Court decision should be upheld.

15. The High Court judge also identified the principles of law applicable to an appeal to the High Court on a point of law against a decision of an administrative body, and against a decision of the Information Commissioner in particular. The judge referred to *Deely v. Information Commissioner* [2001] 3 I.R. 439, *Sheedy v. Information Commissioner* [2005] IESC 35, *Fitzgibbon v. Law Society of Ireland* [2014] IESC 48, and *Minister for Communications, Energy and Natural Resources v. Information Commissioner* [2020] IESC 57. It is clear and well-established that an appeal on a point of law is not a *de novo* hearing, but an appeal on a point of law, where there are many characteristics of a judicial review.

16. By notice of appeal filed on 16th March, 2026 – the Commissioner and the Department having consented to an extension of time – the appellant appealed against the judgment and order of the High Court on ten grounds, many of which had multiple sub-grounds.

17. The appellant’s core ground of appeal is that the High Court failed to recognise the Department as a “*necessary party*” whose presence was required to “*effectually and completely adjudicate upon and settle all questions.*” The appellant points specifically to a statement in the impugned decision of the Commissioner that he lacks the jurisdiction to address what the appellant regards as his core concerns.

18. This betrays a fundamental misunderstanding of the jurisdiction invoked by the appellant to join an additional party and a failure to engage with the judge’s reasoning and the legal principles on which that reasoning was based. The jurisdiction to join an additional defendant or respondent is engaged where such joinder is necessary to allow the court to

effectually and completely adjudicate upon and settle all questions involved in the same cause or matter.

19. It is clear, as the High Court judge, and before her, the Commissioner, recognised that the appellant has grievances with the manner in which the Department engaged with the review of his entitlement to disability allowance. The appellant appears to acknowledge – as the Commissioner spelled out – that the Commissioner has no jurisdiction to address what the appellant regards as his core concerns. It follows that the impugned decision did not address any of those concerns, other than his contention that the Department had failed to make available all available records. The conclusion of the Commissioner was that no further records existed or could be found after all reasonable steps had been taken to locate them. The entitlement of the appellant to appeal to the High Court against that decision is limited to a point of law, and the jurisdiction of the High Court to adjudicate upon the application is limited to deciding whether the impugned decision is vitiated by an error of law. The exclusive focus of the review undertaken by the Commissioner under the 2014 Act was whether the Department had disclosed to the appellant all records captured by his request and the exclusive focus of these proceedings is on the lawfulness of that decision. To be clear, the High Court is not concerned with whether there are or are not records which have not been disclosed but with whether the Commissioner was entitled to take the view which he did that there are not.

20. As a matter of law, the Commissioner is not concerned with the manner in which the appellant perceives himself to have been treated by the Department. But the appellant's object in seeking to join the Department is to ventilate those grievances in the High Court. This would embroil the Commissioner in disputes and grievances which are of no concern to him. In this context, it is important to keep in mind that the role of the Commissioner is limited to the specific matters outlined in s. 22 of the 2014 Act. As the High Court judge found, the joinder of the Department would be in effect to allow the introduction of a new cause of action beyond

the scope of the 2014 Act. That, it is well established, ought not to be permitted. It follows with even greater force that it is impermissible to allow separate causes of action to be bolted on to a limited statutory appeal.

21. The appellant's argument that the refusal to join the Department created a legal "*dead end*" is similarly misconceived. The High Court was not – and this Court on appeal is not – concerned with the substance of the appellant's grievances against the Department. The consequence of the judgment and order under appeal is simply that those grievances may not be ventilated in these proceedings. I emphasise that I am not to be understood as indicating that there is or is not substance to the appellant's grievances but note for the record that the Department emphatically rejects the allegations made against it. The point, for present purposes, is that the appellant's object in seeking to join the Department is to introduce contested issues of fact with which the Commissioner is not concerned and which have no place in a statutory appeal which is confined to a point of law.

22. The appellant's grounds of appeal go on – too often in intemperate language – to assert material irregularity, incompleteness, and lack of clarity in the records maintained and disclosed by the Department and to criticise the Department's policy and protocol for dealing with FOI requests. These matters do not go to the lawfulness of the impugned decision of the Commissioner.

23. I have read and considered all the appellant's grounds of appeal. It is not necessary or useful to address them all individually for the reason that they are all subtended by the same fundamental misunderstanding.

24. The error subtending the appellant's argument came into sharper focus at the oral hearing. In his oral submission, the appellant identified his entitlement under s. 11 of the 2014 Act to "*Assess to [his] records*" and his right under s. 9 to apply for the correction of information held by an FOI body that is incomplete, incorrect or misleading. It was – he said

– with a view to resolving unresolved issues in relation to his entitlement to access to records and the accuracy of his records that he wished to join the Department.

25. The appellant identified four unresolved issues, which were a contention that a Means Report Form dated 14th March, 2023 had been altered; that there were pages missing from the version of the Means Report Form which had been provided to him; that one of the records which had been made available to him had been released through the PRSI section of the Department, rather than by the Cork City Social Welfare Inspectors office to which the FOI request had been addressed; and that he had been unable to find on the internet the Department's Administrative Practice and Policy, on which the Department and the Commissioner had relied. The appellant acknowledged that he had been told by the Department that it had no records other than as had been disclosed; and that the Commissioner had determined that the Department had no records other than those which had been disclosed. He was, however, absolutely convinced that there must be records in addition to those which had been disclosed and wanted the opportunity to demonstrate to the High Court that the Department – obviously, he would say – had additional records.

26. Ms. Siobhán Walsh, for the Commissioner, in response, carefully explained that in the scheme of the 2014 Act, it is the Commissioner who is the final arbiter of fact as to whether there were or were not any additional records, and that the jurisdiction of the High Court is limited to correcting errors of law. The appellant, she argued, was trying to relitigate in the High Court issues which had been decided by the Commissioner. Counsel acknowledged the statutory jurisdiction of the High Court to correct any error of law, but that – she said – was the extent of the jurisdiction to review.

27. Ms. Claire Cummins, for the Department, summarised the appellant's grievances against the Department as being related to the integrity, completeness and handling of the appellant's records and submitted that the object of the joinder application was to allow the

appellant to seek to challenge the substance of the Commissioner's decision. Counsel referred the Court to the summary of the principles to be applied to an appeal against a decision of the Commissioner set out in the judgment of the Supreme Court delivered by Baker J. in *Minister for Communications v. Information Commissioner* [2022] 1 I.R. 1 and a passage from the judgment of the Supreme Court delivered by of Murphy J. in *Allied Irish Coal Supplies Ltd.* which encapsulates the position in which the appellant says he finds himself. Starting at the end of p. 532, Murphy J. said:-

“Furthermore the words ‘cause or matter’ in O. 15, r. 13 mean the action as it stands between the existing parties (Amon v. Raphael Tuck & Sons Ltd. [1956] 1 Q.B. 357 at p. 369). Certainly the court has jurisdiction to refuse to add parties for the purpose of introducing a new cause of action. In Raleigh v. Goschen [1898] 1 Ch. 73, Romer J. explained why, in that case at any rate, such a course should not be adopted, although he was careful to indicate that the plaintiff would have whatever rights were available to it in other proceedings against the parties whom it had sought to add.”

28. Ms. Cummins – unsurprisingly – said that the Department did not accept that there was any basis for the appellant's grievances but the point was that wherever they were to be ventilated, it was clearly not in the context of a statutory appeal to which they were entirely extraneous.

29. Counsel for both the Commissioner and the Department submitted that the joinder of the claims would embroil each of them in issues which did not concern the other, and would add to the costs of dealing with the statutory appeal.

30. The appellant did not contest counsels' submissions – or the judge's finding – as to the applicable principles of law. I am afraid that the appellant does not understand the law. The appellant is dissatisfied with the decision of the Commissioner – and before that with the

decision of the Department on his FOI application – on the facts. That is not something which he is entitled to canvas on an appeal to the High Court on a point of law.

31. The appellant has, as he contends, a right under the 2014 Act to a complete copy of the Department's records in relation to him. That right must be exercised in accordance with the statutory scheme which, besides conferring the right, sets out a procedure for the resolution of disputes in relation to alleged non-compliance. In this case, the appellant's request for records over and above those which had already been provided by the Department was refused by the Department on the ground specified in s. 15(1)(a) that no such record existed or could not be found after all reasonable steps to ascertain its whereabouts had been taken. The appellant had, and availed of, a right of appeal to the Commissioner. In the course of the investigation what was described as a second tranche of documents was made available. It is not altogether clear whether further documents were found in the course of the investigation or whether the scope of the appellant's request was reconsidered, but in the end, the Commissioner affirmed the decision of the Department on the same ground. The decision of the Commissioner is reviewable by the High Court on a point of law, only. The appellant's object in seeking to join the Department as a co-respondent is to establish that the decision of the Commissioner was wrong as a matter of fact. That is not permissible. Insofar as the Commissioner's decision was based on findings of fact, it is final. That is so unless it can be established that there was no evidence before the Commissioner to support such findings. But if such a case is advanced, the issue would be determined on the basis of the evidence before the Commissioner. On an appeal on a point of law, an appellant is not entitled to seek to rely on extraneous material which was not in evidence before the Commissioner.

32. It is true, as the appellant asserts, that the High Court judge did not engage with the appellant's arguments as to the alleged integrity and incompleteness of the Department records.

The simple explanation for this is that any such issues had nothing to do with the impugned decision of the Commissioner.

33. The appellant makes a number of points at paragraph 8 of his grounds of appeal. He says that the trial judge failed to afford him “*fair procedures and equality of arms*”; that he informed the court that “*he did not understand the technical legal arguments presented by the notice party*”, and that the court failed to summarise “*the notice party’s defence*” or to ensure that “*the appellant understood the case he was required to meet*”. It is also suggested that the appellant “*was forced to proceed without professional legal assistance due to administrative delays at the Legal Aid Board*”. The respondent and the notice party, in their respective respondents’ notices responding to the notice of appeal, emphatically reject these assertions.

34. The appellant was furnished on 25th June, 2025 with succinct and clear written submissions from the notice party in which the scope of O. 15, r. 15 (13) was properly explained and in which the nature and scope of an appeal under s. 24 of the 2014 Act was also explained. If the appellant had any difficulty in understanding the submissions, he had sufficient opportunity to have them translated in advance of the hearing on 15th July, 2025. The appellant also had – and availed of – an opportunity to respond to those written submissions in advance of the High Court hearing.

35. It is very clear from the judgment of the High Court that the learned trial judge read and considered the appellant’s motion papers and written submissions in addition to the oral submissions made at the hearing. It is not the function of the court in a civil statutory appeal, such as the present case, to concern itself with whether or not the applicant has the benefit of legal aid. There is no evidential or other basis on which this Court could conclude that the appellant was not given a full opportunity to advance his application, or that the hearing was in any way unfair.

36. The appellant has failed to identify any error in the analysis, reasoning, or conclusion of the High Court. I would dismiss the appeal and affirm the order of the High Court.

37. As this judgment is being delivered electronically, McDonald and Sanfey JJ. have authorised me to say that they agree with it.

38. The Commissioner and the Department having been entirely successful in their opposition to the appeal are presumptively entitled to an order for their costs of the appeal but the Court will list the matter for mention at 2:00 p.m. on Monday 5th October, 2026 to deal with any argument in relation to costs. If in the meantime the appellant agrees that the Commissioner and the Department are entitled to their costs, he may notify the Court of Appeal office and the solicitors for the Commissioner and the Department and the order can be drawn. The effect of any such notification would be to reduce the amount of the costs.