THE HIGH COURT

CIRCUIT APPEAL

[2014/003716]

DUBLIN CIRCUIT

COUNTY OF THE CITY OF DUBLIN

IN THE MATTER OF THE DATA PROTECTION ACTS 1988 AND 2003 AND IN THE MATTER OF AN APPEAL UNDER SECTION 26 OF THE DATA PROTECTION ACTS 1988 AND 2003

BETWEEN

ALAN SHATTER

APPELLANT

AND

DATA PROTECTION COMMISSIONER

RESPONDENT

AND

MICHAEL WALLACE T.D.

NOTICE PARTY

JUDGMENT of Mr. Justice Meenan delivered on the 9th day of November, 2017

Background

1. On 16th May, 2013, both the appellant and the notice party appeared on the RTE television programme "Prime Time". Both were interviewed concerning controversy over the penalty points system. The notice party claimed that it was unlawful for members of An Garda Síochána to exercise any discretion in relation to the issuing of fixed charge notices for certain road traffic offences. The appellant

expressed the view that it was entirely appropriate for members of An Garda Síochána to exercise such a discretion and stated:-

> "Deputy Wallace himself was stopped with a mobile, on a mobile phone last May by members of An Garda Síochána and he was advised by the guard who stopped him that a fixed ticket charge could issue and he could be given penalty points. But the garda apparently, as I am advised…used his discretion and warned him not to do it again…"

2. Political controversy followed.

3. On 21st May, 2013 the appellant said the following in Dáil Éireann: -

> "I am grateful for the opportunity to address issues arising from last Thursday's Prime Time programme. I regret that comments made by me have inadvertently resulted in concerns being expressed that I am prepared to use confidential Garda information to damage a political opponent. Nothing could be further from the truth, but I am happy to offer reassurances to deputies on this point. I give a solemn assurance to the house that I am not in the business of receiving, seeking or maintaining confidential, sensitive information from An Garda Síochána on members of this house, Seanad, anyone in political life, nor are Gardai in the business of providing it…"

4. The appellant further stated:-

> "The manner in which I acquired the information was quite straightforward and there is nothing sinister about it. I have taken the allegations made about the integrity of the fixed notice charge system and the controversy that arose with great seriousness. In the circumstances, I asked that the allegations made be fully investigated and was briefed on the matter by the Garda Commissioner. During the course of one of our conversations in which a

> number of matters relating to the reports on the fixed notice charge issues were discussed, including circumstances in which Gardaí exercised their discretion on traffic offences, the incident involving Deputy Wallace was mentioned by the Garda Commissioner…"

5. In the meanwhile, the notice party submitted a complaint to the respondent concerning what the appellant had said on the "Prime Time" programme. The respondent commenced an investigation into the complaint and notified the appellant of that fact by letter dated 21st May, 2013. In the course of this letter, Mr. Tony Delany, Assistant Commissioner, on behalf of the respondent stated :-

> "Section 2 of the Data Protection Acts sets down the requirements which apply to the processing of personal data by data controllers. The Commissioner is satisfied the personal data of Deputy Wallace was processed by you in the incident complained of. This investigation will seek to determine whether that data processing was carried out in compliance with the requirements of s. 2 of the Data Protection Acts…"

I will return to this paragraph later in the judgment in the context of dealing with one of the issues of the appeal.

6. Under s. 10.1(b)(ii) of the Data Protection Acts 1988-2003 (the "Acts") the respondent may attempt to arrange an "amicable resolution" of the complaint. However, such a resolution was not achieved and so by letter dated 20th December, 2013, on behalf of the respondent, the appellant was informed under s. 10 of the Acts that the respondent was going to carry out an investigation as to whether or not the Acts had been breached in the manner complained of. The letter also posed a number of questions for the appellant to answer concerning, *inter alia*, the circumstances

under which the appellant acquired the information upon which he based his comments on the RTE programme.

7. By letter of 17th February, 2014, the respondent sought answers to the questions set out in the letter of 20th December, 2013. In the course of a reply to that letter, dated 25th February, 2014, the appellant stated:-

> "As I have indicated previously to you, I am anxious not unduly to delay your investigation and the work of the Data Protection Commissioner in this matter and I look forward to providing you with a full response to the questions which were set out previously.
>
> In advance of doing so, however, there is a legal point which has arisen in my analysis of the issues and which I believe requires to be addressed first. In your letter to me of 21st May, 2013, you stated that "the Commissioner is satisfied that the personal data of Deputy Wallace was processed by you in the incident complained of", that is to say, of course the remarks made by me in the course of the discussion on the Prime Time programme of 16th May 2013".
>
> It appears to me that there may be grounds to question the conclusion that the disclosure of information regarding Deputy Wallace by me in the particular and peculiar circumstances of the Prime Time programme qualifies as the processing of personal data as this would be normally comprehended by the terms of the Data Protection Acts.
>
> It may be helpful to reiterate to you that the information about Deputy Wallace in question was not in my possession or in my department's possession in any documentary form – it was information conveyed verbally and directly to me by the Garda Commissioner in the course of a discussion at which no other persons were present. The information resided thereafter in my

mind. I did not make a written record of it, nor was a written record of it made in my department.

I would have a concern about the extent to which the provisions of the Data Protection Acts could be taken to apply to or could be used to regulate information or the processing of information that is held in a person's" mind.

As you well know, the provisions of the Data Protection Acts deal with manual data or automated data as they are defined in the Acts. In the light of the way in which data is so defined, the Acts then set out a range of provisions dealing with the processing and disclosure of such data, the rights of data subjects and also the roles and responsibilities of data controllers and the Data Protection Commissioner…"

8. The respondent replied to this letter on 4th March, 2014, stating, *inter alia*:

"The contents of your letter have been noted and considered. We note in particular your assertion that the information about Deputy Wallace was not in your possession or in the possession of your department in any documentary form as it was information which was conveyed verbally and directly to you by the Garda Commissioner in the course of a discussion where no other persons were present. Notwithstanding that, the Data Protection Commissioner must take account of the fact that the information about Deputy Wallace was, as the Data Protection Commissioner understands, kept in a written record in An Garda Síochána. For that reason, the Data Protection Commissioner is satisfied that the information concerned is covered in by the Data Protection Acts 1988 and 2003…"

9. The reference in this letter to "a written record in An Garda Síochána" is important in the context of the interaction between the respondent and An Garda

Síochána. In the course of an affidavit in the proceedings sworn on 24th July, 2014, the respondent states: -

> "25. On the 12th March 2014, I attended a meeting with Assistant Garda Commissioner Nolan (along with other officials from this office) to discuss a number of different data protection matters including, but not limited to, Deputy Wallace's complaint. At that meeting, Assistant Commissioner Nolan confirmed to me that the Gardaí held a written record of the incident in which Deputy Wallace was allegedly cautioned by a member of the Gardai in relation to the use of a mobile phone while driving."

and:-

> "28. By an email dated 4th April 2014, this office asked the Gardai to formally confirm in writing that they held a written record of the incident in which Deputy Mick Wallace was allegedly cautioned by a member of the Gardaí in relation to the use of a mobile phone whilst driving."

10. The respondent exhibited to his affidavit this email of 4th April, 2014 which stated *inter alia*: -

> "… on the basis of those inquiries, the formal decision will record that An Garda Síochána held a written record in respect of the incident in which Deputy Wallace was cautioned by a member of An Garda Síochána and that the former Garda Commissioner orally briefed Minister Shatter on the contents of that written record. Please confirm that this is correct."
>
> It would therefore seem that at this stage of the investigation the respondent had neither seen nor considered the 'written record'.

11. By letter dated 8th April, 2014 the appellant responded. With regard to the paragraph in the respondent's letter of 21st May, 2013 that I set out at para. 5 above, it continued:-

> "In the context of the current refinement addressed to controlling rather than processing of the earlier view, the view expressed in the letter of 21st May 2013 gives rise to an impression that the outcome of any subsequent investigation into the matter might have been in some way predetermined. Moreover, this coincides with the public statement of the Data Protection Commissioner on the RTE news the previous day 20th May 2013, that "the key issue is that it is the personal data of Deputy Wallace, it was disclosed by Minister Shatter, so it is for Minister Shatter to justify the basis and the justification for disclosing data that came into his possession as Minister for Justice". This is a matter for considerable concern".

12. On 17th April, 2014, the appellant was furnished with a copy of a "draft decision" by the respondent of the notice parties' complaint. Observations were invited.

13. In giving his observations on 2nd May, 2014, the appellant contended, as he had done before, that what was involved in the complaint was not "data" for the purposes of the Acts nor was he, the appellant, a "joint controller" for the purposes of the Acts.

14. Notwithstanding the appellant's observations, the respondent issued his decision dated 6th May, 2014. The decision sets out in detail the background to the complaint and the exchange of correspondence. The respondent concluded that the appellant was a "data controller" for the purposes of the Acts, and that:-

"I understand from An Garda Síochána that the incident involving Deputy Wallace was not recorded on the central Garda IT system, PULSE, but that it was recorded as a written note, the contents of which were disclosed orally to the Garda Commissioner in the course of a briefing session with senior Garda officers. I consider that the information thus processed by An Garda Síochána falls within the definition of "personal data" for which the Garda Commissioner is the "data controller"."

15. The decision further states:-

"The Minister contends that since the disclosure of the "personal data" about Deputy Wallace was made orally to him by the Garda Commissioner as was his statement on RTE, he should not be considered a "data controller" in respect of this information in view of the definition of "personal data" in the Data Protection Acts.

I acknowledge that the Minister raises a legitimate point of interpretation which could be the subject of detailed legal argument. I am not, on balance, disposed to accept the Minister's contention in context of this case. In reaching this conclusion, I have had regard, *inter alia*, to the following considerations.

It is not disputed that Minister Shatter disclosed information about Deputy Wallace in the course of the Prime Time programme. In circumstances where the information about Deputy Wallace was "personal data" held by An Garda Síochána and where an otherwise unlawful disclosure of this "personal data" the Minister is legitimate solely because of the Minister's duties under the Garda Síochána Act 2005, I consider that the Minister, on receipt of the "personal data" in these circumstances was bound by the same obligations of

nondisclosure under the terms of the Data Protection Acts as was the Commissioner. I consider that the Minister in these circumstances, became a joint controller with the Garda Commissioner of the "personal data" of Deputy Wallace and he could not therefore disclose it other than in accordance with the Data Protection Acts. Bearing in mind the definition of "data controller" cited above, it is clear that the use of the personal data on Prime Time was determined by the Minister"

16. In conclusion, the respondent decided:-

"I am of the opinion following the investigation of the complaints submitted to this office by Deputy Mick Wallace T.D. against Mr. Alan Shatter T.D. Minister for Justice and Equality, that Mr. Alan Shatter T.D. Minister for Justice and Equality, contravened the Data Protection Acts 1988 and 2003 as follows:

- Section 2(1)(c)(ii) by further processing Deputy Mick Wallace's personal data in a manner incompatible with the purpose of which that personal data was obtained…"

17. On the same date of the decision, 6th May, 2014, in his affidavit the respondent states the following:-

"At a meeting I attended (along with other officials from this office) on 6th May, 2014, Assistant Garda Commissioner Nolan produced a copy of an email dated 11th January, 2013, internal to An Garda Síochána, setting out details of an incident said to have occurred in or around May 2012, whereby a member of An Garda Síochána had cautioned Deputy Mick Wallace in relation to the alleged use of a mobile phone by him whilst driving. A copy of the email in question was not handed over to me at the meeting. Assistant Commissioner

Nolan did, however, confirm that he would formally reply to the email issued by this office on 4th April, 2014".

18. There is no reference to any of this in the respondent's decision of 6th May, 2014. Further, it turns out that the "written note" referred to in both correspondence and the decision was an email "internal to An Garda Síochána". The email was not "handed over" to the respondent. He was simply "shown" it as was deposed to at para. 44 of the respondent's affidavit.

19. The decision of the respondent was appealed to the Circuit Court and the matter was heard on 21st January, 2015.

The Circuit Court Appeal

20. Her Honour Judge Jacqueline Linnane delivered a written judgment on 21st January, 2015.

21. At the hearing of the appeal, the respondent maintained that the appellant had no standing to bring the appeal by reason of the fact that the office of the Minister for Justice and Equality is a separate legal personality from the appellant as an individual citizen. As such, the appellant cannot appeal against a decision that relates to the office the Minister. At this stage, the appellant was no longer the Minister for Justice and Equality. Further, the respondent stood over both his decision and the procedures he followed in reaching such decision.

22. The Circuit Judge dismissed the appeal:-

"In my view this objection regarding the standing of the appellant to bring this appeal is well founded and on this ground alone I would dismiss the appeal. However, as I have also heard submissions and arguments from both the appellant and the respondent on the merits of the appeal and in case I am incorrect on this standing point, I have considered those arguments."

and:-

> "The onus rests with the appellant here. In my view, the Data Protection Commissioner considered the matter fully and at length in the course of his investigation. He took into account the arguments put forward by Mr. Shatter, fair procedures were followed and reasons given for the conclusion and decision reached. Applying the test referred to above, I do not consider that it has been shown that the decision made was vitiated by any serious or significant error or series of such errors. Accordingly, even if the standing of the appellant to bring this appeal had not been raised, I would dismiss this appeal."

23. The appellant now appeals the decision of the Circuit Court to this Court pursuant to s. 26(3)(b) of the Acts and to set aside the decision made by the respondent of 6th May, 2014, and relying on, *inter alia*, the following grounds:-

(i) The learned trial judge erred in law in holding that the appellant did not have standing to bring an appeal pursuant to s. 26(1) of the Data Protection Act 1988, as amended, against the decision.

(ii) That the learned trial judge erred in law in holding that the respondent was correct in determining that personal data had been received by the appellant on the basis that the gardaí had a note in writing regarding the incident involving the notice party and that the respondent saw the note (in writing) during the course of his investigation in circumstances where:

- no evidence of such note in writing was before the court or was set out in the decision

- in fact, the evidence before the court was to the effect that the respondent had sight of an email relating to the incident
- there was no evidence in the decision or before the court as to the contents of the email such as to allow the conclusion that it constituted personal data to be drawn and the respondent failed to set out the basis for any such conclusion in the decision

(iii) The learned trial judge erred in law insofar as she held that the appellant disclosed personal data in circumstances where he retained the information given to him by the Garda Commissioner neither in automated form nor as manual data.

(iv) The learned trial judge erred in law in holding that the appellant was a data controller or a joint data controller or that the appellant processed personal data.

(v) The learned trial judge erred in law in holding that the respondent took into account the arguments put forward by the appellant, that fair procedures were followed and that reasons were given for the decision.

Legal Principles to be Applied in this Appeal

24. There was agreement between the parties as to the test to be applied on an appeal such as this. I refer to *Ulster Bank Investment Funds Ltd. v. Financial Services Ombudsman* [2006] IEHC 323 where Finnegan P. stated:-

> "To succeed on this appeal the Plaintiff must establish as a matter of probability that, taking the adjudicative process as a whole, the decision reached was vitiated by a serious and significant error or a series of such errors. In applying the test, the Court will have regard to the degree of expertise and specialist knowledge of the Defendant. The deferential standard

is that applied by Keane C.J. in *Orange v The Director of Telecommunications Regulation & Anor* and not that in *The State (Keegan) v Stardust Compensation Tribunal*."

25. The first issue that has to be addressed on this appeal is the appellant's standing.

The Appellant's Standing

26. The respondent submitted that the appellant, in his capacity as a private citizen, does not have standing to institute and maintain the appeal pursuant to s. 26 of the Acts. This is because the decision of the respondent was not made against the appellant in his personal capacity but rather in his capacity as Minister for Justice and Equality. Further, as the appellant stated in his affidavit, when he appeared on the television programme on 16th May, 2013, he did so in his capacity as Minister for Justice and Equality.

27. On this submission, it would follow that the only person with standing to institute and maintain the appeal is the individual who currently occupies the post of Minister for Justice and Equality.

28. A similar submission was made in *Shatter v. Guerin* [2016] IECA 318. This was an appeal by the applicant/appellant against the dismissal by the High Court of an application for judicial review of a report to An Taoiseach concerning the handling of allegations of Garda misconduct made by Sergeant Morris McCabe. The applicant, at the time of the inquiry he sought to impugn, held the post of Minister for Justice and Equality. The respondent argued that the only person with standing to institute and maintain the proceedings was the person then currently occupying the post of Minister for Justice and Equality.

29. In the course of his judgment, Ryan P. stated:-

"94. A Minister has an official position as a member of the Government which means that he has collective responsibility. In his official capacity the Minister for Justice and Equality had legal status as a corporation sole. However, in the inquiry with which we are concerned, it was not the Minister in his disembodied capacity as a *persona designata* such that it did not matter who occupied the office whose conduct was in issue. The question here concerned a particular Minister or rather a particular person, namely, Mr. Alan Shatter, TD. And although his name is not actually mentioned in the report in the challenged conclusions section, it was his personal and individual conduct in relation to the complaints made by Sergeant McCabe that was actually in issue."

30. Also dealing with this issue, Finlay Geoghegan J. stated:-

"19. Objection was made to the *locus standi* of the appellant as a private citizen or natural person to complain of alleged damage to his good name or reputation by reason of alleged criticism in the Report of the Minister in respect of acts done or not done while he was the holder of the office. That objection is not sustainable. The Minister, a corporation sole, is a legal person with perpetual succession and hence in that sense a distinct person from the appellant. Nevertheless the appellant personally is identified as the Minister for so long as he holds office. Hence it appears to me that criticism in respect of acts done or not done by the Minister while the appellant was the holder of the office can only be objectively viewed as criticism of him personally with the potential to damage his good name and reputation. Hence I

> am satisfied the appellant, albeit no longer Minister, has *locus standi* to pursue this claim."

31. It can hardly be disputed that in pursuing this appeal, the applicant is seeking to reverse potential damage to his good name and reputation that arises from the decision of the respondent. I, therefore, reject the submissions of the respondent on this and find that the appellant has standing both to bring and maintain the appeal herein.

The Appeal

32. There are essentially two aspects to the appellant's appeal. Firstly, the issue of constitutional/natural justice and, secondly, issues concerning the interpretation by the respondent of certain provisions of the Acts. I will address these separately.

Constitutional/Natural Justice

33. There are two issues under this heading, firstly pre-determination and secondly, the procedures followed by the respondent in reaching his decision of 6th May, 2014.

34. The submission that the respondent was guilty of "pre-determination" is based on firstly, the letter of 21st May, 2013 entitled "Notification of the Commencement of an Investigation" sent on behalf of the respondent which states:-

> "Section 2 of the Data Protection Acts sets down the requirements which apply to the processing of personal data by data controllers. The Commissioner is satisfied that the personal data of Deputy Wallace was processed by you in the incident complained of. This investigation will seek to determine whether that data processing was carried out in compliance with the requirements of s. 2 of the Data Protection Acts."

Secondly, a public statement of the respondent on RTE News on 20th May, 2013, that 'the key issue is that it is the personal data of Deputy Wallace, it was disclosed by Minister Shatter, so its for Minister Shatter to justify the basis and the justification for disclosing data that came into his possession as Minister for Justice'."

35. The foregoing statements have to be seen in the context of matters set out in correspondence from the appellant to the respondent. In para. 7 above, I set out in detail the extracts from the appellant's correspondence wherein he is expressly contesting whether the provisions of the Acts apply to the circumstances of the complaint at all. This was clearly an issue being raised by the appellant in dealing with the complaint but, notwithstanding this, it would appear from the foregoing that the respondent had already decided the matter.

36. Issues concerning "bias" and "pre-determination" have been considered in a number of cases. I refer to the decision of Clarke J. (as he then was) in *A.P. v. His Honour Judge McDonagh & Anor* [2009] IEHC 316, (unreported, High Court, Clarke J., 10th July, 2009) where, having reviewed the authorities, states:-

> "7.1 There was no real dispute between the parties as to the test to be applied in assessing whether bias had been established. The test is as to whether a reasonable and properly informed person (that is to say someone who is well informed as to the process engaged in and issues to be tried), would have had a reasonable apprehension that one of the parties would not have a fair hearing from an impartial judge."

and:-

> "7.4 However, it seems to me that there is another form of pre-judgment which arises where the adjudicator indicates that the adjudicator has

> reached a conclusion on a question in controversy between the parties, at a time prior to it being proper for such adjudicator to reach such a decision (indeed it might well be more accurate to describe such a situation as premature judgment rather than pre-judgment). It can hardly be said that a reasonable and objective and well informed person would be any the less concerned that a party to proceedings was not going to get a fair adjudication if, at an early stage of the hearing, comments were made by the adjudicator which made it clear that the adjudicator had reached a decision on some important point in the case at a time when no reasonable adjudicator could have, while complying with the principles of natural justice, reached such a conclusion…"

37. Given that the appellant was contesting from the outset that he did not accept that the Acts applied to the circumstances of the complaint, the statements made both in the correspondence referred to and the national media cannot, in my view, be seen as anything other than pre-judgment of a central issue. Indeed, it is noteworthy that this issue was not adequately addressed in the lengthy written decision of 6th May, 2014.

38. However, notwithstanding this pre-judgment, the appellant remained engaged in the complaint procedure which, therefore, raises the issue of "acquiescence".

39. Such an issue was considered in *Corrigan v. Irish Land Commission* [1977] I.R. 317, where Henchy J. stated:-

> "I consider it to be settled law that, whatever may be the effect of the complaining party's conduct after the impugned decision has been given, if, with full knowledge of the facts alleged to constitute disqualification of a member of the tribunal, he expressly or by implication acquiesces at the time

in that member taking part in the hearing and in the decision, he will be held to have waived the objection on the ground of disqualification which he might otherwise have had…"

40. In applying the foregoing to the circumstances of the instant case, it is my view that, the respondent was guilty of pre-determination of an important issue in the complaint. The appellant, nonetheless, did not take any steps to have the respondent recuse himself. Therefore, the appellant cannot rely on this particular aspect of his appeal.

41. A further issue arises on the procedures adopted by the respondent in considering the complaint. Very clearly, central of the complaint was the "data" involved. In the course of correspondence, the draft decision and the final decision the respondent referred to a "written note". It was only on the 6th May, 2014, the date of the decision, that it transpired that the "written note" was, in fact an email dated 11th January, 2013. All that the respondent knew about this email was that it was "internal to An Garda Síochána". There was no information provided as to who was the sender or the recipient of this email.

42. As was stated in the affidavit of the respondent, the respondent was never furnished with a copy of this email. In his own words, the respondent was "shown" it.

43. Fair procedures would require that, at least, a copy of this document would also be shown to the appellant. This was not done. As a result, the appellant was deprived of an opportunity to make any observations or submissions concerning this central piece of evidence in the complaint.

44. In my view, this represented a fundamental flaw in the procedures followed by the respondent and thus amounted to a "significant error" as per *Ulster Bank v. Financial Services Ombudsman* which, of itself, requires the court to reverse the

decision made by the Circuit Court in upholding the decision of the respondent of 6th May, 2014.

45. The second aspect of the appeal concerns the interpretation by the respondent of certain provisions of the Acts.

46. A starting point is to examine whether "data" as is defined in the Acts covers an email "internal to An Garda Síochána", that was shown but not handed over to the respondent.

47. Section 1(1) of the Acts define "data" as "means automated data and manual data".

48. "Automated data" means information that–

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) is recorded with the intention that it should be processed by means of such equipment."

49. "Manual data" means information that is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system.

50. Applying the foregoing definitions to the instant case, it would seem to me that there is no evidence to suggest that the email in question was being "processed by means of equipment operating automatically". Nor was there evidence that it was "recorded with the intention that it should be processed by means of such equipment". Therefore it does not fit the statutory definition of "automated data".

51. In fact, the decision of the respondent clearly states that the email in question "was not recorded on the Central Garda IT System, PULSE".

52. Equally, there was no evidence on which the respondent could conclude that the email was "recorded as part of a relevant filing system or with the intention that it

should form part of a relevant filing system". Thus, in my view, the email was not "manual data" for the purposes of the Acts.

53. The next matter that must be looked at is whether the appellant was a "data controller" for the purposes of the Acts. Section 1(1) defines "data controller" as:-

> "a person who, either alone or with others, controls the contents and use of personal data."

54. In his decision, the respondent found that the appellant came within the said definition of "data controller" at a time when it would appear that the respondent himself was not aware as to what the nature of the data was. I have already referred to the fact that there is no mention in the decision of the email he was shown.

55. Looking at the definition of "data controller" in the context of an email "internal to An Garda Síochána", it is difficult to see how the appellant could control the "contents" of such an email as is required by the statutory definition. It would follow from this that the appellant cannot be a joint controller with the Garda Commissioner of such data.

56. Further, it seems to me that the error of the respondent in finding that the appellant was a "data controller" is underlined by the provisions of s. 10 of the Acts. Under s. 10(3)(a) the respondent, having found that a person is in breach of a provision of the Acts may require such person to:-

> "(a) to block, rectify, erase or destroy any of the data concerned …"
>
> It is difficult to see how the appellant could comply with such a request.

57. In light of the foregoing, I am of the view that the respondent made "a serious and significant error or a series of such errors", as per *Ulster Bank v. Financial Services Ombudsman* in applying the said definitions in the Acts to the appellant in the circumstance that gave rise to the complaint.

58. I should that add in the course of the hearing counsel for the appellant, Ms. Eileen Barrington S.C. and for the respondent Mr. Paul Anthony McDermott S.C. also made submissions in respect of other definitions in the Acts. However, in light of my findings I do not consider it necessary to consider these.

Conclusion

59. By reason of the foregoing, I find that the Circuit Court judge erred in law as follows:-

(i) in holding that the appellant did not have standing to bring and maintain the appeal;

(ii) in finding that the respondent followed fair procedures in reaching his decision of 6th May, 2014;

(iii) in the application of the provisions the Data Protection Acts 1988-2003 (the "Acts") to the circumstances of the complaint made by the notice party herein.

I would allow the appeal.