



THE HIGH COURT

Record No. H.JR.2026.506

Neutral Citation [2026] IEHC 571

BETWEEN:

JOHN WALSH

Applicant

-and-

THE LEGAL AID BOARD

Respondent

JUDGMENT of Ms. Justice Mary Rose Gearty delivered on the 5th of August 2026

1. Summary of the Application

- 1.1** The Applicant was refused legal aid in pursuit of his claim for damages as a result of events and acts which he characterises as defamation, false imprisonment and a breach of his rights. He seeks leave to review that refusal, raising issues of anonymity, bias, irrationality and failure to address the issues.
- 1.2** The first submission addressed by this Court was an application for anonymity, which was refused in an *ex tempore* ruling on the 13th of July, 2026. There was no lawful basis on which such an order could have been made and the important principle that justice must be administered in public required a public hearing and a public judgment, including identification of the parties involved.
- 1.3** The Respondent refused to represent the Applicant for reasons set out in an opinion by counsel. These included explanations as to why the events and acts described did not constitute torts, or civil wrongs, and that he was unlikely to

succeed in establishing either tort in a court of law. In those circumstances, the reasons for the initial decision are discernible and not irrational. That initial decision was appealed and upheld. As it was supported by reasons and these were set out clearly in the initial decision, no more was required in the appeal.

1.4 The European Convention of Human Rights does not have direct effect. In any case, this Applicant's rights to liberty and to his good name do not create any free-standing rights beyond those protected by the torts of false imprisonment and defamation. There is no challenge to the constitutionality of the legislation which governs the Respondent so it cannot consider a defamation claim in this respect. Further, the right to liberty is not breached by the conditions subject to which housing was provided to this Applicant. The conditions merely imposed a minimum residence requirement and could not constitute false imprisonment.

1.5 The manager of the Respondent Board, Mr. Aidan Lynch, relayed the initial decision refusing legal aid to the Applicant. Mr. Lynch forwarded his appeal to the relevant Committee and he was also responsible for conveying the outcome of that appeal to the Applicant. There was a delay between the notice of an appeal and the forwarding of the appeal by this person to the relevant Appeal Committee. These facts do not constitute evidence of bias. The evidence is that Mr. Lynch took no part in the appeal process other than conveying papers and, therefore, there is nothing to support the claim that he was a judge in his own cause or that the Committee, which did not include Mr. Lynch, was biased.

1.6 The application must be refused as there is no prospect that the Applicant will succeed on any of the grounds raised.

2. Anonymity

2.1 The Applicant argued that he should be afforded anonymity in making this claim. The Applicant made this argument with dignity and based it, in part, on his experience of hardship during a time of homelessness. He submitted that there was no need to identify him and no prejudice to the Respondent in anonymising him. He pointed to a newspaper article regarding these events in which a journalist had not named him, in order to protect his privacy.

2.2 The Applicant was invited to address the Court on that issue in a separate hearing as the Court noted the concerns raised and gave the Applicant an opportunity to consider whether or not he would proceed with his claim even if he would be named in the final judgment. He elected to proceed, having been

informed that the Court could not identify any legal basis to restrict reporting of the claim or to anonymise him in any way.

2.3 The law is well settled in this regard and the constitutional norm that justice must be done in public is strongly endorsed throughout the decisions of the Superior Courts. In *Zalewski v. Workplace Relations Commission* [2022] 1 IR 421, [2021] IESC 24, the Supreme Court reaffirmed this principle. Only strictly defined situations attract reporting restrictions. The Court may decide to exercise its inherent jurisdiction in this regard, but there must be good reasons to do so. O'Donnell J., as he then was, put it thus (paragraph 142):

"... Article 34.1 makes clear that public hearings are of the essence of the administration of justice. In some cases, this may be practically important because the publicity may bring forward further relevant evidence and witnesses, or because it will allow a party (whether an employee or employer) to achieve public vindication. It may, furthermore, have the general public benefit that it allows the public to see justice administered, which might, for example, make it easier for a judgement to be made on the fairness, competence, and efficiency of the decision-maker. However, the requirement for a public hearing does not require any functional justification: from time immemorial, it has been regarded as fundamental to the administration of justice, and as establishing a principle from which any exception must be justified."

2.4 The same passage was quoted in one of the most recent authorities on anonymity in legal proceedings; the decision of Simons J. in *Student A. v Provost, Fellows and Scholars of the University of Dublin, Trinity College Dublin and anor* [2026] IEHC 54. This Applicant was directed to that judgment as a clear, comprehensive and recent review of the law on this topic.

2.5 There, Simons J. discusses the relevant cases, the provisions which allow a court to restrict reporting or to hear cases otherwise than in public, and the common law power to regulate court proceedings as set out in *Gilchrist v. Sunday Newspapers Ltd* [2017] 2 IR 284, [2017] IESC 18, which case lends its name to such orders, known as Gilchrist Orders. In the words of Simons J. *"the onus resides with the party requesting anonymity to demonstrate the existence of a legitimate interest which might justify a departure from the constitutional imperative that justice be administered in public."* The most common examples of those entitled to anonymity are children and those who have been subjected to sexual assaults.

2.6 The application for anonymity was based on the context in which these events took place and on certain medical issues, which are of minimal relevance to the decision this Court must consider, and which need not be set out. The right to

privacy in respect of aspects of his life which a litigant would prefer not to be public knowledge is outweighed by the constitutional imperative, fundamental to the administration of justice, that court hearings take place in public. While there is a constitutional right to privacy, the case law set out above makes it clear that this right is subject to the constitutional imperative of public justice.

2.7 There were insufficient grounds to justify the exercise of an inherent power not to name the parties. None of the elements here - the involvement of An Garda Síochána, the allegation of tampering with an alarm, nor the fact of homelessness (happily no longer an issue for the Applicant) – can form the basis for a direction of anonymity. Very few of those accused of criminal offences are entitled to anonymity, although many are acquitted as part of the criminal justice process. The allegation was not substantiated and did not amount to defamation or an attack on his good name, as there is no evidence that it was publicised by the management of the hostel to third parties. It was put to the Applicant directly but there is no suggestion that others were present.

2.8 The fact of homelessness may produce embarrassment, understandably, but there was insufficient evidence here of the level of inexplicable shame as that suffered by those who make an allegation of sexual offending. There is an argument, in a suitable case, that the medical consequences of a period of homelessness might be sufficient to override the constitutional imperative in this regard but there was insufficient evidence to do so in this case. Neither the right to a good name nor the right to privacy constitutes a good reason to abandon the constitutional obligation that justice be administered in public. In the hierarchy of rights, this obligation takes precedence on the facts of this case.

2.9 Although the Applicant may not have agreed with the outcome regarding his anonymity, he understood the Court's reasoning which was delivered in an oral ruling before judgment was delivered. The Applicant knew that the judgment would be publicly available and elected to proceed with his application for leave to apply for judicial review, nonetheless. This preliminary issue arose as the case unfolded and the Court's approach to the issue does not suggest that a future case will necessarily require a similar two-stage hearing.

3. Leave for Review Test: *G v DPP*

3.1 Those who seek leave to review judicial decisions must demonstrate arguable grounds for the remedy sought: *G v. DPP* [1994] 1 IR 374. While nearly all grounds may be arguable, to paraphrase O'Donnell C.J. in *O'Doherty & Anor v.*

The Minister for Health & Ors [2022] 1 ILRM 421, [2022] IESC 32, the test is that there must be a prospect of success in respect of at least one ground. The Applicant need not go so far as to establish a *reasonable* prospect of success.

4. Alarm, Accusation and Barricades

4.1 The facts that gave rise to this application occurred in a hostel operated by DePaul Ireland and funded by the local council. In November 2023, changes were made to rules and regulations concerning the provision of accommodation in the hostel. Specifically, the decision was made to reduce absences on the part of residents and to ensure that those in the hostel were residing there on a full-time basis. The practical effect was that residents were now obliged to remain in the hostel for all but three nights per month. Until that change in policy, residents could avail of alternative accommodation, such as staying with friends or family, for up to three nights every week. This Applicant often availed of that facility, staying overnight with family or friends from time to time.

4.2 On 8th August 2024, the Applicant was accused of tampering with a fire alarm on the premises, which allegation he has always disputed. Due to this accusation, DePaul issued a Temporary Withdrawal of Service on 9th August 2024, which required the Applicant to leave the hostel for five days, from 12th August 2024. The Applicant wrote to the manager of the premises on 12th August. The manager confirmed the withdrawal of services on 15th August. Meanwhile, the Applicant had barricaded himself in his room at the hostel. Gardaí conducted welfare checks for a period of about a week, during which the Applicant remained barricaded in his room. On 16th August, the manager suspended the Withdrawal of Services. The Applicant was never ejected from his room, presumably due in part to his own acts in forestalling his removal, but also due to his submissions made in respect of the dearth of evidence as to what had set off the alarm.

4.3 The Applicant submits exhibits of correspondence with the management of DePaul and has pointed to his repeated requests for certain CCTV footage, which he insists will exonerate him in respect of any allegation of tampering with the alarm. He avers that he knows of another person who was similarly accused and then exonerated. He also argues that the local Council, which co-funds the hostel, is also responsible for the events which caused him such stress and, in his words, forced him to barricade himself in his room.

Imprisonment, Defamation and the Constitution

4.4 The Applicant went to his local Legal Aid Board. He notes that the solicitor he met, Mr. Lynch, noted the importance of obtaining CCTV footage in order to combat the charge of tampering with fire equipment, which allegation had ignited the dispute. On 8th August 2025, a letter issued refusing to extend legal aid to the Applicant. With the letter was an opinion from counsel, commenting on the Applicant's case and the likelihood of success, and considering the various legal grounds the Applicant wished to raise. Counsel drew attention to the fact that the decision of DePaul to withdraw the offer of accommodation had itself been withdrawn and this legal issue was no longer a live one. The sanction of withdrawing services was, therefore, never imposed.

4.5 Insofar as there was an allegation made directly to the Applicant, the withdrawal of the purported sanction appears to mark the end of any action taken by DePaul or the Council in respect of the alleged tampering with the alarm. There is no evidence of either body making that allegation to anyone, save the Applicant himself who denied it. There has been no evidence of a formal withdrawal of the allegation, only the sanction was withdrawn though this may prompt a logical conclusion that the allegation too was withdrawn. While it is unfortunate that this was not clarified, an allegation of wrongdoing alone does not of itself amount to an actionable wrong if it is made directly, and only, to the person suspected.

4.6 The Applicant has, nonetheless, sought orders amounting to disclosure in these proceedings, seeking preservation of the CCTV footage in question. This is an action against the Respondent Board and not against DePaul or the Council, thus there is no live issue between the Applicant and the Respondent in this regard and, insofar as a sanction was purportedly imposed and then lifted, it is difficult to see how an action could be maintained in that regard. The Applicant's arguments in respect of defamation are addressed further, below. In any event, relief in respect of CCTV footage cannot be maintained against this Respondent as this material was never in its possession or procurement.

4.7 The remaining points the Applicant raised with the Respondent, namely, personal liberty, reasonableness of overnight restrictions and false allegations made against the Applicant, were all discounted in this opinion as not being viable legal claims. In this regard, it is useful to summarise the reasons set out by counsel. He noted that the right to personal liberty was usually engaged in circumstances where a person was imprisoned or prevented from leaving a particular place but that here, the Applicant was free to come and go from the

hostel at all times but was required to spend most of his nights there. While this restricted his movements, in counsel's view it did not disproportionately breach his right to liberty, nor would it lead to any award for the tort of false imprisonment. Further, insofar as there is any suggestion that the period in which the Applicant was barricaded in his room constituted an imprisonment (and his language of being forced to take this action suggests this view), this is incorrect. His presence at the premises during the barricade was self-imposed and was not an imprisonment that was imposed or necessitated by any act of the Respondent. A notice that services are withdrawn does not necessitate a barricade, nor is a barricade a proportionate response. Still less does that situation equate with false imprisonment, as discussed further below.

4.8 The Applicant criticises passages of counsel's opinion, contending that prisoners and those seeking asylum have more freedom than an Irish homeless citizen. This is grossly ill-informed. Had he read the case on which counsel relied, *C.A. and T.A. v the Minister for Justice and Equality and others* [2014] IEHC 532, he would have seen that the asylum seekers in that case failed to obtain relief from the High Court in respect of conditions in which they had been housed by the State. Far from ignoring the Applicant's suggestions in this case, that coercion and imprisonment can be mental as well as physical, counsel in the case cited a very apt case. There, the house rules in reception centres (the rules required residents to register daily, to notify management of a proposed absence, to submit to unannounced searches of bedrooms without permission and guests were prohibited) were considered. The facts are very far removed from the factual situation faced by this Applicant. Moreover, and given his specific reliance on this case, it was clear that counsel did consider all these aspects of the case, including the Applicant's Convention rights as these rights were considered and discussed in the judgment in *C.A.* and the Convention was referred to specifically in this opinion in respect of the Applicant's case.

4.9 Finally, in this respect, I note that the Applicant refers to his circumstances as "*cruel and unusual punishment*" and states that his barricading himself in his room was his only reasonable choice. This Applicant is not familiar with the usual context in which this phrase is used. In O'Malley, *Sentencing Law and Practice*; 3rd Ed. (2016), Chapter 4 on Proportionality, the phrase is discussed. In short, it is difficult, if not impossible, to apply the phrase to a penalty that was not imposed, in this context, as the phrase is most often used to refer to the death penalty or to a grossly disproportionate penalty.

4.10 The Applicant seeks to characterise a restriction on where he stays at night as a total loss of his personal liberty. The definition of false imprisonment was set out by Fawsitt J. in *Dullaghan v. Hillen* (1957) Ir.Jur.Rep. 10, at page 15: *the unlawful and total restraint of the personal liberty of another, whether by constraining him to go to a particular place or confining him in a prison or police station or private place or by detaining him against his will in a public place*. There is no authority to support the Applicant's interpretation of the conduct here, whether characterised as a tort or a breach of any fundamental right, as imprisonment. The essence of his complaint is that a relatively minimal restriction, imposed to maximise publicly funded housing supports, is a total restraint of his liberty. I cannot agree. This condition of residence did not equate to a loss of the Applicant's liberty, still less a total restraint of his personal liberty. It was merely a condition of his continuing to reside in the premises and it did not amount to a civil wrong, nor did it constitute a breach of his constitutional right to liberty.

4.11 A key passage of counsel's advice addressed the difficulty that the Legal Aid Board cannot represent parties in defamation proceedings as the Civil Legal Aid Act 1995 specifically excludes such claims. Notwithstanding this, counsel commented on the fact that there was no evidence that the allegation or the withdrawal of services was notified to anyone except the Applicant himself. Thus, there was no publication, which is a crucial proof in establishing defamation. Based on counsel's opinion, which was sent to the Applicant, the Respondent refused to extend legal aid to the Applicant. These documents provided a detailed account, clearly outlining the reasons as to why legal aid was refused. Even if the tort of defamation might be made out on these facts (and it does not appear that it could be established) the statute which confers power on this Respondent makes it clear that it cannot fund a claim in defamation. It is also important to note that the Applicant has not challenged the constitutionality of that legislation, which binds the Respondent.

4.12 The Applicant makes two core claims: he argues that he has a cause of action in defamation and false imprisonment and that this sounds in constitutional and Convention law. The main issue for this Court is whether the Respondent was entitled to refuse to represent him in the circumstances. The reasons set out by counsel, as summarised above, are not irrational and there is no aspect of that process, or the subsequent appeal, which requires intervention by the Court.

4.13 Insofar as the Applicant claims that the decision did not address his constitutional rights or rights under the European Convention, both claims are misconceived or plainly incorrect. As set out above, counsel clearly addressed his Convention rights directly and by citing the case of C.A. and insofar as it is necessary, the Court considers that no further consideration was required.

4.14 There is no aspect of the case which requires a specific ruling on constitutional or Convention rights insofar as the torts of false imprisonment and defamation are an adequate and complete mechanism for the vindication of his rights. The Applicant, on whom the burden of proof lies, cannot point to any constitutional right, whether to his good name, his liberty or his property rights, which is not vindicated by these nominate torts. For completeness, the constitutional provision on which the Applicant relies is set out below:

ARTICLE 40

1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

3°... [irrelevant to this case insofar as refers to termination of pregnancy]

4.15 In respect of each complaint, the Applicant must first identify whether he has a claim in tort law. Hogan J. in *D.F. v The Commissioner of An Garda Síochána*, [2014] IEHC 213, noted (at paragraph 20) that “[i]t may be here convenient to break down the individual claims and to assess the claims based on specific nominate torts by reference to the individual constitutional guarantees. The governing question in essence is identical in all of these particular cases: can it be said that the nominate tort provides an adequate or complete mechanism for the vindication of individual rights?” Here, the statute law and case law in respect of false imprisonment and defamation provide sufficient assurances to any citizen that their rights will be vindicated by the courts. Put otherwise, the nominate torts are interchangeable with the breaches on which the Applicant seeks to rely.

4.16 It is an insuperable obstacle to this Applicant that the facts complained of here cannot amount to breaches of constitutional or Convention rights for the simple reason that they do not constitute nominate torts either. Here, there appears to have been no publication of these events, other than by the Applicant himself. There was no disproportionate interference with any of his constitutional rights, including his right to liberty and his right to a good name.

4.17 In *D.F. v The Commissioner of An Garda Síochána*, a claim of unlawful arrest involving a child, Hogan J. struck out aspects of the claim in respect of restrictions of liberty under the Constitution and the Convention. To paraphrase his conclusion, the claims simply duplicated, or could not add anything to, the well-established nominate torts of false imprisonment, assault and battery and they presented no justiciable issue. The same is true here.

4.18 The Applicant argues that he has a separate right to damages under the Convention. This too was addressed in *D.F.* by Hogan J. There, having noted that the Convention does not have direct effect (para. 35), Hogan J. referred to the European Convention of Human Rights Act 2003 (“the 2003 Act”) as follows:

“... s. 3(2) ... makes it plain that any claim for damages under the 2003 Act can only be claimed “if no other remedy in damages is available”. But is plain that many other claims for damages are available in this State to a person who claims that they have been unlawfully arrested and detained: these remedies not only include the nominate torts of false imprisonment and assault and battery, but also the action for damages for breaches of constitutional rights”.

The same can be said here in respect of false imprisonment and defamation.

5. The Appeal Process and Adequacy of Reasons

5.1 The Applicant appealed the decision refusing to provide him with legal aid. The Applicant argues that the Appeal Committee should be independent of the original decision-makers. The Applicant raises a number of matters which he claims were “*inexcusable legal errors and negligence*”.

5.2 The Appeal Committee upheld the refusal of legal aid on the 15th of January 2026. The Applicant claims that the appeal process lacked independence as the same legal aid solicitor, Mr. Lynch, who instructed counsel relayed correspondence to the Appeal Committee and sent that Committee’s decision to the Applicant. Mr. Lynch signed the letter confirming the outcome of the appeal. The Applicant wrote to him, asking him to confirm whether he had taken any part in the appeal process and Mr. Lynch replied confirming that he had not. The Applicant also takes issue with the reasons furnished by the Committee, saying that they were insufficient.

5.3 The only evidence available to the Court is that the Applicant knew that the appeals panel did *not* include the first decision maker. The Committee upheld an earlier decision and the reasons for that first decision were set out in detail

and supported by a fully reasoned opinion from counsel. The law which binds this Court confirms that this is sufficient if, on review, the decision maker upholds an earlier decision. In Hogan and Morgan, *Administrative Law in Ireland*, (Round Hall), 5th edn (2019) at paragraphs 16–44, the authors conclude that “*it will frequently be clear that the reasons which finally motivated the deciding authority were the same as those mentioned or implied the earlier stage of the decision making process.*” In this case, the final written decision on appeal was terse, but the previous decision, to which this final decision referred specifically, was comprehensive, clear and cogent. The Applicant could not have been confused as to why the Appeal Committee formed the view it did.

6. Bias

- 6.1** The facts pleaded here fall far short of conduct that would establish objective bias, let alone subjective bias. The relevant law was set out by the Supreme Court in *Kelly v University College Dublin* [\[2025\] IESC 6](#). The test for objective bias remains whether a reasonable observer, familiar with all the facts, would have a reasonable apprehension of bias. In *Kelly*, the judge’s son was a solicitor in the same firm as a solicitor on record for one of the parties. This was an insufficient nexus to support a finding that the judge was objectively biased.
- 6.2** There, O’Donnell C.J. confirmed that measures to guard against perceived bias must have defined limits, including the warning that it cannot be correct to accede to “*any objection however flimsy to avoid controversy*”. He noted the costs to opposing parties and to the administration of justice by claims of bias. Both sides have a right to fair procedures, including the right to finality of litigation. The crucial conclusion of these preliminary remarks reads that “*[t]here must be a cogent and rational link between the issue raised and its capacity to influence the decision to be made; it is not to be determined by some precautionary consideration that it might have been better not to sit, or some wise after-the-fact assessment that a problem might have been avoided by not sitting.*”
- 6.3** Here, the height of the allegation of bias is that the solicitor who briefed counsel and who decided not to extend the legal aid certificate to this Applicant also conveyed the Applicant’s notice of appeal to the Committee, and, in due course, conveyed that Committee’s decision to him. There was a delay of four months in forwarding this appeal to the Committee, and that has been explained by reference to email access. The Applicant contends that this is implausible as the same man was able to acknowledge an email from a work address during the same period. Once received, the appeal was processed within eight days.

6.4 The Applicant contends that the solicitor who initially refused his application was, therefore, *“in control of what materials reached the Committee and when.”* There is no evidence to support the suggestion that this solicitor might have influenced the final decision in any way. In fact, the evidence points to the contrary conclusion, as the solicitor has confirmed in correspondence exhibited by the Applicant, that he had *no* role in the appeal. These facts are wholly insufficient to sustain an argument that the solicitor was biased.

6.5 This is the Applicant’s case, and the burden is on him to establish evidence to support his claim. The evidence here undermines his claim. There is no authority cited to support the proposition that if a litigant does not agree with a decision on appeal, he is entitled to see all correspondence and materials before the appellate body. Nor is there any authority to the effect that a dissatisfied appellant is entitled to all minutes and correspondence surrounding the appeal, and to have details of the appellate body’s personnel. The Applicant relies on the brevity of the decision, coupled with his claim of involvement by the original solicitor. The brevity of the refusal is explained by the comprehensive opinion provided at first instance, on which the Committee was entitled to rely. The claim that Mr. Lynch was involved in the appeal is speculative, at best, and is inconsistent with the facts set out in correspondence exhibited by the Applicant.

7. Failure to genuinely re-consider and no documented decision

7.1 The Applicant contends that *“no valid decision of the Appeal Committee is known to exist”*. The Applicant was provided with a decision from the Appeal Committee on 15th January 2026 wherein it was stated that *“[t]he Committee upheld the refusal of Legal Aid under Section 28(2)(b), (c) & (e) and under Section 24(a) & (b) only of the Civil Legal Aid Act, 1995.”* This is the decision, its meaning is clear, and the brevity of the letter has already been discussed, above.

7.2 Additionally, the Applicant contends that there was a *“failure to conduct a genuine reconsideration”*. Specifically, the Applicant states that *“[a]n appeal under section 30 of the Civil Legal Aid Act 1995 requires a substantive reconsideration of the applications of its merits.”* These words do not appear in the section. The case law cited above makes it clear that while entitled to an appeal, he is not necessarily entitled to a second decision in which the reasons are exhaustively recited. This is particularly so where, as here, the first decision was well supported and the second decision upheld it. The Minister is entitled to *“make provision as to the cases or the circumstances in which an applicant may be refused legal aid or advice by the Board and for the review of decisions by the Board on appeals therefrom”* (section 37(1)(f)). A review on the papers in which a decision is simply upheld is sufficient.

8. Error in s. 28

- 8.1 The Applicant claims that there was an error of law in the application of section 28 of the Civil Legal Aid Act 1995. Specifically, the Applicant contends that the assessment under section 28(2)(b) and (c) *"was conducted with no engagement with the detailed legal analysis in the Applicant's appeal concerning Articles 3, 5 and 8 of the European Convention on Human Rights and Articles 40.1, 40.3 and 40.4 of the Constitution."* This has been addressed above. None of the rights identified add to the nominate torts set out in counsel's opinion. Insofar as defamation is not a claim that can be maintained under the legislation, that legislation has not been challenged and so, it is an issue which goes beyond the scope of the pleadings.
- 8.2 The Applicant also contends that the assessment under section 28(2)(b) and (c) was incorrect on a factual basis because *"the proposed proceedings were assessed only by reference to Depaul as a private actor, with no engagement with the Council's role as co-author and enforcer of the impugned rule."* It is not clear as to what legal argument is raised here. Either the Applicant has a claim, or he has not. If there is no claim, which is the Respondent's view, then the identity of the defendant to his claim is of minimal relevance. For the purposes of this application, the Court does not have to consider whether it would have made the same decision but whether the decision was made fairly and after affording the Applicant due process. This decision was made fairly and the point made in respect of a potential defendant being a public body does not affect the Court's view on rationality, nor does it address the essential error in these proceedings, namely, that there was a tort or a breach of rights which the Respondent has failed to identify such as to render its decision irrational. The Applicant has not persuaded the Court that this is so.
- 8.3 Furthermore, the Applicant contends that the assessment under section 28(2)(e) was applied incorrectly. Specifically, the Applicant contends that *"[w]here proceedings concern the vindication of fundamental constitutional and Conventional rights, the benefit to the applicant is not reducible to the monetary value of any damages awarded."* This is a mischaracterisation of the Respondent's position. This is not a question of reducing any claim to monetary value alone, but of the careful use of public funds.
- 8.4 The Respondent must consider whether the claim will lead to any award of damages. This is a statutory requirement. Its decision was that no such rights had been breached. If fundamental rights have not been breached, then this factor is immaterial. The argument is not relevant where there is no support for the claim that constitutional or Convention rights have been breached as there was no false imprisonment or disproportionate interference with liberty. As

noted, defamation could not be considered due to statutory constraints, which are not challenged. The Respondent is required to consider whether extending legal aid to this Applicant will result in any award of damages and considered that in the circumstances, it would not result in any award.

9. Conclusions

9.1 There is insufficient evidence that either of the two core complaints made constitute civil wrongs or breaches of any of the Applicant's rights, and the Respondent's decisions in this regard are unimpeachable.

9.2 The Respondent has considered this application in two separate processes, and its rationale was set out in a detailed opinion by counsel, which was clearly the decisive factor in the initial decision and in the appeal. There is no need to exhaustively list the reasons for the final decision, when they have been comprehensively addressed at first instance. The Applicant had every opportunity to address the decision makers, including the Appeals Committee, and the concerns he raised had already been addressed, insofar as this was necessary, in counsel's opinion.

9.3 This Court is not required to step into the shoes of the decision maker. The Applicant has not satisfied me that the Respondent's final decision was irrational.

9.4 There is no prospect that this claim will succeed. The Applicant has not established that the Respondent acted unfairly. Nor has he established that his rights have been breached, whether characterised as torts, constitutional rights or breaches of any convention. The test for this Court remains one of assessing the Respondent's processes, which were fair, and its rationale for refusal which was comprehensive and clear. The Appeals Committee was entitled to rely on it.

9.5 The application for leave to apply for judicial review is refused on all grounds.