



THE HIGH COURT

[2026] IEHC 560

Circuit Court Record No: 2023/ 00055

BETWEEN

JS

APPELLANT

AND

DONEGAL COUNTY COUNCIL

RESPONDENT

THE HIGH COURT

Circuit Court Record No: 2023/ 00160

BETWEEN

JS

APPELLANT

AND

THE DEPARTMENT OF SOCIAL PROTECTION

RESPONDENT

JUDGMENT of Ms. Justice Egan delivered on the 31 day of July, 2026

Introduction

- [1] On 4 December 2024, the Circuit Court upheld two determinations of the Workplace Relations Commission ("WRC") dismissing two separate complaints brought by the Appellant under the Equal Status Act 2000-2018 ("the Equal Status Act"). In essence, these complaints alleged that Donegal County Council ("DCC") and the Department of Social Protection ("the Department"), respectively (together, "the respondents") had

discriminated against him on grounds of gender by failing to provide him with social housing support and one-parent family payment while, it was alleged, providing such support to his former wife. The Circuit Court Judge ("the Northern Circuit Judge") found that the Appellant had failed to establish any facts from which discrimination could be inferred. The Appellant now appeals to this Court on a point of law.

- [2] Issues arising from the breakdown of the Appellant's marriage to another Polish national have been before the courts since in or about 2016, when the couple separated. In particular, the former couple were involved in bitterly disputed family law proceedings concerning custody, access and maintenance of the two children of their former marriage. The couple ultimately divorced in 2020.
- [3] Although the present proceedings are not family law proceedings, it will be necessary to refer to aspects of these family law proceedings in the course of this judgment. As these family law proceedings were heard in camera pursuant to the provisions of s. 45 of the Courts (Supplemental Provisions) Act 1961, I have anonymised the title of the present proceedings accordingly.

No record of the decision of the Circuit Court hearing under appeal

- [4] On taking up this appeal in the Sligo Circuit Appeal sessions, I noted that a significant difficulty arose. The Appellant had not placed before this Court any record of the Circuit Court decision or hearing under appeal. This is not a *de novo* appeal, but an appeal on a point in law. This Court cannot determine whether a lower court has made an error on a point of law without a record of the decision. Absent the transcript, it is equally difficult to see how this court could determine whether, as the Appellant maintains, the Northern Circuit Judge ought to have recused himself or, indeed, whether the hearing breached the Appellant's right to fair procedures.

The DAR of the Circuit Court hearing under appeal

- [5] The Appellant's Circuit Court appeal had originally been listed for hearing in a previous Sligo Circuit Appeal list, some months before the hearing before me. On that occasion, the Appellant had apparently gained the impression that the High Court might be prepared to listen to and hear argument on the digital audio recording ("the DAR") of the Circuit Court proceedings during the hearing of the appeal on a point of law. This, it was said, would facilitate the Appellant in scrutinising, assessing and making submissions on the DAR.
- [6] I find it difficult to accept that the Appellant was truly of this view. As is apparent from the decision of Phelan J. (see para 47 below), the Appellant is well versed in the procedures applying to the release of the DAR. He could at any time have made a formal application for the release of the transcript of the DAR. Yet, he did not do so. As

- the Circuit Court hearing had occupied a full day, it was plainly inappropriate to expect this Court to listen to the DAR in real time during the running of the appeal before me.
- [7] In the absence of any record of the decision of the Circuit Court, both respondents offered to make available the notes of their solicitor and counsel of the hearing before the Circuit Court. This offer was made shortly after I called the list over and was repeated by each respondent when the Court rose at 1pm. I afforded the Appellant some time over lunch to consider these hearing notes. Having done so, the Appellant declined to agree the notes of the hearing or even the note of the ultimate rulings made by the Northern Circuit Judge. Instead, he requested that this Court take up and make available a transcript of the DAR. A transcript of the DAR usually takes several days to prepare. As such, the Appellant's request, made half way through the first day of the two-day Circuit Appeal hearing, was plainly too late.
- [8] As matters stood therefore at 2pm on the first day of this hearing, the High Court had before it no record of the decision of the lower court from which the point of law was raised. The obligation lies on the Appellant to identify any relevant errors of law which he contends vitiate that decision. The respondents were inclined to rest on the onus of proof and submitted that, as the Appellant had not discharged the onus of demonstrating an error of law, the appeal should be dismissed.
- [9] Ultimately, however, this issue was overtaken by events. The case did not conclude within the two-day period allocated to it in the Sligo Circuit appeals sessions. It was therefore necessary to adjourn the matter for several weeks. In light of this, I decided to request that a transcript of the DAR of the Circuit Court was prepared. This was circulated to the parties in advance of the resumed hearing date. All the parties therefore had an opportunity to make any submissions that arose on foot of the DAR, which they did.

The WRC Adjudications

The Appellant's social housing support complaint against DCC

- [10] The Appellant's claim under the Equal Status Act was that the alleged provision by DCC of Social Housing Support to his former wife, but not to him, comprised gender-based discrimination.
- [11] The adjudication officer, Emile Daly ("the adjudication officer") held that DCC had not engaged in prohibited discriminatory conduct under the Equal Status Act in determining that it could not process the Appellant's application for Social Housing Support. She found that the Appellant had not been refused Social Housing Support, whether on discriminatory grounds or otherwise. Rather, she found as a fact that DCC could not process the Appellant's application because he had failed to provide the income and benefit documentation required for the statutory means test.

- [12] The adjudication officer noted that the Appellant had to prove facts from which it could be inferred that he had been treated less favourably than a female comparator because he was male. This not only required proof that his former wife had obtained the relevant support, but also that she had not been required to provide the same information and undergo the same process of assessment as him.
- [13] The adjudication officer found as a fact that no such proof had been adduced. DCC had requested that the Appellant provide vouching documentation which it was entitled to seek. In particular, Revenue documentation showing that the Appellant had not been in PAYE eligible employment in 2019 did not prove that he had also received no social welfare payments for that period. In particular, he had not provided a Department of Social Protection statement of payment covering part of the relevant period of assessment.
- [14] The adjudication officer also recorded that DCC had offered to adjourn the WRC hearing for three months so that it could clearly identify the documents required and process a fresh application for Social Housing Support within a fast-track timeframe. However, the Appellant declined that offer because he wanted a decision on his discrimination complaint concerning his treatment in 2020.
- [15] The adjudication officer noted the Appellant's extensive research on gender discrimination, included in his 1,610-page WRC bundle. She fully accepted that many of his submissions on equality and non-discriminatory public decision-making were legally correct and described his knowledge of European, national and international discrimination law as impressive. However, the test remained whether the Appellant had proven facts from which less favourable treatment on grounds of gender could be inferred. She found that he had not.

The Appellant's social welfare complaint against the Department

- [16] In the second adjudication, the adjudication officer dismissed the Appellant's complaint that the refusal by the Department of his application for identified social welfare benefits was discriminatory. Once again, the Appellant complained of discrimination on grounds of gender and family in circumstances where he contended that his former wife was in the same circumstances as he and had received those benefits.
- [17] The adjudication officer noted that the Appellant had conceded at the adjudication that he was not eligible under the Social Welfare Consolidation Act 2005 for certain social welfare benefits which it is not necessary to detail here. He had therefore narrowed his complaint to an allegation of adverse treatment in relation to one benefit in particular, namely one-parent family payment.
- [18] The adjudication officer concluded that the Appellant had not provided any evidence, other than an assertion, that his former wife had in fact received one-parent family payment, a fact which she determined was fatal to his complaint.

- [19] The adjudication officer found that, even if the Appellant had proven that his ex-wife did receive the benefit at the material time, he had incorrectly applied the eligibility criteria for one-parent family payment. These required that the parent must have a child normally residing with them and that the parent must have the main care and charge of the child. The adjudication officer noted that on the Appellant's own description of his circumstances at the material time, he had custody for 13 hours per week less than for his ex-wife. In such circumstances, the Department's assessment that the Appellant was not eligible for one-parent family payment constituted a proper consideration and application of the statutory eligibility criteria.
- [20] Accordingly, the adjudication officer determined that the Appellant could not prove a *prima facie* case of discrimination on grounds of gender.
- [21] Nor could he prove a *prima facie* case of discrimination on grounds of family status. In this respect, the adjudication officer determined that the complainant's chosen comparators were unidentified and in any event, were separated persons and so in the same class as the Appellant.
- [22] The adjudication officer also referred to s. 14(1)(a)(i) of the Equal Status Act, which provides an exemption to equal status complaints if the action in question arises on foot of compliance with an enactment or court order. As the Department's eligibility assessment had been carried out under the auspices of a statutory regime, same was exempt under s. 14(1)(a)(i).
- [23] In concluding, the adjudication officer noted that, whilst he had made general arguments based on EU Law, the Appellant had not identified any particular national provision of the Equal Status Act (or any other provision of Irish law) which he contended was contrary to EU Law, still less identified any cogent basis of non-compatibility. Therefore, no question requiring referral to the Court of Justice of the European Union ("CJEU") had been identified and it was not appropriate to make such a reference.
- [24] In summary having regard to the written and oral submissions by both parties the adjudication officer found that the Appellant had not been discriminated against by the Department on any of the grounds alleged.

The Rulings of the Northern Circuit Judge

The Circuit Court ruling of the Appellant's appeal in respect of the social housing support complaint against DCC

- [25] The Northern Circuit Judge considered the Appellant's complaint of discrimination arising from his failure to receive social housing support between 2020 and 2024.

- [26] The Northern Circuit Judge cited Regulation 11(1) of the Social Housing Assessment Regulations, which required a household to provide information and documentation requested by DCC for the purpose of verifying a social housing application.
- [27] The Northern Circuit Judge found that DCC was entitled to require the documentation necessary to apply the statutory means test. The Court accepted the evidence of the DCC's witness, Mr. Canning, that all applicants are subject to the same means assessment.
- [28] The Northern Circuit Judge found as a fact that, in the absence of the documentation and information requested, the Appellant's social housing support application could not be validated. He agreed with the WRC that the documentation required had not been furnished to DCC at the relevant time and was not in fact provided until January 2024. Independently of that finding, the Northern Circuit Judge concluded that there was insufficient evidence to establish that the Appellant's former wife was in receipt of social housing support.
- [29] Accordingly, the Northern Circuit Judge held that there was no evidence of discrimination, whether on grounds of gender or otherwise.
- [30] The Northern Circuit Judge also declined to make a reference to the CJEU, concluding that no issue of European Union law arose.
- [31] Having found no evidence capable of supporting an allegation of discrimination, the Court dismissed the Appellant's complaint.

The Circuit Court ruling on the Appellant's appeal in respect of the social welfare complaint against the Department

- [32] The Northern Circuit Judge noted that the Appellant had narrowed his claim to one-parent family payment.
- [33] The Northern Circuit Judge observed, however, that the Appellant had confirmed in his application form to the WRC that neither he nor his former wife were entitled to one-parent family payment.
- [34] The Northern Circuit Judge found as a fact that the Appellant's ex-wife had custody of the children two thirds of the time and that he had custody of the children one third of the time. As such, the Northern Circuit Judge found that the Appellant failed the eligibility test for one-parent family payment.
- [35] The Northern Circuit Judge therefore found that Appellant had not presented any *prima facie* evidence of discrimination and that there was no basis either for a finding of discrimination under national law or for referral to the CJEU.
- [36] Furthermore, in light of the fact that the Appellant did not meet the statutory criteria for one-parent family payment, s. 14 (1)(a) provided an exemption in any event.
- [37] In respect of both appeals, the Northern Circuit Judge was satisfied that none of the evidence presented by the Appellant was relevant to the discrimination alleged. This

evidence had consisted of an affidavit of means sworn by the Appellant's wife in the context of the previous family law proceedings on foot of which he intended to demonstrate that she had not qualified for certain benefits she had allegedly received. He had also intended to submit certain statistical evidence to demonstrate that single mothers were granted social welfare support (and possibly social housing support) more often than single fathers.

- [38] The Northern Circuit Judge therefore dismissed the Appellant's complaint as against both DCC and the Department with costs, to include the costs of a motion brought by the Appellant some weeks previously in which the Northern Circuit Judge held that it was not appropriate for the Appellant to join his infant children as co-plaintiffs to the proceedings.

Family Law and Judicial Review Proceedings

- [39] As will become evident, the Appellant maintains that the Northern Circuit Judge was guilty of bias against him in his approach to these proceedings. Such bias is said to arise as a result of the involvement of the Northern Circuit Judge in one aspect of the Appellant's family law proceedings, which I will outline here.
- [40] A judge of the District Court ("the District Judge") made maintenance and custody orders throughout 2017 which were appealed by the Appellant to the Circuit Court and ultimately came on for hearing before the Northern Circuit Judge on 22 March 2019. The Northern Circuit Judge dismissed the Appellant's appeal and affirmed the orders of the District Judge ("the Northern Judge's family law ruling").
- [41] The Appellant sought leave to judicially review the Northern Circuit Judge's family law ruling. Ultimately neither the Appellant's former wife nor the State opposed the application for judicial review and in an *ex-tempore* judgment delivered on 6 July 2019, Meenan J held that the Circuit Court hearing of the 22 March 2019 was "*not in accordance with law*". Having considered the transcript of the hearing, Meenan J granted the order of *certiorari* sought and remitted the matter to the Circuit Court for the appeal to be reheard by a judge other than the Northern Circuit Judge. Meenan J held that none of the other numerous issues raised by the Appellant, including, it appears a social welfare issue not dissimilar to that raised in the present proceedings, were properly before the court.
- [42] Unusually, in circumstances in which the Appellant had obtained the principal relief sought by him in the judicial review proceedings, he applied for a leapfrog appeal directly to the Supreme Court. When this was refused, the Appellant appealed Meenan J's judgment to the Court of Appeal.
- [43] Giving judgment for the Court of Appeal in *S v. S* [2021] IECA 204 Costello J (as she then was) upheld the decision of Meenan J. The Court of Appeal noted that judicial review was distinct from a *de novo* appeal and that the numerous issues sought to be

raised by the Appellant (including issues in relation to social welfare) did not arise. Accordingly the appeal was dismissed.

[44] The Court of Appeal stated:

"In view of the deeply felt concerns expressed by the [Appellant] and the unsatisfactory hearing which occurred on 22 March 2019, I would request the President of the Circuit Court to assign a judge who has no previous involvement in this litigation to hear and determine all outstanding issues, including any interlocutory applications, between the [Appellant] and his wife in relation to custody access and maintenance of the children. The court recommends that this should occur as soon as the resources of the court permit, given the passage of time and the ages of the children."

[45] I will refer to this as the "Court of Appeal remittal judgment." I pause to observe that neither the judgment of Meenan J nor the Court of Appeal remittal judgment detail precisely what aspects of the hearing before the Northern Circuit Judge on 22 March 2019 were "*unsatisfactory*". The Appellant suggests that the Northern Circuit Judge was hostile and impatient towards him and indeed threatened him with contempt of court on that occasion. However, the Appellant has not substantiated that suggestion. Specifically, the Appellant did not place any of the pleadings in the aforementioned judicial review proceedings before this court. Nor did he furnish this court with the transcript of the DAR of the Circuit Court hearing of 22 March 2019. As matters stand therefore, I am guided simply by the findings of the High Court and the Court of Appeal that the hearing of 22 March 2019 was "*not in accordance with law*" and "*unsatisfactory*" and that the Northern Circuit Judge should have no further involvement in these family law proceedings after they were remitted to the Circuit Court for rehearing.

[46] Arising, it appears, from this remittal, the Appellant subsequently brought another application by way of judicial review seeking, *inter alia* to preclude three named Circuit Court judges from dealing with the remitted family law District Court Appeal concerning custody, access and maintenance. This in itself is of significance. It demonstrates a pattern of behaviour on the part of the Appellant in which he accuses members of the judiciary of bias and seeks their recusal.

[47] On 27 November 2023, Phelan J delivered an *ex tempore* judgment in respect of this (second) application for leave to apply for judicial review. Phelan J held that three elements of the Appellant's case reached the low threshold of arguability whilst also meeting the other elements of the test in *G v. DPP*, namely:

- the plea that the delay in obtaining a report from a psychologist under s. 32 of the Guardianship of Infants Act 1964 to consider the voice of the former couple's children and to make welfare recommendations was unreasonable and breached

the Appellant's rights to constitutional justice and to a hearing within a reasonable time.

- the plea that the refusal of one of the three named Circuit Court judges to release the DAR of one of its earlier hearings breached the Appellant's right to constitutional justice and/or an effective remedy.
- the plea that the Appellant was entitled to damages for breach of his rights to constitutional justice arising from the unreasonable delays just identified.

[48] Phelan J declined to grant leave in respect of the Appellant's complaint of discrimination against him as a male home maker on the basis that no stateable case for unequal treatment had been identified. Phelan J also determined that the Appellant's rights to natural justice had not been infringed and that he had not, as alleged, been denied access to an interpreter.

[49] Importantly, Phelan J also held that the Appellant had failed to make out arguable grounds in respect of his challenges to the impartiality of the three named Circuit Court judges and indeed to the District Court Judge whose orders were under appeal. In respect of the District Court Judge, Phelan J noted that the Appellant's complaint was several years out of time and was wholly unfounded. Indeed, she held that the Appellant's persistent and fixated complaints regarding the District Court hearing were concerning. Phelan J declined to grant leave in respect of the applications for prohibition as against the three named Circuit Court Judges. She found that the Appellant's assertions of *mala fides* and inappropriate conduct were not grounded in any coherent or logical statement of fact and were entirely lacking in the necessary foundation for such serious claims. Phelan J held that these particular complaints were frivolous and vexatious and refused to grant leave to seek relief on this basis.

[50] In passing, I note that Phelan J's decision also records that the Appellant had also made complaints to the Judicial Council in relation to several members of the judiciary. Further details, however, were not available.

[51] Notwithstanding the refusal of leave, the Appellant named the three Circuit Court Judges as respondents. The Chief State Solicitor's Office contended that their joinder was procedurally incorrect and invited the applicant to reconstitute the proceedings. When he declined to do so, the respondents brought a motion seeking to be struck out of the proceedings. In her judgment on this application *JS v. MK and Judges of the Northern Circuit* [2024] IEHC 353, Jackson J noted that, in opposing this application, the Appellant continued to make references to misconduct and loss of judicial immunity which she regarded as problematic because Phelan J's judgment had already definitively rejected such allegations and no appeal had been pursued. Having reviewed the authorities and the procedural history, Jackson J. held that the three Circuit Court Judges had been improperly joined. Since no allegation of *mala fides* or

personal misconduct survived, their participation was inconsistent with both Order 84 rule 22(2A) and the broader jurisprudence protecting judicial independence. A judge generally has no personal interest in defending an order and that the proper contradictor is ordinarily the opposing party to the original proceedings. The Court therefore ordered that the three Circuit Court Judges be struck out of the proceedings.

Appeal on a Point of Law

- [52] I will provide some legal context before reviewing the Appellant's Notices of Appeal,
- [53] In *Deely v. The Information Commissioner* [2001] 3 IR 439, McKechnie J. made the following observations about the scope and limitations of an appeal taken on a point of law to the High Court (in that instance pursuant to s. 42(1) of the Freedom of Information Act). He said at p. 452:

"There is no doubt but that when a court is considering only a point of law, whether by way of restricted appeal or via a case stated, the distinction in my view being irrelevant, it is, in accordance with established principles, confined as to its remit, in the manner following:

(a) it cannot set aside findings of primary fact unless there is no evidence to support such findings;

(b) it ought not to set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision making body could draw;

(c) it can however, reverse such inferences, if some were based on the interpretation of documents and should do so if incorrect, and finally;

(d) If the conclusion reached by such bodies shows that they have taken an erroneous view of the law, then that also is a ground for setting aside the resulting decision..."

- [54] At paragraph 14 of *Fox v. Data Protection Commissioner* [2024] IECA 92 Noonan J. stated:

*"As the section makes clear, an appeal to the High Court is limited to a point of law and is thus significantly more confined than the prior appeal to the Circuit Court. The distinction between the two forms of appeal is discussed in some detail in the judgment of the High Court. Whereas the appeal to the Circuit Court is governed by the Orange test, the appeal to the High Court on a point of law is considered in the judgment of this Court in *Nowak v Data Protection Commissioner* [2022] IECA 95. This Court cited with approval the earlier judgment in *Fitzgibbon v The Law Society of Ireland* [2015] 1 IR 516 where Clarke J. observed that in appeals on a point of law, a higher degree of deference, so far as the facts are concerned, is paid by the appellate body to the decision of the first instance body in an appeal of on a point of law only, as opposed to an appeal against error."*

- [55] In an appeal on a point of law, it is for the appellant to identify the alleged errors of law and to articulate a claim within these parameters. As will become apparent when I review the Appellant's Notice of Appeal, he has not even attempted to do this. Rather, this aspect of his appeal is essentially-and unapologetically- an attempt to obtain a *de novo* hearing of the matters already adjudicated upon by both the WRC and the Circuit Court.
- [56] However, there is a second aspect to this appeal. As referred to above, the Appellant also maintains that the Northern Circuit Judge was guilty of subjective bias against him and furthermore that his rights to fair procedures and natural justice were breached in a number of respects in the course of the Circuit Court hearing. In truth, given that he identifies no error of law in the Circuit Court decision, this complaint of bias and unfairness is the gravamen of the Appellant's appeal.
- [57] It is common case that if the Appellant could establish that the Circuit Court hearing was vitiated by bias, or indeed that the Northern Circuit Judge ought to have recused himself on grounds of bias then this would be a valid ground upon which to allow an appeal such as this. The same would also follow if the Appellant demonstrated that the Circuit Court hearing was conducted in breach of his right to fair procedures, then this would be a valid ground upon which to allow an appeal such as this. The question, however, is whether these criticisms are made out.

Grounds of Appeal Against the Circuit Court Decision

- [58] The judgments of Costello J., Phelan J. and Jackson J. discussed above all comment on the lengthy and diffuse nature of the Appellant's papers. The same pattern is continued here. The Appellant's papers are voluminous and densely written. The papers in respect of the appeal against DCC run to 883 pages of closely typed script, and those concerning the Department run to 1096 pages of closely typed script.
- [59] Despite this, the Appellant has not identified the point or points of law upon which he contends the Circuit Court erred. Nor are the findings of primary fact or the inferences drawn from those facts challenged in accordance with the parameters set out at para 53 above. In fact, the Notices of Appeal do not engage with the judgment of the Northern Circuit Judge at all, beyond asserting that it was wrong not to overturn the WRC decisions. This aspect of the appeal is, to all intents and purposes, a replication of the appeal already dismissed by the Circuit Court.
- [60] As regards the allegation of bias, the Notice of Appeal contends that the WRC adjudicator and the Northern Circuit Judge were biased against him. The claim is advanced in broad and largely general terms.
- [61] Thus, the Appellant's principal contention is that the structures governing judicial appointment, promotion and discipline give rise to a lack of judicial independence in

cases involving the State. He submits that WRC adjudicators and judges are appointed, promoted and dismissed by the Government. He further contends that the Attorney General is involved in the judicial appointments process and that lay representatives appointed by Government sit on the Judicial Appointments Commission. According to the Appellant, judges therefore consider that their future promotional prospects depend upon maintaining favourable relations with the Government and its agencies. This, he pleads, means that judges are reluctant to decide against State bodies, to disapply national law that is inconsistent with European Union law, or to make references to the CJEU.

- [62] The Appellant also places reliance upon alleged institutional connections between the judiciary and the Chief State Solicitor. He pleads that, because the Chief State Solicitor represents judges in judicial review proceedings and in proceedings brought against them, this gives rise to an inference of bias against the entire bench in any case involving a State body. Similarly, he points out that the respondents' solicitors are members of the Law Society and that barristers are members of the Bar Council. Both organisations have some involvement in the judicial appointments process. From this, the Appellant appears to infer a general bias against lay litigants. The Notices of Appeal further plead that High Court judges lack impartiality because of their connection with the Government and seeks a referral of these matters to the CJEU.
- [63] The Notices of Appeal also criticize the earlier family law proceedings in the District Court. The Appellant alleges that a District Court judge's involvement in the Judicial Appointments Commission gives him significant influence within the judiciary, with the result that other judges are effectively discouraged from departing from or overturning his decisions. He further alleges that both the District Court Judge and the Northern Circuit Judge effectively pre-determined his entitlement to housing support and social welfare benefits in the course of the family law proceedings.
- [64] The Notices of Appeal refer only briefly to the Court of Appeal remittal judgment and do so without placing it in any clear context. It is not at all apparent from reading the Notices of Appeal that this Court of Appeal remittal judgment - which is anonymised - concerned either the Appellant or the Northern Circuit Judge.
- [65] The Notices of Appeal plead that the decisions made by the Northern Circuit Judge in the present proceedings were retaliatory measures arising from proceedings previously brought by the Appellant against him. He alleges that the Northern Circuit Judge ought to have recused himself but refused to do so. The Appellant's allegations in this regard are directed primarily towards actual, rather than apparent or objective, bias. He contends that, due to an ulterior motive and personal animus towards him, the Northern Circuit Judge deliberately excluded evidence that would, he says, have established his case. As indicated at para 37 above, this evidence consisted, in the first instance of material from the prior family law proceedings. This appears to have

been tendered with a view to demonstrating that the Appellant's former wife had effectively defrauded the State in connection with her applications for social housing support and the One-Parent Family Payment. The Appellant also pleads that the Northern Circuit Judge deliberately excluded statistical evidence constituting evidence of indirect discrimination. According to the Appellant, the exclusion of both of these categories of evidence was itself indicative of retaliatory conduct undertaken for an improper purpose on the part of the Northern Circuit Judge.

[66] The Appellant also alleges a number of breaches of fair procedures to which I will refer below.

Summary of the Appellant's further submissions

[67] After the release of the DAR/transcript of the Circuit Court hearing of 4 December 2024, I permitted all parties to deliver legal submissions by reference to the DAR/transcript directed to the bias issue. Those submissions were to be expressly confined to the allegation of bias by reference to that material. Nevertheless, the Appellant's submissions ranged well beyond that leave and repeated points already advanced in writing and orally. I do not intend to address those parts of the submissions which fall outside the leave granted. In any event, they raise no new point of substance.

[68] Reduced to their essence, the Appellant's submissions are that the Northern Circuit Judge should not have heard the case. He contends that the Judge lacked independence and impartiality; had prior involvement in the litigation by dint of having heard the family proceedings concerning him; had allegedly demonstrated bias against male homemakers or fathers; failed to comply with prior final judgments (i.e. the Court of Appeal remittal judgment); wrongly interpreted EU law rather than referring questions to the CJEU; excluded or failed to engage with the affidavit of means and the statistical evidence; failed to give adequate reasons; and used costs as a means of intimidation.

Relevant legislative provisions

It may be helpful to briefly summarise the principal legislative provisions of relevance to this appeal.

Equal Status Act

[69] The Equal Status Act prohibits discrimination, harassment and related behaviour in connection with the provision of services, property and other opportunities to which the public generally or a section of the public has access. Section 3 of that Act provides that discrimination shall be taken to occur where a person is treated less favourably

than another person is, has been or would be treated in a comparable situation on any of the prohibited grounds, which of course include gender and family status.

- [70] Section 38A of the Equal Status Act deals with the burden of proof and provides that where in any proceedings facts are established from which it may be presumed that prohibited conduct has occurred in relation to the person in question, it will be for the respondent to prove to the contrary. The burden therefore rests initially on the Appellant to prove that discrimination can be presumed from the facts of the case. In general to prove discrimination a complainant must advance comparators relevant to the particular ground of discrimination advanced.
- [71] Complaints under the Equal Status Act are adjudicated upon by the WRC and s. 28(1) provides that not later than 42 days from the decision of the WRC, the complainant or respondent involved in the claim may appeal against the decision to the Circuit Court by notice in writing specifying the grounds of the appeal. Section 28(3) provides that no further appeal lies, other than to the High Court on a point of law.
- [72] Thus, the decision of the WRC may be appealed to the Circuit Court by notice in writing specifying the grounds of appeal and no further appeal lies thereafter other than an appeal to the High Court on a point of law.

Legislative Provisions Relevant to the Complaint Against DCC

- [73] Regulation 17 of the Social Housing Assessment Regulations 2011 provides that the income of a household for the purposes of assessing eligibility for social housing support shall be calculated in accordance with written guidance issued by the Minister for Housing and Local Government and Heritage to housing authorities.
- [74] The relevant written guidance is the Social Housing Support, *Household Means Policy 2021* (approved by the Minister on 16 March 2021). This policy sets out the manner in which local authorities will assess the means of applicant households for the purposes of determining the household's ability to provide accommodation from its own means and by extension its eligibility or otherwise for social housing support. At s. 3, the policy specifies the income that is assessable in considering such applications. This includes income from employment, self-employment, maintenance payments, rental properties, occupational and social welfare pensions and with the exception of specified payments (which are not of immediate relevance) all income from social insurance and social assistance payments, allowances and benefits.

Legislative Provisions Relevant to the Complaint Against the Department

- [75] Chapter 7 of Part 3 of the Social Welfare Consolidation Act 2005 as amended governs entitlement to the one-parent family payment. Section 173(1) provides that subject to the Act and to Regulations made under the Act, the one-parent family payment shall be payable to any qualified parent.

- [76] Section 172 defines a qualified parent as including a separated spouse who is the parent of at least one relevant child who normally resides with that person.
- [77] The Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, S.I. No. 142 of 2007, provide at Regulation 128, under the heading "Residence of Child", that, for the purposes of Chapter 7 of Part 3 of the Social Welfare Consolidation Act 2005, a relevant child is to be regarded as normally residing with a qualified parent, or another person to whom one-parent family payment is payable, where the child is resident with that parent or other person and that parent or other person has the main care and charge of the child.

Structure

- [78] I will first consider whether the two rulings of the Northern Circuit Judge in respect of the Appellant's complaint against DCC and the Department respectively reveal any error of law.
- [79] Thereafter, I will consider the question of recusal on grounds of bias. I will conclude by considering the alleged breaches of fair procedures in the course of the Circuit Court hearing.

Discussion of the Northern Circuit Judge's ruling in respect of the Appellant's complaint against DCC.

- [80] For the reasons set out below, I see no error of law in the Northern Circuit Judge's ruling.
- [81] The Appellant's claim rests upon an assertion that he was treated less favourably than his former wife because he is male.
- [82] An allegation of discrimination cannot be established by assertion alone. In order to discharge the burden imposed by s. 38A, the Appellant was required to establish facts from which discrimination could properly be inferred. Given the facts of this case, this required evidence not merely that a female comparator received social housing support, but also that such comparator was treated more favourably in the assessment process or relieved from requirements imposed upon the Appellant.
- [83] The legislative scheme demonstrates that DCC was both entitled and, indeed, obliged to seek documentation necessary to assess eligibility. The Northern Circuit Judge made no error of law in so concluding. Mr Canning's evidence established that the documentation sought was required for the proper assessment of the Appellant's application, and there is no basis upon which this Court could interfere with that finding of fact.
- [84] Similarly, there is no basis for disturbing the finding - again based on Mr Canning's evidence - that the same documentation would have been required from any applicant

irrespective of gender. There was no evidence that female applicants were exempted from those requirements or subjected to a different standard of assessment.

[85] The finding that the documentation required to support the Appellant's social housing support application had not been furnished to DCC at the relevant time and was not provided until January 2024 was also fully supported by the evidence.

[86] The Appellant contends that submissions advanced on behalf of DCC to the Circuit Court were inconsistent with the evidence given by its witness. I am unable to accept that contention. The record indicates that counsel for DCC clarified an apparent inconsistency between documentation obtained from the Revenue Commissioners and documentation obtained from the Department of Social Protection. Such clarification did not alter the evidence and did not give rise to any procedural unfairness.

[87] Accordingly, the conclusion of the Northern Circuit Judge that DCC was entitled to require such documentation, that same had not been submitted and that there was no evidence of more favourable treatment of any female comparator were findings open to the Circuit Court on the evidence.

[88] The Northern Circuit Judge was also fully entitled to conclude that there was, in any event, insufficient evidence to establish either that the Appellant's former wife was in receipt of housing support or that, if she was, her application had been assessed in a manner more favourable than that applied to the Appellant.

[89] In this regard, the Appellant contends that the Circuit Court erred in failing to have regard to certain evidence arising from family law proceedings. The material in question consisted principally of an affidavit of means sworn by the Appellant's former wife averring to certain assets and sources of income, including jobseeker's allowance, child benefit and maintenance payments. It did not establish that she was in receipt of social housing support.

[90] In my view, the Circuit Court was correct to regard this material as irrelevant to the issues arising for determination. Even if admitted, this affidavit of means was incapable of proving that the Appellant's former wife received social housing support or that she had been subjected to a more favourable assessment process.

[91] In those circumstances, the Circuit Court was entitled to conclude that the Appellant had failed to establish facts from which gender discrimination could be presumed.

My conclusion in respect of the Northern Circuit Judge's ruling in respect of the Appellant's complaint against DCC.

[92] Having considered the Notice of Appeal and the grounding materials, I am satisfied that the Appellant has failed to identify any error of law in the judgment of the Circuit Court.

- [93] Far from disclosing discrimination, the evidence demonstrated that DCC applied the ordinary statutory requirements governing social housing assessments. The fact that the Appellant's application could not be processed in the absence of the requisite documentation does not constitute less favourable treatment on grounds of gender.
- [94] The Appellant's submissions contain extensive references to principles of equality and non-discrimination. Those principles are undoubtedly important. However, the issue before the WRC and the Circuit Court was not whether discrimination in public administration is unlawful, it plainly is, but whether there was evidence of discrimination in the present case. The WRC and the Circuit Court correctly concluded that there was not.
- [95] I am satisfied that the Circuit Court correctly identified and applied the relevant legal principles. Likewise, the findings of fact made by the Circuit Court were supported by the evidence and disclose no error of law. The Appellant has failed to establish any facts from which discrimination on the grounds of gender could properly be inferred. Accordingly, subject to the issue of bias and fair procedures (with which I deal separately below), it is appropriate to dismiss the appeal.

Discussion of the Northern Circuit Judge's ruling in respect of the Appellant's complaint against the Department

- [96] I can identify no error of law in the judgment of the Circuit Court.
- [97] The Appellant's case rests essentially on the assertion that, because he is male and/or because of his family status, he was treated less favourably than his former wife in his application for one-parent family payment.
- [98] In the present case, there was simply no evidence, other than the Appellant's assertion, that his former wife received one-parent family payment at the time in question. In this respect, the Appellant criticises the Northern Circuit Judge for failing to have regard to the affidavit of means sworn by his former wife. This sets out the Appellant's former wife's property ownership in sole and joint ownership in Poland and also avers that the deponent is in receipt of jobseeker's allowance, child benefit and maintenance. She is not stated to be in receipt of one-parent family payment. This material is therefore of no assistance to the case against the Department.
- [99] In any event, even if the Appellant's former wife had received the benefit in question, there was ample evidence supporting the Northern Circuit Judge's conclusion that the Appellant had not demonstrated that he satisfied the statutory criteria for entitlement.
- [100] The statutory scheme required consideration of whether the children in question normally reside with the claimant and whether the claimant has the main care and charge of those children. The Appellant's pleadings do not disclose any error in the conclusion of the WRC adjudication officer and the Northern Circuit Judge that he had custody and care of the children for 13 hours less per week than his former wife. As

such, it was demonstrably open to the Circuit Court to conclude that the Appellant had not therefore satisfied the eligibility criteria.

- [101] The Appellant has not identified any female comparator who was shown to have been relieved of the statutory eligibility requirements imposed upon him. Nor has he shown that the Department applied a different standard to him because he is male.
- [102] The mere fact that his former wife may have been in a different position under the custody arrangements does not establish discrimination. It points instead to the application of statutory eligibility criteria.
- [103] The Circuit Court was also entitled to rely, in the alternative, on s. 14(1)(a)(i) of the Equal Status Act. The Department's assessment was carried out pursuant to a statutory social welfare regime. Where a respondent acts in compliance with an enactment, the Equal Status Acts provide an exemption in respect of the impugned conduct. The Circuit Court therefore made no error of law in concluding that the complaint was, in any event, exempt under that provision.
- [104] Nor do I consider that the Circuit Court erred in declining to refer a question to the CJEU. The Appellant did not identify any provision of national law said to be incompatible with EU law, nor did he identify any question of EU law necessary for the determination of the proceedings. The Circuit Court was therefore entitled to conclude that no reference was appropriate.

My conclusion in respect of the Northern Circuit Judge's ruling in respect of the Appellant's complaint against the Department.

- [105] I am satisfied that the Appellant has failed to identify any error of law in the judgment of the Circuit Court.
- [106] The evidence did not establish facts from which discrimination on the grounds of gender or family status could properly be inferred. The Appellant did not prove that his former wife received the benefit in question, did not establish that he satisfied the statutory eligibility criteria, and did not demonstrate that any comparator was treated more favourably.
- [107] Crucially, the Appellant has always positively asserted that neither he nor his former wife were in fact entitled to one parent family payment. His complaint is that, although neither such party were so entitled, his wife nonetheless received this benefit. This has been evident since 21 October 2019, when the Appellant first issued a formal complaint to the Department in which he stated: *'there are two parents, where one receives benefits without meeting the conditions for receiving it, while the other does not meet and does not receive benefits'*.
- [108] Similarly the Appellant's complaint form of 28 January 2020, states *"despite the fact that both [my wife] and I do not meet any conditions for receiving benefits, she receives*

them..." The complaint form further states that, "I do not qualify for all these benefits, just like my wife, but Social Welfare in Letterkenny awarded my wife those benefits..."

- [109] The Appellant invites this court to find that his former wife misrepresented her means in the course of her application for this benefit (and, it appears, in her application for social housing support). It goes without saying that this court could never make a finding to this effect in proceedings in which the Appellant's former wife is not involved. In any event, there is not a scintilla of evidence that she committed fraud in the manner alleged by the Appellant. Furthermore, even if it were established that the Appellant's wife had received benefits to which she was not entitled as a result of misrepresentation, this would not in itself establish less favourable treatment by reason of the Appellant's gender.

Unlawful failure to recuse and bias/breach of fair procedures

- [110] The Department's submission addresses two separate issues under this heading: first, whether the Northern Circuit Judge ought to have recused himself, and second, whether the allegations of bias made by the Appellant are borne out by the DAR transcript of the hearing of 4th December 2024. The first of these is the key question. The second issue - which relies upon an interrogation of the fairness of the conduct of the hearing as recorded on the DAR transcript - is more properly examined under the auspices of alleged breach of fair procedures.

Whether the Northern Circuit Judge ought to have recused himself

- [111] By way of background, the Appellant's appeal from the WRC adjudications was first listed before the same Northern Circuit Judge in November 2024. On that date, the court determined that there was no legal basis upon which the Appellant could join his two children as co-appellants to the appeal. This application appears to have been before the court for some time and the Appellant did not, at that stage, make any application to the Northern Circuit Judge to recuse himself. In his pleadings, the Appellant asserts that he did not recognise the Northern Circuit Judge on this occasion and only became aware that it was the same judge who would have previously dealt with his family law proceedings when he saw his name in the court diary for the forthcoming substantive hearing. If this is so, the Appellant ought to have moved immediately to request recusal. Instead, he waited until 4 December 2024 and then raised this issue when the substantive hearing was already in train.
- [112] I have carefully considered the entire DAR transcript, including the "recusal application," such as it was.
- [113] I first observe that it is extremely hard to identify the basis of the Appellant's application for recusal or even indeed that recusal was in fact being sought. The Appellant stated vis-a-vis the Judge *"he knows my case and the case has been dealt*

with in the High Court, Court of Appeal and twice in the Supreme Court." The Appellant then stated that he wanted to read out what had been decided by the Court of Appeal (in, I can only infer, the remittal judgment). He sought to do this, however, by suddenly, and without permission, playing an audio file on his computer. The Appellant did not provide any context whatsoever for what he was about to play or for what he had played. The Northern Circuit Judge quite reasonably requested the Appellant to desist from playing audio files in court.

- [114] The Appellant did not explain the relevance of the Court of Appeal remittal judgment to the respondents or, more importantly, to the Northern Circuit Judge then having seisin of the case. It is evident from the transcript that the Appellant did not inform the legal representatives of the respondents or the Northern Circuit Judge that a) the remittal judgment concerned the Appellant specifically; b) that the remittal judgment concerned the Northern Circuit Judge; c) that the remittal judgment concerned, quashed a prior decision of the Northern Circuit Judge in family law proceedings involving the Appellant and remitted those proceedings to be heard by a different Circuit Court Judge or d) that this was the basis for the Appellant's objection to the Northern Circuit Judge hearing the case. The decision of the Court of Appeal was not handed into Court, furnished to the respondents, or even correctly cited by the Appellant. Nor were the decisions of Meenan J. (if any written record was to hand), Phelan J. or Jackson J.
- [115] The DAR records that the Appellant then stated that the Northern Circuit Judge had decided his case in the family division and suggested that issues of social welfare had arisen in that family law case also. He stated that he did not wish the Northern Circuit Judge to "*conduct the proceedings*" due to "*some incorrect proceedings*" in the previous case of which he stated the Judge was aware. Once again, the Appellant did not, however hand in or cite correctly copies of any of the relevant decisions
- [116] The Appellant segued into a complaint that the Northern Circuit Judge was connected to the Chief State Solicitor; that all judges are chosen by politicians and thus connected to government and government departments specifically. Therefore all members of the Irish judiciary are predisposed towards finding in favour of State bodies such as DCC and the Department. As a result the Appellant proclaimed that he could not obtain a fair and impartial hearing before any Irish court and that the question of discrimination which he raised should therefore be referred to the CJEU.
- [117] Separately, the Appellant also adverted to the fact that the Northern Circuit Judge was "*represented by the state solicitor*" which comprised representation by the "*government side*" thereby also depriving him of access to a fair trial. Again, the Appellant did not indicate in what context or in what case the Northern Circuit Judge had been represented by the Chief State Solicitor. Instead, the transcript shows that this was put as a broad objection to State representation and alleged political links.

- [118] The Appellant therefore requested the Northern Circuit Judge to send the issues arising to the CJEU because the *"current relationships between the public offices in Ireland and the judges makes it impossible for me to claim my rights based on the European law."*
- [119] The Northern Circuit Judge informed the Appellant that he had been a Judge for several decades, that he had taken his judicial oath and that, as far as humanly possible, he would conduct the hearing in a fair, non-biased and non-discriminatory manner.
- [120] The Northern Circuit Judge sought to ascertain if the Appellant's assertion was that he would not get a fair trial before him specifically or if it was a general assertion due to the Appellant's beliefs about the Irish legal system. Each time the Northern Circuit Judge tried to narrow down the issue, the Appellant continued to conflate his recusal application (such as it was) with generalised complaints about the Irish legal system and his request for a preliminary reference.
- [121] The Appellant indicated that the whole system did not allow for the possibility of a fair trial. The Appellant reminded the Northern Circuit Judge that in his Notice of Appeal he had expressly requested referral to Europe because he could not avail of access to an independent judiciary in this country as a result of the factors outlined above. Notably, this Notice of Appeal was prepared before the Appellant was even aware that the Northern Circuit Judge would be hearing the case.
- [122] It is clear from the transcript that the Northern Circuit Judge ultimately understood the Appellant's application as seeking a reference to the CJEU because he could not get a fair hearing from any judge in this country. To this end, the Northern Circuit Judge requested the respondent to provide him with legal authority in relation to referrals to the CJEU. The judge indicated that as the Appellant was a lay litigant he would afford him every possible chance of prosecuting his case.
- [123] The Northern Circuit Judge considered the Appellant's application for a referral to the CJEU and concluded that he needed to apply national law to the case and that the point had not yet been reached at which a referral could arise.
- [124] It appears, in summary that the application for recusal (such as it was) was not clearly expressed as having been based on either actual or objective bias on the part of the Northern Circuit Judge arising from his earlier hearing of the family law District Court appeal on 22 March 2019.

Legal principles in relation to recusal

- [125] The starting point is that an objective test is applied to allegations of judicial bias. As described by Denham J. in *Bula Ltd v. Tara Mines Ltd (No. 6)* [2000] 4 IR 412 (*"Bula"*)(at 449):-

"A judge has a duty to sit and hear a case. However, in certain circumstances it is appropriate that he or she disqualify himself or herself from a particular case."

The test is not whether that judge believes he or she would be impartial. Nor is it whether the judge or judges on a motion to set aside such a judgment believes the judge was or would be impartial. Nor is it whether the parties consider the judge impartial. The test is objective. This has been analysed by the Constitutional Court of South Africa: President of the Republic of South Africa v. South African Rugby Football Union 1999 (4) S.A. 147 at para. 48:-"

'...the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour, and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reason, was not or will not be impartial."

[126] In *Rooney v. Minister for Agriculture and Food* [2001] 2 ILRM 37, Keane C.J. cautioned that "a judge cannot permit a scrupulous approach by him to be used to permit parties to engage in forum shopping under the guise of challenging the partiality of the court." Moreover, "the need to ensure the appearance, as well as the reality, of impartiality must be reconciled with the proper functioning of the judicial system." Those observations are of particular relevance in circumstances where the Appellant's allegations of bias are not restricted to the Northern Circuit Judge alone but extend to three other members of the Circuit Court, a Judge of the District Court, the WRC and indeed it appears the entire Bench.

[127] Prior involvement in proceedings, even where a Judge has made an order or a decision unfavourable to a party and even if that decision has been set aside on judicial review as being unsatisfactory does not of itself show that the Judge cannot bring an impartial mind to later unconnected proceedings involving the same litigant. The question is not whether an earlier hearing was flawed, but whether the circumstances of that flawed hearing would lead an informed observer to think the judge cannot be impartial in the

later case. Recusal after an earlier hearing is a matter of degree and context - that assessment depends on all the circumstances, including the grounds on which the recusal application is advanced.

My decision on the “recusal” application

- [128] Seeking a judge’s recusal should be by way of a formal application on notice to the court and to the other parties. It is a serious issue and requires a formal application. At the very least it is incumbent on the party seeking recusal to clearly set out the precise basis upon which recusal is sought.
- [129] In a recusal application based upon actual bias the applicant must identify what precisely they contend might lead the judge to decide the case other than on the factual and legal merits. The Appellant’s argument to this Court is that the Northern Circuit Judge deliberately set out to hold against him either because he had a personal antipathy towards him on account of the prior Court of Appeal remittal judgment, or potentially, because of a discriminatory attitude towards men in general. However, what he presented to the Northern Circuit Judge was a number of general objections, a variety of apprehensions about the entire Irish court system and a request that the legal issues he wished to ventilate would be referred to Europe. It is very clear that this is how the Circuit Court judge understood the nature of the objection being made.
- [130] The application for recusal (such as it was) was not clearly expressed as having been based on bias on the part of the Northern Circuit Judge arising from his earlier hearing of the District Court appeal in the family law proceedings on 22 March 2019.
- [131] It is also significant that the Judge was not explicitly asked to recuse himself. Rather, the Appellant sought a reference to the CJEU and indicated that he would otherwise withdraw the case. The Judge explained that a reference could not be made before the case was heard and that if the Appellant withdrew his case, costs would follow. When that was explained, the case proceeded.
- [132] The Appellant says that the Judge refused to withdraw and then conducted the case in a retaliatory manner to effectively punish him for the Court of Appeal remittal judgment. The Appellant is therefore clearly alleging actual rather than objective bias against the Northern Circuit Judge. In *Orange Communications Ltd v Director of Telecommunications Regulation* (No. 2) [2000] 4 IR 159 (“*Orange No.2*”) Geoghegan J. described actual bias as “*the rare case of proved actual bias.*” Actual bias requires proof that the Judge, tribunal or adjudicator “*was deliberately setting out to mark or hold against a particular party.*” It is a high threshold to meet.
- [133] The Court of Appeal held in *Adigun v. McEvoy* [2018] IECA 229 that actual bias is a factual matter to be established by cogent evidence and that it would be necessary to prove that the judge had deliberately set out to hold against a particular party.

[134] More recently in *Kelly v. University College Dublin* [2025] IESC 6, the Supreme Court stated that actual bias arises when a judge is likely to or has in fact decided a case by reference to factors extraneous to its merits, factual or legal. O'Donnell C.J. states that this is not something which should readily be assumed. On the contrary, there is a heavy onus on the party to demonstrate that this has occurred or will occur. Objective bias, on the other hand, is the apprehension of a reasonable (and informed) observer of actual bias. The Appellant here does not appear to allege objective bias but it is worth observing, as O'Donnell C.J. states, that this is also a difficult test to satisfy which is applied strictly and rigorously. It is necessary in every case to state the nature of the bias alleged in order to consider whether a reasonable observer would have a reasonable apprehension that it could, or did, operate on the decision of the judge. There is a two stage test requiring the identification of the factor which might lead a judge to decide a case other than on its factual and legal merits and, second the articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits. It is necessary to show a rational cogent connection between the identified factor as giving rise to the bias and the apprehension that the case will not receive a fair and impartial hearing.

[135] Here, the Appellant does not attempt to articulate the logical connection between the factor of which he complains- the involvement of the Northern Circuit Judge in the prior family law proceedings and the Court of Appeal remittal judgment-and the feared deviation from the course of deciding the case on its merits. In this particular case any reasonable and informed observer would conclude that there is no such connection. This is because it is entirely evident from the transcript that the Northern Circuit Judge did not recall and was therefore unaware of the Appellant's previous family law case five years before. This is not surprising. Indeed, the Appellant himself did not recognise the Northern Circuit Judge when he took up the prior application in relation to the joinder to the proceedings of the Appellant's children. All of the evidence suggests that the Northern Circuit Judge was not aware, or made aware of the relevance of the Court of Appeal remittal judgment. Specifically, it was not clearly indicated by the Appellant that the Court of Appeal remittal judgment to which the Appellant referred only in passing concerned a judicial review of a decision of the Northern Circuit Judge specifically and moreover concerned proceedings involving the Appellant personally. The Appellant did not properly cite or furnish that judgment to the Judge or to the respondents during the hearing or explain its asserted relevance to the case then before the Court. In these circumstances, I find that any allegation of actual bias is implausible and unreasonable.

[136] In all of the circumstances, I am not satisfied that a case of actual bias has been made out. Nor, even if it were advanced could a credible case of objective bias be made out. Other than a case in which a judge is deemed to be a party, there is no absolute rule

of disqualification of a judge from hearing any case. Specifically, there is no rule of disqualification of a judge from hearing a case involving a litigant against whom he or she has previously made a finding in other proceedings, even if such finding has been quashed by way of judicial review. This is all the more true where the relevance and context of the prior proceedings has not been brought to the attention of the relevant judge and where no clearly articulated application for recusal has been moved.

- [137] It is of course the case that the Court of Appeal quashed a previous decision of the Northern Circuit Judge in the Appellant's family law proceedings and further held that same should be remitted to another Judge of the Northern Circuit. That however was for two combined reasons: firstly, due to the Appellant's deeply held concerns and then secondly due to the unsatisfactory nature of the hearing. This does not amount to a finding of bias or want of independence.
- [138] In any event, the Court of Appeal judgment concerned the disposition of a *particular* set of proceedings. It did not decide, or even suggest, that the Northern Circuit Judge was thereafter precluded from hearing any case involving the Appellant.
- [139] The Appellant also relies extensively on CJEU and ECHR authorities concerning judicial independence, judicial appointments, recusal and the right to a tribunal established by law. The principles to which he refers are not controversial. He correctly observes that under EU Law, judicial appointment conditions must not give rise to reasonable doubt, in the minds of individuals, as to the independence of judges from external factors or as to their neutrality in respect of the interests before them. Those principles are not in doubt and are also reflected in domestic law.
- [140] The difficulty for the Appellant is that he identifies no credible factor relating to the appointment of the Northern Circuit Judge, or indeed any of the other judges whose independence he has impugned, which could support an allegation that those principles were breached. Nor does he identify any deficiency in Irish law concerning the review of judgments on bias grounds. The submission therefore remains at the level of bald assertion.
- [141] I agree with Counsel for DCC that there is a certain disingenuousness in the Appellant's criticism of the Northern Circuit Judge. On any fair analysis of the transcript, the Appellant's recusal application to the judge was wrapped up with a systemic objection to the independence of the Irish judiciary as a whole and his request for a referral to the CJEU. It was open to the Appellant at all times to print out the Court of Appeal remittal judgment to furnish it to the Northern Circuit Judge and to the respondents and to clearly state the grounds for the recusal. However, for reasons best known to himself, the Appellant did not do so.
- [142] Indeed, as I point out above, the Appellant's Notice of Appeal to the Circuit Court sought referral to the CJEU on that very basis well before the identity of the judge who would hear the appeal was known. The impression one gains of a deep seated objection

to the independence of the Irish judiciary as a whole is fully borne out by the Appellant's other repeated attempts to challenge the independence and objectivity of a number of other members of the Irish judiciary.

Does the transcript evidence bias?

- [143] The Appellant also maintains that certain aspects of the conduct of the hearing before the Circuit Court betray bias against him. This, however, is misplaced. Alleged breach of fair procedures, even if made out, does not establish bias. As Hogan and Morgan, *Administrative Law in Ireland* (5th ed, Round Hall) state: "*neither the egregious conduct of a decision-maker at a hearing, nor the perversity of his or her decision, may be taken as evidencing bias*". This is consistent with *Orange (No. 2)* in which the Supreme Court held that bias could not be established from the nature of the decision itself or by proving "*cumulative error all one way*."
- [144] Therefore, complaints about impatience, interruption, or robust case management such as requests to be brief will not suffice unless the conduct, in context, demonstrates prejudgment, one-sidedness, hostility, or denial of a meaningful opportunity to be heard.
- [145] Judicial interruptions of prolix or irrelevant submissions may be interpreted by a party as bias, but case management is part of a court's function. In assessing bias, the court will look at context and the overall picture, such as the pressures of case management, the need to keep evidence relevant, the conduct of the parties and whether the judge behaved similarly towards both sides.
- [146] Furthermore, such complaints of unfairness are not assessed through the personal perception of the party alleging bias. A party may complain that a judge seemed personally hostile, impatient, dismissive or irritated. However, these complaints are assessed through an objective lens. Would a reasonable, informed observer, considering the hearing as a whole, apprehend a lack of impartiality?
- [147] I am absolutely satisfied that none of the alleged examples of unfairness which the Appellant instances could either as a matter of law or on the facts possibly establish actual bias as alleged. Nor, incidentally, could they possibly establish objective bias. These complaints are more appropriately examined under the rubric of fair procedures, which I will now proceed to do.

Alleged breaches of fair procedures

- [148] The Northern Circuit Judge's approach as evidenced by the transcript was measured and appropriate. He did not display hostility towards the Appellant. The Court did not dismiss the Appellant's submissions, or express frustration. Nor did it indicate any inappropriate view on the merits. On the contrary, the transcript shows that the

Northern Circuit Judge requested that, in light of his status as a lay litigant, the respondents assist the Appellant in making his arguments in respect of a request for referral to the CJEU.

- [149] The Appellant's allegation that the Northern Circuit Judge "*favoured*" the State Solicitor is contradicted by the transcript as the Northern Circuit Judge challenged both sides. He asked Counsel for the respondents to address their legal position. He did not prevent the Appellant from making submissions; rather, he attempted to keep him focused on the relevant issues.
- [150] The Appellant alleges that the Judge impaired his ability to participate in the hearing by preventing the interpreter from translating the entire exchange. Having reviewed the transcript, I do not accept that this occurred. This demonstrates that the interpreter was permitted to interpret the proceedings. The interpreter was afforded a break for water, was offered a further break when requested, and participated in the late luncheon recess.
- [151] The Appellant also alleges that the Northern Circuit Judge prevented him from using computer equipment to read documents aloud in English. This appears to be a reference to the audio of the Court of Appeal remittal judgment which the Appellant started to play without permission to the Circuit Court. The Appellant now contends that he is dyslexic and that this amounted to a breach of his rights as a person with a disability. However, this submission lacks any evidential foundation whatsoever. The Appellant submitted no evidence of dyslexia before either the Circuit Court or before this court.
- [152] The Appellant also submits that the judge forced him to give "yes" or "no" answers and thereby prevented him from responding to the respondents' arguments. It is correct that the judge occasionally requested concise answers. I do not criticise that approach. In the conduct of proceedings, particularly where a litigant repeatedly gives lengthy answers which do not address the question asked, a judge is entitled to seek direct answers so that the issues may be identified and the hearing may proceed in an orderly manner.
- [153] The Appellant complains that statistical evidence relevant to discrimination was not properly considered. The Appellant states that he was impeded from showing that 82% of housing support is allocated to mothers with children and only 17% to fathers with children. However, this broad statistical material was not determinative of the issue before the Circuit Court. The net question was whether the Appellant had been discriminated against by either respondent and that case turned on its own facts. The Northern Circuit Judge decided the case on the evidence before him.
- [154] The Appellant alleges that the Judge intimidated him with costs and with the termination of the case. That allegation is not borne out by the transcript. The judge identified that the Appellant appeared to object to the matter

being determined in the Irish courts and was seeking a reference to Europe before the case had been heard. The judge stated, entirely reasonably, that he was not prepared to make such a reference at that stage and that if the Appellant elected to withdraw his case, the ordinary consequence as to costs would arise. That was not intimidation. It was an appropriate explanation of the procedural consequences of the position being adopted by the Appellant.

- [155] In all these respects, the transcript reveals that the Northern Circuit Judge was attempting to manage the hearing fairly. The transcript shows the Northern Circuit Judge trying to identify the issues, keep the hearing within its proper jurisdictional limits and assuring the Appellant that the case would be heard fairly and in accordance with his judicial oath.
- [156] The Appellant also contends that the Judge could not decide the case because he acknowledged that he was not an expert in EU law. That submission is incorrect. A Judge's acknowledgement that he is not a specialist in a particular area of law does not mean that he is incompetent to hear a case which touches upon that area. Where necessary, the relevant law can be opened to the Court.
- [157] In any event, this claim was brought under domestic legislation, namely the Equal Status Acts. No credible case has been advanced that Irish law failed to transpose any relevant provision of EU law in a manner material to the issues arising in this case.
- [158] Finally, the Appellant says that the Northern Circuit Judge failed to give adequate reasons for his decision. I do not accept that submission. The DAR discloses that the Court heard the evidence adduced and for stated reasons which are apparent from the DAR determined that there was no discrimination.
- [159] The Appellant's real complaint is that the Judge relied upon domestic law, as he was entitled to do, and did not address the Appellant's extensive submissions on EU law and ECHR law. However, those submissions did not arise on the issues to be determined. The issues before the Circuit Court were narrow. The Judge was not required to address every argument advanced by the Appellant, particularly where those arguments were irrelevant to the statutory claim before the Court or sought to transform the proceedings into a general challenge to Irish law, the Constitution, or the legal system. The Judge gave reasons sufficient to explain why the claim failed.
- [160] For the avoidance of doubt, I should say that no credible basis has been advanced for the proposition that a preliminary ruling from the CJEU was required in order to determine the proceedings. The Judge refused a reference not arbitrarily or unlawfully, but because the request was made before the evidence had been heard and before the Court had made any determination. Only after the factual and legal issues had crystallised could the question of any reference arise, if appropriate. On the facts of this case, no such basis arose.

Conclusion

[161] It is hard to disagree with the impressions of Counsel for DCC that the Appellant was going to appeal this Circuit Court decision (if it went against him) irrespective of which Judge heard the case and howsoever s/he came to their decision. He is a vigorous litigator in this matter and in relation to his family law litigation. He has brought numerous Court cases and applications in all three Superior Courts of Ireland. I would be frankly astonished if the Appellant does not also seek leave to appeal this Court's judgment.

[162] Ultimately, however, the Appellant failed to even identify any points of law in his Notices of Appeal and elected to simply ignore the findings of the Northern Circuit Judge and to refuse to engage with them, despite repeated invitations from this Court. In this respect, the observations of Noonan J. in *Fox v Data Protection Commissioner* appear opposite to the Appellant's approach to this litigation:

"It is difficult to conclude otherwise than this was a deliberate choice by the appellant, who is clearly an intelligent person. These appeals purport to be advanced on the basis of an erroneous understanding of the most basic legal principles. They are an abuse of process. The consequences of this relentless pursuit of spurious appeals are serious for both parties and in particular the Appellant himself, who will likely be faced with a potentially ruinous order for the costs of all this unnecessary litigation. And, as often occurs, in the event that the Appellant is unable to discharge those costs, it is ultimately the taxpayer who must do so. As I observed at the outset, this is in nobody's interest."

[163] The crux of the matter is that this Court can only allow an appeal on a point of law which has not been shown to arise. I therefore dismiss this appeal.