THE HIGH COURT

[Record No. H.SS.2025.1554]

[2026] IEHC 519

In the matter of section 2 of the Summary Jurisdiction Act 1857 as extended by section 51 of the Courts (Supplemental Provisions) Act 1961

Between

SERGEANT MICHAEL HARKIN

Complainant/Respondent

and

VERONICA MAHER

Defendant/Appellant

Judgment of Mr. Justice Dignam delivered on the 29th day of July 2026

INTRODUCTION

1. This application is brought in the context of a case stated by Dublin District Court for the opinion of this court. The case was stated in proceedings brought by the complainant for orders pursuant to section 22 of the Control of Dogs Act 1986. The specific application before this court is for an order that the DAR transcript of the hearing before the District Court be attached as an appendix to the case stated, and for the amendment of one of the questions stated by the District Judge. Alternatively, an order is sought sending the case stated back to the District Judge for amendment by the inclusion of the DAR transcript as an appendix to the case stated.

2. I take the following summary from the case stated itself and from the affidavits filed in respect of this particular application.

3. On the 28th May 2025, the District Court heard complaints by the complainant (the respondent to the case stated) against the defendant (the appellant in the case stated) pursuant to section 22 of the Control of Dogs Act 1986. Section 22(1) provides:

> "22.-(1) Where-
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> (a) on a complaint being made to the District Court by any interested person that a dog is dangerous and not kept under proper control, or
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> (b) on the conviction of any person for an offence under *section 9(2)* of this Act,
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> it appears to the Court that the dog is dangerous and not kept under proper control, the Court may, in addition to any other penalty which it may impose, order that the dog be kept under proper control or be destroyed."

4. The District Court made destruction orders in respect of three dogs, owned by the Appellant.

5. The complaints arose from incidents on the 28th March 2025 and the 3rd April 2025. Evidence was given in the District Court by seven members of An Garda Síochána, by the defendant, and by a third-party friend of the defendant, Ms. Kayleigh McEntee. Submissions were also made. At paragraph 6(a) – (n) of the case stated, the District Judge sets out some of the evidence.

6. In summary, these paragraphs recite that the following evidence was given. On the 28th March 2025, Gardaí were conducting patrols in the area of the defendant's home. The Gardaí say that as they approached the defendant's house, they saw her open the gate to her front garden and let a large XL Bully dog out. The dog had no muzzle or leash. The Gardaí say that the defendant shouted abuse at them and told them to get away from her property. This is in dispute – the defendant gave evidence that the dog jumped over the garden wall and that she opened the gate to go after the dog. She explained that the dog had broken the rear door off its hinges and

therefore she could not let the dog out the back. This is why he was in the front garden. She also denies shouting abuse at the Gardaí. The XL Bully ran towards the Gardaí in a threatening manner. They jumped on walls and bins to take refuge. They were in fear that they would be injured by the dog. A patrol car arrived in response to calls for assistance. The evidence was that when the dog was back on the defendant's property, she shouted that she would release the dog again if the Gardaí did not get away from her property. The dog was subsequently identified as "Oddie". The Gardaí's evidence under cross-examination was that there was only one dog involved, and that there was housing for the dogs at the rear of the defendant's property. Evidence was also given in respect of a drugs search at the property on the 3rd April 2025. The evidence was that there was a "pocket bully" running around the house, and in the back garden two large XL Bully dogs were in one cage barking loudly whenever Gardaí approached and there was a fourth dog in a cage to the right-hand side of this. The Gardaí confirmed the three dogs were in heavy duty metal cages and were removed by dog wardens. The defendant gave evidence that the dogs were like her children. Photographs were shown of the dogs in the home and being affectionate with children. She said there had never been any problems or behavioural issues. This was confirmed by Ms. McEntee. Ms. McEntee also gave evidence that Oddie had jumped over the wall. The defendant accepted that she did not have certificates of exemptions for the three XL Bully dogs.

7. The case stated also records the submissions made on behalf of the parties. Again, it is only necessary to refer to these in brief summary. It was submitted on behalf of the defendant that section 22(1) has two components and that both components have to be established, i.e. that a dog the subject of the complaint is both dangerous **and** is not kept under proper control. It was submitted that there was no evidence upon which the District Judge could find that the dogs were dangerous or not under proper control, particularly where, on the 3rd April, three of the dogs were confined to cages. The complainant's position was as follows *"...it was the threat of the use of the dogs also that the – in other words, the dogs weren't under control and they were controlled for a threat on the members of An Garda Síochána and that it was a deliberate act by one dog, which was a restricted breed for which there is no exemption letter for. That those dogs were used as a threat and were let out deliberately and that could mean one or any of the dogs, Judge, that we couldn't identify at the time. It's only [the Defendant] saying it's one dog in particular but there was three large XL Bullies seized at the time plus a pocket bully."*

8. According to the case stated, the District Judge rose to consider the matter and delivered his ruling some time later. At paragraphs 12 – 15 of the case stated, the District Judge said:

> "12. After hearing from Sergeant Harkin, I indicated that I wanted to take some time to consider my ruling. In my ruling, I indicated I had found it upsetting to see pictures of the dogs with young children. I found that one dog pursued the members of An Garda Síochána but that another XL Bully rammed the back door to such an extent as to remove it from its hinges. I found that section 22 deals with the overall management and control of these animals and Sergeant Harkin satisfied me that this control was not such as to comply with the provisions of the Act.
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> 13. I further found that the gardaí being chased by the dog were terrified and that the dog that left the premises was dangerous and could easily have fatally wounded one or all of the gardaí. I was satisfied that all the dogs presented a danger.
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> 14. When I had made my ruling, Mr. Clarke indicated that the dog which had knocked the door off its hinges was the same dog that had been involved in the incident on the 28th of March 2025. He asked whether that information changed my ruling, and I indicated it did not.
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> 15. Sergeant Harkin then asked me to make a destruction order in respect of all the dogs. Mr. Clarke asked that I not make that order and that the Act provided for other measures short of destruction. I stated I was making the destruction order. I then adjourned the issue costs [sic] for two weeks."

9. It will be noted that the District Judge did not make express findings of fact in respect of some of the matters addressed in the evidence.

10. The District Judge then set out the following questions for the opinion of this court:

> "(i) In order to make an order under section 22(1) of the Control of Dogs Act 1986, is the court required to find that the dog is both dangerous and that it is not under proper control?

(ii) Was there adequate evidence in the case before me on which I could make the orders in relation to the dogs in question?"

11. The current application is focused on the second question.

12. The application before the court is for this question to be amended to read "*Was there adequate evidence in the case before me on which I could make the orders in relation to the dogs in question, the evidence being recorded in the DAR transcript of the hearing on 28 May 2025 at Appendix I to this Case Stated?*" and for an order providing for the "*inclusion of the DAR transcript of the relevant hearing before the District Court on 28 May 2025 (the "District Court Hearing") as Appendix I to the Case Stated.*" The alternative relief that is sought is an order pursuant to section 7 of the Summary Jurisdiction Act 1857 sending the case stated back to the District Judge for amendment by the inclusion of the DAR transcript as an appendix to the case stated

13. There were interactions between the parties prior to completion of the draft case stated in relation to the precise terms of the case stated. At the conclusion of the hearing, the District Judge directed that the DAR transcript be made available to the parties. It seems that the transcript was received by the defendant's solicitor on the 22nd July 2025, but was not received by the complainant. The draft case stated was sent to the complainant on the 9th September 2025. The matter was back before the District Court on the 16th September 2025, and it was adjourned to allow the complainant to review the draft case stated. It came back before the court on the 22nd September 2025. The District Judge gave the parties time to discuss the draft and amendments that were being suggested/sought by the complainant. There followed a discussion between the parties. The complainant had made handwritten notes on the draft case stated, which he felt should be reflected in the finalised case stated, and these were the subject of the discussion. These are set out at paragraph 4 of the grounding affidavit and the version of the draft case stated containing the handwritten notes is exhibited to the grounding affidavit of the complainant. It seems that counsel on behalf of the defendant took the view that most of the proposed amendments were irrelevant. He agreed to one amendment. This change was made and by agreement the District Judge was provided with a copy of the amended draft, and he signed that draft. It is important to say that there does not appear to be any dispute about these facts. Indeed, the complainant accepts that "*...when all but one of my proposed changes were not accepted by Counsel for the Appellant, I agreed that the Case Stated*

could be put before Judge Halpin on the basis that it was agreed." He emphasises that this was in circumstances where he did not have legal advice, had no previous direct experience of case stated proceedings, and he did not have a copy of the DAR transcript.

14. The basis of the complainant's application is that in order for this court to be in a position to answer the question, it is necessary for the DAR transcript to be before this court. At paragraph 3 of the written submissions of the complainant, it is put as follows: *"In circumstances where the second question submitted concerns the "*evidence*" at the District Court Hearing and the Transcript is a complete record of that evidence, the Transcript will ensure that the High Court is fully apprised of the "*evidence*" when answering the second question submitted. The Transcript is the complete and therefore the best and most accurate summary of the evidence at the District Court Hearing.*" In essence, the complainant's point is that the recital of the evidence in the case stated is deficient in that it does not record the full details of the evidence. For example, the complainant says at paragraph 20 of his grounding affidavit that while:

> "[T]he Case Stated records the evidence of members of AGS that the Appellant "deliberately opened the gate" of her front garden and "let a large XL bully out", and that she "shouted abuse at gardaí and told them to get away from her property", the evidence was considerably more detailed as to the nature of this alleged behaviour. In his evidence, Garda Seán McLoughlin stated (Transcript, p. 3):
>
> > *"I observed Veronica Maher open the gate to the front garden and let a large XL Bully out – with no muzzle and no leash and no control over the dog. She then stated to gardaí: "Get the fuck away from my house, yous murderers." I was in absolute fear of my life and safety from the imminent vicious attack that was presented from the XL Bully. I believed Veronica Maher to have opened this gate on purpose and direct the dog at members of An Garda Síochána. The XL Bully ran towards members in a threatening manner. I jumped at the nearest wall possible for safety and the XL Bully was extremely close to biting me on the boot, my right boot. I called for urgent armed assistance over the radio due to the extreme threat presented from serious injury from the XL Bully. During this, Veronica Maher was calling members: "Murdering scumbags, get the fuck away from my house"."*

Further examples are given in paragraphs 21 – 33 of the complainant's affidavit.

THE APPLICABLE PRINCIPLES

15. The general principles applying to cases stated are well-established. In *Mara v. Hummingbird [1982] I.L.R.M. 421*, at 426, the Supreme Court (*per* Kenny J) considered the nature of an appeal by way of case stated. Kenny J said:

> "A case stated consists in part of findings on questions of primary fact, e.g. with what intention did the taxpayers purchase the Baggot Street premises. These findings on primary facts should not be set aside by the Courts unless there was no evidence whatever to support them. The Commissioner then goes on in the Case Stated to give his conclusions or inferences from these primary facts. These are mixed questions of fact and law and the court should approach these in a different way. If they are based on the interpretation of documents, the court should reverse them if they are incorrect for it is in as good a position to determine the meaning of documents as is the Commissioner. If the conclusions from the primary facts are ones which no reasonable Commissioner could draw, the Court should set aside his findings on the ground that he must be assumed to have misdirected himself as to the law or made a mistake in reasoning. Finally, if his conclusions show that he has adopted a wrong view of the law, they should be set aside. If however they are not based on a mistaken view of the law or a wrong interpretation of documents, they should not be set aside unless the inferences which he made from the primary facts were ones that no reasonable Commissioner could draw. The ways of conducting business have become very complex and the answer to the question whether a transaction was an adventure in the nature of trade nearly always depends on the importance which the Judge or Commissioner attaches to some facts. He will have evidence some of which supports the conclusion that the transaction under investigation was an adventure in the nature of trade and he will have some which points to the opposite conclusion. These are essentially matters of degree and his conclusions should not be disturbed (even if the court does not agree with them, for we are not retrying the case) unless they are such that a reasonable Commissioner could not draw them or they are based on a mistaken view of the law."

16. In *Ó Culacháin v. McMullan [1995] 2 I.R. 217*, Blayney J, giving the judgment of the Supreme Court, quoted from that judgment of Kenny J and, after pointing out that the Court of Appeal in England and Wales had reached a similar view, then stated

(at pp. 222–3) that when a court has before it a case stated seeking its opinion as to whether a particular decision was correct in law, the following principles apply:

> "(1) Findings of primary fact should not be disturbed unless there was no evidence to support them;
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> (2) Inferences from primary facts are mixed questions of fact and law;
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> (3) If the conclusions of the judge showed that he had adopted a wrong view of the law, they should be set aside;
>
> (4) If the conclusions were not based on a mistaken view of the law, they should not be set aside unless the inferences which he had drawn were ones which no reasonable judge could draw;
>
> (5) Some evidence might point to one conclusion, other evidence to the opposite: these were essentially matters of degree and the judge's conclusions should not be disturbed (even if the court did not agree with them, for it was not retrying the case) unless they were such that a reasonable judge could not have arrived at them or they were based on a mistaken view of the law."

17. The courts have also had to consider what should be included in a case stated and what should be considered by this court on such an appeal. In *Irish Agricultural Machinery Ltd v Ó Culacháin [1987] IR 458*, Murphy J said:

> "Appendix I referred to above consists of a bound volume of coloured photographs recording in detail the assembly processes used by the appellant and it includes also an analysis of the labour and financial input of the appellant company. It was agreed by the appellant and the respondent that this documentation formed part of the case stated and was properly before the court. In addition, however, reference was made in the case stated to notes of evidence given relating to the sales procedures and to work performed on machinery which were also set out in a schedule to the case stated but in respect of which the learned trial judge stated that he had made no particular finding. The schedule was apparently incorporated on the express understanding that the respondent reserved his right to contend that the schedule did not form part of the case stated. This somewhat unsatisfactory position arose as a result of protracted negotiations between the appellant and the respondent in relation to the form of the case stated. I declined to have regard to the notes of evidence aforesaid on the basis that it comprised or

included material in respect of which the learned trial judge expressly stated that he had made no particular finding. It seems to me unthinkable that on an appeal by way of case stated the appellate tribunal could consider facts and form a view thereon which might be in conflict with the view which the court of first instance would have taken if it had felt it necessary to form a decision thereon. Furthermore, I would be reluctant to accept that it is appropriate for a court or tribunal stating a case to incorporate therein a detailed note or transcript of the evidence given *viva voce* before it. In principle this is unnecessary for resolving a disputed question of law and in practice it would be very difficult if not impossible without far reaching changes in the facilities available to many courts and tribunals for recording the evidence given before them."

18. In *Mitchelstown Co-Operative Society Limited v The Commissioner for Valuation [1989] IR 210*, Blayney J considered the principles applying to cases stated. He adopted the principles which had been set down by Murphy LJ in *Emerson v. Hearty and Morgan [1946] N.I. 35*. Murphy LJ said at p. 36:—

> "We have thought that this may be a convenient opportunity to call attention to the principles which ought to be observed in drafting Cases Stated.
>
> The Case should be stated in consecutively numbered paragraphs, each paragraph being confined, as far as possible, to a separate portion of the subject matter. After the paragraphs setting out the facts of the Case there should follow separate paragraphs setting out the contentions of the parties and the findings of the Judge.
>
> The Case should set out clearly the Judge's findings of fact, and should also set out any inferences or conclusions of fact which he drew from those findings. The task of finding the facts and of drawing the proper inferences and conclusions of fact from the facts so found is the task of the Judge. It does not fall within the province of this Court. Accordingly, it is not legitimate by setting out the evidence in the Case Stated and omitting any findings of fact to attempt to pass the task of finding the facts on to the Court of Appeal. What is required in the Case Stated is a finding by the Judge of the facts, and not a recital of the evidence. **Except for the purpose of elucidating the findings of fact it will rarely be necessary to set out any evidence in the Case Stated save in the one type of case where the question of law intended to be submitted is whether there was evidence before the Judge which would justify him in deciding as he did.**" [emphasis added]

19. Blayney J agreed with and adopted this statement of principles. He then said that an examination of the case stated before him showed that it had not been drafted in accordance with those principles. He said:

> "The case does not contain any clear statement of the facts found by the Tribunal. The entire transcript of the evidence is annexed to the case and it is stated in the case that "the Tribunal accepted the uncontradicted evidence adduced on behalf of the appellants in these appeals as regards the descriptions given of the various installations." This is the only part of the case which could constitute a finding of primary facts, but in my opinion it is clearly not such a finding. Evidence remains evidence even where it has been accepted. There must still be a finding of fact based on such evidence. There is no such finding in the case. Furthermore it is in the case that the facts must be found and stated. This court should not be required to go outside the case stated to some other document in order to discover them.
>
> The same principle applies to the contentions of the parties, the inferences to be drawn from the primary facts, and the Tribunal's determination. All these must be found within the case, not in documents annexed. In the same way, the fact that the judgment of the Tribunal is annexed to the case does not dispense the Tribunal from setting out its determination in the case. This is a specific requirement of s. 5 of the Act of 1988.
>
> It may be objected that the observance of these principles will lead to the case stated being excessively long. That may be so, but it will result in this court being able to deal with the matter much more expeditiously. **Furthermore, it seems to me that it would be a dangerous precedent to permit any divergence from the principles to be observed in the drafting of cases stated which were set out by Murphy L.J. in his judgment in *Emerson v. Hearty and Morgan* [1946] N.I. 35. In my opinion it is of great importance that these principles should continue to be observed.**" [emphasis added]

20. More recently, Barrett J in *McNamara v The Revenue Commissioners [2021] IEHC 485* considered the principles in *Emerson*. Mr. McNamara had relied on the final sentence in the quote from *Emerson* to assert a right to rely on the transcript. Barrett J said:

> "66. Court Note: Mr McNamara was at pains in this application to emphasise the line in *Emerson*, at p.36, where Murphy L.J. states:

"*Except for the purpose of elucidating the findings of fact it will rarely be necessary to set out any evidence in the Case Stated save in the one type of case where the question of law intended to be submitted is whether there was evidence before the Judge which would justify him in deciding as he did*".

67. This, Mr McNamara claims is the line that enables him to have the entirety of the transcript evidence placed before the High Court in this case. The court respectfully disagrees. Murphy L.J. clearly contemplates that there will be instances in which evidence will be set out in the case stated. He most certainly does not endorse as a matter of practice that the entirety of the transcript of the proceedings in the forum below will be placed before the court to which the case is stated. And it is striking that although Denham J. in *McGinley* adopts the observations of Murphy L.J. in *Emerson* as to how a case stated should be 'packaged', she sees no inconsistency in also stating that "*It is most unusual to append to a case stated the transcript of the evidence as was done in this case*". ("[M] *ost unusual"* but not altogether prohibited, *i.e*. facts may present in which such an approach may be merited.)

21. At paragraph 70, he identified the principle that "*It is most unusual to append to a case stated the transcript of the evidence (McGinley; Williams)*" and noted at paragraph 71: *"[M]ost unusual" but not altogether prohibited, i.e. facts may present in which such an approach may be merited."*

22. In *Glynn & Ors v The Revenue Commissioners [2021] IEHC 780*, Stack J had to consider an application to admit the transcript of the evidence given to the Tax Appeal Commissioners. Her judgment is effectively in two parts. In the first, she had to consider whether a transcript could simply be produced to the High Court at the hearing or whether a formal application to append the transcript to the case stated must be made. In the second part of her judgment, she went on to consider whether the transcript should be appended.

23. In relation to the first issue, she decided that an application must be made, rather than the transcript simply being produced. This issue does not arise in the current case because the complainant has properly brought such an application. However, Stack J's reasoning is relevant because her decision is based on the general principle that the court should not have regard to a transcript and she referred to some of the authorities already mentioned above.

24. She quoted the passage from *Emerson v Hearty* and noted that the principles set out in that case had been adopted by Blayney J in *Mitchelstown Co-Op Society* and approved in *McGinley v Criminal Assets Bureau [2001] IESC 49*. In *McGinley*, Denham J observed that it was not in general appropriate to append the transcript to a case stated.

25. She also referred to *Dublin City Council v. Williams [2010] 1 I.R. 801*, in which Geoghegan J referred to the fact that the transcript of the proceedings before the Circuit Court had been sent forward and said "*in accordance with correct practice, I take the view that I should confine myself to the findings made by Deery J*." (at para. 4).

26. Stack J did note that in *Dublin City Council v Williams* "*the questions of law in that case (set out in full at pp. 803–4) do not seek to challenge primary findings of fact. Similarly, in McGinley, the questions stated by the Circuit judge were quite clearly pure issues of law relating to his jurisdiction, and which did not seek in any way to challenge primary findings of fact on the basis that there was no evidence to support them*" and therefore in those cases "*the Supreme Court was setting out the general position which will apply when a case is stated for the opinion of this Court.*"

27. Stack J also referred to *McNamara v. Revenue Commissioners*.

28. These principles led her to the conclusion that a transcript should not simply be produced when it has not been exhibited to the case stated unless there is agreement to that effect. The reference to an agreement to that effect derives from the judgment of Twomey J in *Byrne v Revenue Commissioners [2021] IEHC 262*. I return to this judgment.

29. In the second part of her judgment, Stack J turned to the question of whether or not the case stated should be amended to append the transcript and, in considering this, emphasised the established principle that the transcript should only be relied upon when the appeal is on the basis that there was no evidence to support the primary findings of fact. She said:

> "27 Because this Court can only consider whether the determination of the Commissioners was erroneous on points of law, the evidence before the Commissioners, and therefore the transcript of that evidence, is generally not

material to a consideration of the questions on which the opinion of the High Court is sought."

30. Having identified that general principle, she went on to set out the well-known quotes from *Mara v Hummingbird* and *Ó Culacháin v McMullan* and then acknowledged that the evidence/transcript may, in limited circumstances, i.e. where there is a challenge to primary findings of fact on the ground that there is no evidence to support them, be material. She said:

"31 There is, however, no doubt but that this Court has in an appropriate case a jurisdiction to consider whether a primary finding of fact was made with no evidence to support it, and a transcript could obviously be relevant to that issue.

32 That will only be the case, however, where primary findings of fact are challenged as being erroneous in law because there is no evidence to support them. It is worth repeating the clear statement to that effect in *Emerson*, which was approved by Blayney J. in *Mitchelstown Co-Op Society v. Comr.* for Valuation:

> *"Except for the purpose of elucidating the findings of fact it will rarely be necessary to set out any evidence in the Case Stated save in the one type of case where the question of law intended to be submitted is whether there was evidence before the judge which would justify him in deciding as he did."*

33 **Therefore, if a case is stated on the issue of whether there is an error of law in making any particular primary finding of fact in the absence of any evidence for that finding, then that portion of the transcript setting out the relevant evidence will be required by the High Court in order to determine the issue of law, and that portion of the transcript should then be included in the case stated**. Alternatively, it may be necessary to include the entire transcript of the evidence of a witness or of all witnesses for the purpose of showing that there was no evidence to support a primary finding of fact. If the portion of transcript thereby required to be put before this Court is lengthy, it will in all likelihood not be feasible to put it in the main body of the case stated, and it may be better to include it by way of exhibit pursuant to s. 949AQ (7A).

34 **In general, therefore, where it is proposed to appeal on the basis that the Appeal Commissioners erred in law in making a primary finding of fact without any evidential basis, it will be appropriate to include the relevant portion of the evidence** (such as the evidence of the relevant witness) in the

document comprising the case stated, whether in the body of the case stated itself or, if more convenient, in a formal appendix to it as now provided for in s. 949AQ (7A). **However, that will not be appropriate in appeals which do not seek to challenge primary findings of fact**.

35 In making that very clear distinction between primary findings of fact and inferences or conclusions drawn from them, I am conscious that this distinction is not always clearly maintained in the caselaw. However, at the hearing of this application, it was accepted by counsel for Revenue that there was such a distinction and that the transcript would only be material to an appeal against primary findings of fact as being made without any evidence to support them.

36 The question for consideration in this application is whether this particular case stated includes a question of law for the opinion of this Court as to whether one or more findings of primary fact made by the Appeal Commissioners are erroneous in law as having been made without any evidence to support them. It is therefore necessary to look at the points of law in the case stated, which are set out at para. 121 of the case." [emphasis added]

31. Twomey J had earlier reached a different conclusion in *Byrne v Revenue Commissioners [2021] IEHC 262*. He held that the transcript of the relevant hearing could (and indeed should) be relied upon. In that case, Revenue objected to the inclusion in the case stated of transcripts of the hearing before the Tax Appeals Commissioner, on the basis of its claim that the High Court does not review evidence outside that which is set out in the case stated. The appellant submitted that the hearing of the case stated could not proceed without the transcript. In light of this dispute, the parties agreed that the hearing should proceed before the court by reference to the transcript *de bene esse*, with the court determining, after the hearing, whether it could be relied upon. Twomey J held that the transcript could be relied upon where the question was whether there was any evidence to support the findings of primary fact (this is in line with *Emerson v Hearty* and *Mitchelstown*) but also where the question is whether the conclusions on mixed questions of fact and law were such that no reasonable commissioner could have drawn them on the basis that there is no evidence or insufficient evidence for the conclusions. This refers to inferences drawn from primary facts. Twomey J said:

"33 It is important to note that it is not suggested by either party that the transcript does not accurately record what occurred at the hearing before the

Commissioner. Against this background, Revenue's position appears to be that this Court should be limited, in its review of whether there was an error on a point of law by the Commissioner, to the description of the Determination as set out by the Commissioner and any documentary evidence attached thereto, but not the transcript of the hearing, if one is available.

34 However, as is clear from *Hummingbird*, the role of this Court in a Case Stated involves considering, in the context of findings on primary fact made by a commissioner, whether there is, or is not, *evidence to support* that finding on primary fact.

35 Similarly, it is also clear from *Hummingbird* that the role of this Court on a Case Stated, in the context of conclusions on mixed questions of fact and law made by a commissioner, is whether no reasonable commissioner could have drawn the conclusion reached. In this regard, *if there is no evidence*, or the evidence is insufficient, for the conclusion on a mixed question of fact and law reached by a commissioner, then it can be said that no reasonable commissioner could have reached that conclusion.

36 It is clear therefore that, whether dealing with findings on primary fact or conclusions on mixed questions of fact and law, the role of this Court is to consider *the evidence* before a commissioner. In this regard, an official transcript of the hearing is the most accurate summary of the evidence which was before a commissioner and so as a matter of general principle, this Court cannot agree that in a Case Stated, the High Court is not entitled to have regard to the transcript, and thereby be deprived of what is, in effect, the evidence before a commissioner.

37 To take an example, if a taxpayer claimed in a Case Stated that findings on primary facts should be set aside, he would have to establish (as noted hereunder) that '*there was no evidence whatever to support*' the findings on primary facts made by the commissioner. However, if at the same time as making this claim, the taxpayer was to claim, as Revenue are now claiming, that this Court is not entitled to have regard to the transcript, then this would, in this Court's view, defy logic. This is because the Court would be asked to make a finding that there was *no evidence whatever* to support the commissioner's conclusion, without having access to the best record of what *evidence was actually before* the commissioner."

32. It is clear from paragraphs 35 and 36 in that quote that this judgment extended the limited circumstances in which the evidence/transcript may be considered by the

court beyond those identified in *Emerson* and *Mitchelstown*. This judgment was considered by Barrett J in *McNamara* and by Stack J in *Glynn*. Barrett J held at paragraph 42 that it is only authority for a case where there is agreement between the parties as to how to proceed. In *Glynn*, Stack J also referred to the same aspect of Twomey J's judgment in the first part of her judgment, i.e. in relation to how a transcript might be before the court. She said:

> "23 By contrast, although counsel for Revenue relied heavily on *Byrne v. Revenue Commissioners* [2021] IEHC 262 as effecting a sea change in relation to the admission of transcripts, I do not read that judgment in that way. In *Byrne*, the parties simply agreed that the transcript could be produced to the High Court *de bene esse* and it consequently does not constitute an authority on the appropriate way to introduce the transcript into the case stated. It does, however, contain some comments on when it is appropriate or necessary for this Court to have regard to the transcript and I refer to this further below, when considering the second application of Revenue."

33. Her consideration of the "*comments on when it is appropriate or necessary for the court to have regard to the transcript*" is more important for present purposes than her discussion of the manner in which the evidence should be put before the court. Senior Counsel for the complainant correctly pointed out that Twomey J had decided in that case when it was appropriate and necessary to have regard to the transcript rather than simply making comments on the subject.

34. Stack J said at paragraphs 60-61:

> "60 Revenue relied heavily on *Byrne v. Revenue Commissioners* [2021] IEHC 262 in support of its application. However, two of the questions in that case stated expressly asked if there was sufficient evidence before the Appeal Commissioners to support his findings. It was therefore no surprise that Twomey J. held that the transcript was relevant to the questions in the case stated. Having upheld the various primary findings of fact on the basis of evidence in the transcript which supported them, Twomey J. then considered whether the inferences drawn from those findings were ones which no reasonable Commissioner could have drawn.
>
> 61 I entirely agree with the analysis at para. 52–58 of *Byrne* that those inferences are drawn from primary facts (which he had accepted were made on the evidence), but where I respectfully disagree with the approach in *Byrne* is that it

does not seem to me that the question of whether an inference is properly drawn from the primary facts should be tested against the transcript. It seems to me that the Appeal Commissioners should put in the case stated all of the findings of primary facts from which he draws the necessary inferences and that the exercise of considering whether the inferences were ones which no reasonable Commissioner can draw is conducted by an analysis of the primary findings of fact as set out in the case stated and whether they support the inferences drawn from them."

35. She then said at paragraphs 65-68 in relation to the general principle:

"65 I do not think that there is anything in *Ó Culacháin v. McMullan* which is intended to depart from the clear statement in Emerson to the effect that the case stated should not include any evidence save in the one type of case where the error of law is said to be that there was no evidence before the judge which would justify him in deciding as he did.

I think the better view, therefore, is that it is only where a notice pursuant to 949AP (2) questions the correctness of a primary finding of fact on the basis that there was no evidence to support it that the transcript will be material to the case stated.

66 As stated by the Supreme Court in McGinley and reiterated by Barrett J. very recently in McNamara, this will not be the norm. The notice pursuant to s. 949AP (2) is required to identify with particularity the error of law for the opinion of the High Court, and it is only where such a notice leads to the drafting of a case stated to include a question as to whether any primary finding of fact had evidence to support it that the evidence will need to be before the High Court. In those circumstances, the relevant evidence should be set out in the case stated itself or in an exhibit to the case stated.

67 Even where a primary finding of fact is appealed as being erroneous in law as having no evidence to support it, it would, in my view, be wrong to assume that because the test is that the primary fact is unsupported by the evidence, it logically follows in all cases that the entire transcript of the evidence or even of a single witness needs to be included in order for the High Court to consider the point of law. In at least some cases, particular exchanges may be pivotal, and it will be sufficient to include only those in the case stated.

68 In conclusion, it is my view that the case stated does not identify any alleged error of law to the effect that material findings of fact were made without any

evidence to support them. There is no application to amend the questions of law in the case stated and, if there were, I would reserve to the consideration of that application the issue of whether such an application can be made where the point of law sought to be introduced was not identified, at least in substance, in the notice of the appellant pursuant to s. 949AP (2)."

36. I agree with Stack J's analysis summarised in paragraph 61 of her judgment, i.e. that the lawfulness of inferences or conclusions by a decision-maker are to be tested against the findings of fact set out in the case stated, and it is only where there is a challenge to those findings of fact on the grounds that there was no evidence to support them that regard should be had to the transcript. Crucially, Twomey J does not appear to have been referred to *Mitchelstown Co-Operative Society* or *Emerson v Hearty*.

37. In my view, the applicable principle is that it is only where the point of law raised is that there was no evidence to support the primary findings of fact that regard should be had to the transcript of evidence.

CONCLUSION

38. It was submitted on behalf of the complainant that this is a case in which the point of law for the opinion of the High Court is whether the findings of fact were made without evidence to support them, or that it is analogous to this type of case (reference was made to paragraph 52 in *Glynn*). The relevant question in the case stated is: "*Was there adequate evidence in the case before me on which I could make the orders in relation to the dogs in question?*" I can not accept that the complainant's characterisation of this question is correct for two reasons.

39. Firstly, the question relates to the conclusions or inferences made by the District Judge and not to his findings of primary fact. Secondly, the question is not whether there was **any** evidence but whether there was adequate evidence.

40. In relation to the first of these, it is clear from the terms of the question that it is concerned with whether there was evidence upon which **the orders** could be made and not whether there was evidence upon which the findings of fact could be made. The question asked by the District Judge is "*Was there adequate evidence in the case*

before me on which I could ***make the orders*** *in relation to the dogs in question?*" [emphasis added]. The orders were the destruction orders. These could only be made on the basis that the requirements of section 22(1) were met. For the purpose of this discussion, I proceed on the basis that the District Judge, before he may make such orders, must be satisfied that the dog(s) in question "*appear(s)*" to be "*dangerous*" and "*not kept under proper control*" (of course, whether or not both aspects have to be satisfied is the subject of the first question and, therefore, this should not be taken as a finding). Findings that a dog is "*dangerous*" and/or "*not kept under proper control*" are conclusions or inferences from primary findings of fact, rather than primary findings of fact in themselves. Thus, in its own terms, the case stated relates to the evidential basis for the conclusions or inferences drawn by the District Court from the findings of primary fact made by him and not to the evidential basis for the primary findings themselves. There is in fact no case made in the appeal that the District Judge's primary findings of fact, such as they are, were unsupported by any evidence. The question therefore does not fall within the narrow circumstances in which a transcript may be relied upon.

41. In relation to the second point, even if we assume that the question is concerned with the primary findings of fact, or that the conclusions are primary findings of fact, the general principle, as set out in the authorities discussed above, is that the evidence or transcript should not be considered by the court save where the question is whether there was **any** evidence to support the findings of primary fact. The question of whether there was adequate evidence is a very different question and does not come within that exception. On one view, it would require the High Court to evaluate all of the evidence and to weigh the evidence given for and against particular propositions because in order to assess the adequacy of the evidence, regard would have to be had for any evidence to the contrary. That goes far beyond a determination on a point of law or on a mixed question of fact and law. On that view, it goes beyond this court assessing whether there was any evidence to support the District Judge's decision and requires the court to weigh the evidence to determine whether it was sufficient or adequate.

42. If, on the other hand, the question is read as meaning whether there was adequate evidence to allow a reasonable decision-maker to reach the findings that the District Judge made in this case, it is difficult to see why the transcript would be necessary in circumstances where the District Judge recites some of the evidence.

This must be taken as the evidence that the District Judge (correctly or incorrectly) considered relevant. The assessment that this court would have to make is whether that evidence is adequate to support his findings.

43. I would also refuse the relief sought on the ground that the terms of the case stated were agreed by the parties and that no application was made to append the transcript to the case stated when it was still before the District Court. The complainant deals with these features in his affidavits. He explains that he made some notes on the draft case stated in relation to proposed amendments. He accepts that he suggested changes to the case stated, discussed them with counsel for the defendant, and ultimately agreed that a very slightly amended case stated could be sent by the District Court. He explains that this was in the context of him not being legally represented, having no prior experience dealing directly with a case stated, and him not having received the transcript prior to this discussion and agreement. I have some sympathy for the complainant in those circumstances. However, they do not explain why he did not seek an adjournment until he had obtained a copy of the transcript, or refuse to agree that the draft case stated could be presented to the District Judge as an agreed draft, or why he did not simply ask the District Judge to determine the precise terms of the case stated in light of the dispute between the parties. In this regard, the comments by Dunne J on behalf of the Supreme Court in *DPP v Davitt [2023] 2 ILRM 117*, are apposite:

> "As can be seen, the District Judge provides the parties with a draft of the case stated to enable them to agree the facts set out in the draft case stated. In the event that there is disagreement, the facts are to be found by the judge. There is no suggestion that the parties herein were not in a position to furnish submissions on the facts set out in the consultative case stated. Indeed the parties accepted the fact that they had had the opportunity to review the facts before they were finalised by the District Court Judge… It is unfortunate that, prior to the finalisation of the consultative case stated by the District Judge, the DPP did not seek to amend or add to or alter the findings of fact, if it was to be contended that certain other facts not mentioned in the consultative case stated were of relevance… It goes without saying that for the purpose of any consultative case stated that the findings of fact set out therein are of crucial importance to the High Court in giving its opinion on the issue of law raised. It follows, therefore, that if either of the parties have an issue about the facts set out in the consultative case stated this should be dealt with before the draft case stated is finalised. Matters of fact raised subsequently, by way of submissions or otherwise, simply cannot be taken into

account as they are not part of the findings of fact determined by the District Judge relevant to the point of law raised in the consultative case stated…The second point to make is that, as it has already been pointed out, the parties had an opportunity to invite the District Court Judge to amend the draft consultative case stated if it contained a finding of fact that was contended to be wrong, or alternatively, if some fact which was material to the issue had been omitted. This was not done, and therefore the observations of the trial judge at para. 7 of her judgment set out above seem to me to be correct."

44. In all of those circumstances, I must refuse the relief sought.