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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY HER MAJESTY'S CORONER FOR SOUTH DOWN FOR JUDICIAL REVIEW

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WEATHERUP J

Coroners in Northern Ireland

[1] This is an application for judicial review of the decision of the Northern Ireland Court Service, acting on behalf of the Lord Chancellor in declining to increase the applicant's remuneration as Her Majesty's Coroner for South Down. The applicant was represented by Mr David Scoffield BL and the respondents were represented by Mr Adrian Lynch QC.

[2] Northern Ireland is divided into seven coroners districts. There are six part-time coroners each assigned to one of the districts outside Greater Belfast. In Greater Belfast there is one full-time coroner and two temporary full-time deputy coroners. In addition there are two part-time deputy coroners assisting in the districts outside Greater Belfast

[3] The applicant is John Daniel Thompson who was appointed Her Majesty's coroner for South Down in September 1987. After appointment the applicant retired from private practice as a solicitor. By affidavit the applicant sets out the changing and increasingly onerous nature of the post of part-time coroner involving on average 20-25 hours per week, often at unsociable hours and being on call 24 hours a day, seven days a week for 48 weeks a year. He works mainly from home where he is contactable day or night. The applicant has an office in Armagh Courthouse and a court clerk is assigned when sitting at inquests. The remuneration for part-time coroners comprises a basic annual salary calculated by means of a formula referable to the number of

deaths in the district. In the applicants case the basic annual salary is £6,960 per annum. The basic annual salary is supplemented by a local allowance of 25% of basic salary. Further the applicant is paid 15.5% of basic salary in respect of superannuation. In addition the applicant is paid an expenses allowance of 130% of basic salary.

[4] The applicant compares the package of administrative support and remuneration available to part-time coroners with that available to full-time coroners. The permanent full-time coroner for Greater Belfast has a salary that is more than ten times the applicant's basic salary as well as a pension entitlement and travel expenses. In relation to administrative support there are coroners' courts in the Old Townhall Building, Belfast with fully staffed and resourced offices, which includes administrative and secretarial support and office technology provided by the respondent.

The legislation.

[5] The Coroners (Northern Ireland) Act 1959 governs the appointment and remuneration of coroners.

Section 2 provides that the Lord Chancellor may appoint "one, or more than one, coroner and deputy coroner for each district or districts and on such conditions as to numbers, remuneration, superannuation or otherwise as the Lord Chancellor, after consultation with the Treasury may determine."

By Section 36(2)(a) it is provided that the Lord Chancellor may with the consent of the Minister for the Civil Service determine the salaries or fees and superannuation to be paid to coroners.

It is further provided by Section 2(2) of the 1959 Act that Section 18(2) of the Interpretation Act (Northern Ireland) 1954 shall apply to the appointment of coroners. Section 18(2) of the 1954 Act provides that the power of appointment is deemed to confer the power to fix and vary remuneration.

The dispute on remuneration.

[7] The applicant is a member of the Coroners' Association for Northern Ireland, which has sought to improve the administrative support and remuneration available to part-time coroners. In 1998 the Association engaged ASM Horwath, chartered accountants, to report on the remuneration of part-time coroners in Northern Ireland. The Horwath Report dated 14 October 1998 examined coroners workload and the basis of remuneration. The report expressed the opinion that the level of remuneration awarded to part-time coroners is inequitable (paragraph 5.1). In a supplementary report

dated 27 September 1999 A S M Horwath considered alternative approaches to the remuneration of part-time coroners in Northern Ireland.

[8] The Luce Report on "Death Certification and Investigation in England, Wales and Northern Ireland" was published in June 2003. The Report proposed that the seven coroners districts should be amalgamated into a single district covering the whole of Northern Ireland. That single jurisdiction should be headed by a senior presiding judge at High Court level with a full-time coroner and two full-time deputy coroners. The Northern Ireland Court Service has issued a consultation paper with proposals for the administrative redesign of the Coroners service in Northern Ireland.

[9] As an aspect of the Luce review a consultant, Peter Jordan, was engaged to undertake an analysis of the coroners' data for Northern Ireland. A draft Jordan Report was released on 1 February 2003 dealing with use of coroners' time, demands on coroners' resources and the use of Rule 23(2) (an option available to coroners to notify the authority that may have the power to take action to prevent further deaths of issues arising during inquests). A further draft Jordan Report was released on 4 February 2003 addressing non-inquest cases and inquest cases.

[10] Correspondence was exchanged between the Association and the respondent on the issue of administrative support and remuneration for part-time coroners. A meeting took place on 12 November 2003 to discuss the issues. By letter dated 25 November 2003 the respondent notified the Association of their intention to commission Price Waterhouse Coopers "to carry out a piece of work relating to both the current remuneration of part-time coroners and exit terms when we come to implement the Luce recommendations." It was indicated that A S M Horwath would represent the Association. The engagement of Price Waterhouse Coopers has not progressed and there has been a breakdown between the Association and the respondents. In the affidavit grounding this application for judicial review the applicant states that it is important to the part-time coroners to establish a fair and reasonable rate of remuneration for coronial functions in advance of any discussion of compensation arrangements for loss of office. This sentiment is described by Mr Lynch QC for the respondents as "the engine of these proceedings".

[11] In an exchange of affidavits by the applicant on behalf of the Association and George Hughes Keatley as the respondent's Director of Operations, an extensive dispute has developed in relation to the nature and extent of the respective duties of the full-time coroners and the part-time coroners. This has extended to the on-call arrangements, the hours of work, the remuneration and the negotiations between the Association and the respondents and the future of coronial services in Northern Ireland. It is not intended to repeat the extensive factual matters that are recited in relation to

these topics but in general it may be observed that in light of the service provided by the part-time coroners the level of remuneration is modest and the extent of administrative support is minimal.

Grounds for Judicial Review.

[12] The applicant's application for Judicial Review proceeds on the basis that the remuneration of part-time coroners amounts to unlawful discrimination when compared with the full-time coroners and this position is advanced by reliance on three grounds -

> First, breach of the applicant's vertically directly effective rights under Directive 97/81/EC (the part-time workers directive) as extended to the United Kingdom by Directive 98/23/EC.
>
> Second, breach of Article 14 of the European Convention on Human Rights (anti discrimination) taken in conjunction with the applicant's rights under Article 1 of the First Protocol (rights to property).
>
> Third, breach of the public law and/or community law principle of equal treatment.

[13] The applicant's original grounds for judicial review included a challenge to the decision of the respondents not to disclose details of the remuneration and conditions of the full-time coroners. The details were provided in advance of the hearing of the application for judicial review.

Respondents preliminary grounds.

[14] The respondents raise three preliminary grounds of objection to the present proceedings.

First, that the issues between the parties concern a private pay dispute between the part-time coroners and the Northern Ireland Court Service/Lord Chancellor which does not give rise to public law issues and is not a matter for Judicial Review.

Second, that the claim bristles with issues of factual detail and factual dispute so that Judicial Review is inappropriate.

Third that the domestic Regulations in relation to part-time workers provide remedies before Industrial Tribunals and that if the applicant has any claim it should proceed before an Industrial Tribunal and not by way of Judicial Review.

[15] The circumstances in which Judicial Review may address disputes arising in a public employment context has given rise to some difficulty. Disputes in the context of public employment or officeholders bring into play the differences between private law matters and public law matters, with the place of Judicial Review being with disputes that have implications of a public nature. The authorities were reviewed by the Court of Appeal in Northern Ireland in Re Philips Application (1995) NI 322 at 331. At page 334E Carswell LJ concluded:

> "For my own part I would regard it as a preferable approach to consider the nature of the issue itself and whether it has characteristics which import an element of public law, rather than to focus upon the classification of the civil servants employment or office."

To consider the nature of the issue itself and whether it has characteristics which import an element of public law requires in the circumstances of the present case a more detailed consideration of the character of the dispute as formulated in these proceedings. Similarly, to consider the respondents' further objections in relation to the character of the factual dispute and the appropriate forum in which any remedy might be available requires a consideration of the nature of the issues.

Part Time Workers Directive.

[16] European Community law addresses the issue of discrimination against part time workers on the basis of their part time status. Council Directive 97/81/EC of 15 December 1997 concerned the Framework Agreement on part-time work. It became applicable to the United Kingdom with the adoption of Council Directive 98/23/EC of 7 April 1998. One purpose of the Framework Agreement was to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work.

Clause 2 of the Framework Agreement provides that "This agreement applies to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State."

Clause 3 defines "part-time worker" as an employee whose normal hours of work are less than those of a comparable full-time worker.

Recital (16) of the Directive provides that those terms used in the Framework Agreement which are not specifically defined leaves Member

States free to define those terms in accordance with national law and practice, provided such definitions respect the content of the Framework Agreement.

Clause 4 of the Framework Agreement sets out the principle of non-discrimination so that in respect of employment conditions part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work less time unless different treatment is justified on objective grounds. Where appropriate the principle of pro rata temporis shall apply. The arrangements for the application of Clause 4 are to be defined by the Member States having regard to European legislation, national law, collective agreements and practice.

[17] The Directive was implemented by the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000 which came into operation on 1 July 2000. The 2000 Regulations were amended by the Part-Time Workers (Prevention of Less Favourable Treatment) (Amendment) Regulations (Northern Ireland) 2002 which came into operation on 1 October 2002.

By Regulation 1(2) "worker" means an individual who entered a contract of employment or any other contract to do work or services. The applicant and the respondents agree that a coroner is not a "worker" to whom the 2000 Regulations apply. The coroner is an officer-holder. There is a general discussion of officer-holders in Harvey on Industrial Relations and Employment Law at paragraphs 155 and 159 and it is applied to coroners in Leckey and Greer on Coroners Law and Practice in Northern Ireland at paragraphs 2.22 to 2.25.

By Regulation 2(2) a part-time worker is one who is paid wholly or in part by reference to the time he works. A part time coroner is not paid by reference to the time he works, unless it can be said that the calculation of basic pay by reference to the work in the district amounts to time related pay.

By Regulation 2(4) a "comparable" full time worker is one who is (i) employed by the same employer under the same type of contract and (ii) is engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience.

Regulation 5(1) provides that a part-time worker has the right not be treated by his employer less favourably than the employer treats a comparable full-time worker (a) as regards the terms of his contract and (b) by being subjected to any other detriment by any act, or deliberate failure to act, by his employer. By Regulation 5(2) this right applies only if the treatment is on the ground that the worker is a part time worker and that the treatment is not justified on objective grounds.

Regulation 5(3) provides that, in determining whether a part-time worker has been treated less favourably than a comparable full-time worker, the pro rata principle shall be applied unless it is inappropriate.

By Regulation 8 complaints of less favourable treatment of part-time workers are made to an Industrial Tribunal. Accordingly, if the applicant were a "part time worker" for the purposes of the Regulations he could make a claim in the Industrial Tribunal.

[18] While the applicant agrees that the 2000 Regulations do not apply to the applicant as a part time coroner, the applicant relies on the 2000 Regulations to contend that, in principle, if the applicant were within the scope of the Regulations there would be entitlement to remuneration pro rata full-time coroners. In the first place reliance is placed on the comparable nature of the duties of full-time and part-time coroners and secondly reliance is placed on the differential treatment of full-time and part-time coroners, namely a claim of less favourable treatment of part-time coroners in respect of remuneration and administrative support. The applicant relies on the approach of Regulation 5(3) as it is said that there is no reason why it would be inappropriate to apply the pro rata principle and to reach a determination that the part-time coroners have been treated less favourably than full-time coroners.

[19] The applicant therefore contends that as there is evidence in these proceedings to establish unlawful discrimination, and it being agreed that the Regulations do not apply to part-time coroners, the applicant is entitled to a remedy. In England and Wales the Coroners Act 1998 Schedule 1 paragraph 2 provides for the determination by the Secretary of State of a salary dispute between a coroner and the relevant council. There is no equivalent statutory arrangement in Northern Ireland. In the absence of any alternative remedy the applicant applies for Judicial Review of the exercise of the discretion of the Northern Ireland Court Service/Lord Chancellor under the 1959 Act to fix coroners' remuneration. On the other hand the respondents contend that the 2000 Regulations provide a comprehensive scheme in relation to alleged discrimination against part-time workers, and it being agreed that the applicant is not covered by the Regulations, the applicant can have no right which may be enforced by way of an application for Judicial Review.

Discrimination and Direct Effect.

[20] It becomes necessary to consider the three discrimination grounds relied on by the applicant and also the appropriate proceedings in which to advance those grounds. At this point it is also necessary to return to the Directive. The applicant contends that while he is not a "worker" under the Regulations he is a "worker" for the purposes of the Directive. Further the applicant contends that the Directive has direct effect so that the applicant can

therefore enforce the discrimination provisions of the Directive in the domestic courts. On the other hand the respondents contend that the applicant is not a "worker" under the terms of the Directive, and in any event the terms of the Directive are not sufficiently clear as to be given direct effect.

[21] On the issue of the scope of the Directive the respondents refer to the terms of Clauses 2(1) and Clause 4(3) of the Framework Agreement and recital (16) of the Directive to contend that the application of the Directive is qualified by the law and practice of each Member State. That being so the respondents contend that the scope of the Directive is determined by the Member State, subject to the requirement that there should be respect for the content of the Framework Agreement. As a result it is said that the Directive does not apply to coroners who, as officeholders, are excluded from the scope of the Directive's protection by the law of the State. On the issue of direct effect the respondents contend that the Directive is not sufficiently clear to establish domestic justiciability, as the necessary conditions require that the Directive be clear and precise and unconditional and not such as requires further legislation. The absence of justiciability is particularly apparent, say the respondents, where the measure has been introduced by way of the adoption of a Framework Agreement.

[22] The respondents contend that the applicant's argument takes him to the point where any available remedy under the Directive must involve an application to the Industrial Tribunal, being the domestic forum to which such claims have been assigned. In Percival Price and Others v Department of Economic Development and Others (2000) NI 141 the Court of Appeal dealt with equality of treatment for applicants holding a statutory office who had brought claims before an Industrial Tribunal in relation to equal pay and sex discrimination. The applicants as officeholders were excluded from the domestic legislation. However, they relied on Article 119 of the EC Treaty and the Equal Treatment Directive. The Court of Appeal found that the applicants were "workers" for the purposes of the community legislation. It was stated to be the duty of a national court, where there was a conflict between domestic law and the directly effective provision of community law, to interpret domestic law where possible so as to accord with community law, and where that could not be done to disapply the conflicting provisions of domestic law. In Percival-Price the domestic provisions excluding officeholders were disapplied and the applicants became entitled to the protection of community law. The Court of Appeal rejected the argument that the applicants were required to seek their community rights by way of Judicial Review and found that they should advance their claims in the Industrial Tribunal, the forum that had been given statutory jurisdiction to deal with such claims.

[23] Reference was made to Biggs v Somerset County Council (1995) ICR 811 to similar effect. Preston v Wolverhampton Health Care NHC Trust and

Others (1998) IRLR 197 is a further example relied on by the respondents. Further in R v Secretary of State for Employment ex parte Equal Opportunities Commission (1995) 1 AC 1 the House of Lords dealt with the qualifying thresholds for unfair dismissal compensation and redundancy payments for part-time workers. The applicant applied for Judicial Review of a decision of the Secretary of State that the statutory thresholds were justifiable for the purposes of Article 119 of the EEC Treaty. The House of Lords held that the claim to redundancy payable under the applicable community law should appropriately be brought against employers in the Industrial Tribunal and not against the Secretary of State in proceedings for Judicial Review.

[24] The applicant replies that in the authorities relied on by the respondents the direct effect of the relevant community law was not in dispute and in such cases the applicant accepts that an application to an Industrial Tribunal is the appropriate remedy. However the applicant contends that where direct effect is in issue it is appropriate to apply by way of Judicial Review for a declaration that the Directive has direct effect. Alternatively, if the Directive does not have direct effect and the applicant is within the scope of the Directive, the applicant contends that it is appropriate for the Court to make a declaration that the Directive has been inadequately transposed into domestic legislation.

[25]` I am unable to accept the applicant's submission. If the applicant claims that the Directive has direct effect then the remedy is to apply to the Industrial Tribunal to disapply the provisions in the Regulations that exclude the applicant and then prove the discrimination claim. If the applicant claims that the Directive does not have direct effect, but has been incorrectly transposed into domestic legislation, the remedy is to undertake a Francovich action for damages against the State. (Francovich v Italy (1995) ECR 1-3843). The relevant authority in the State would be a party to the proceedings.

Discrimination in relation to the right to property.

[26] The applicant's second ground relies on Article 14 of the European Convention read in conjunction with Article 1 of the First Protocol. Article 14 of the European Convention provides that –

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The character of Article 14 is described by *Lester and Pannick on Human Rights Law and Practice* at paragraph 4.14.1 - "The Convention, unlike other international human rights instruments, contains no freestanding guarantee of equal treatment without discrimination. Instead Article 14 is restricted to a parasitic prohibition of discrimination in relation only to the substantive rights and freedoms set out elsewhere in the Convention."

[27] Article 1 of the First Protocol provides –

> (1) Every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possessions except in the public interest subject to the conditions provided for by law and by the general principles of international law.
>
> (2) The preceding provisions shall not, however, in any way impair the right of estate to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 1 of the First Protocol comprises three distinct rules. The first rule states the principle of peaceful enjoyment of property. The second rule covers deprivation of possessions and subjects it to certain conditions. The third rule recognises that States are entitled to control the use of property in accordance with the general interest.

[28] The applicant contends that the office of coroner and the remuneration attached to that office are "possessions" for the purposes of Article 1 of the First Protocol. Harvey on Industrial Relations and Employment Law at paragraph 156 refers to offices being regarded as incorporeal hereditaments the freehold office of the officeholder. Blackstones Commentaries (1766) Volume 2 page 36 refers to "offices …. and the fees and emoluments thereto belonging …" as incorporeal hereditaments. This issue was address by Kerr J in Re Sheil's Application (2001) NIQB 46 in relation to the office of constable where the issue is whether the alteration of terms and conditions represented interference with the applicant's possessions. In that case the respondent had argued that the statutory scheme for the control of constables was inconsistent with the notion that the holder of the office of constable enjoyed a right of possession for the purposes of Article 1 of the First Protocol. Kerr J did not find it necessary to resolve the issue as he did not consider that in any event there had been a violation of Article 1 of the First Protocol as the measures in question were taken in the general interest and represented a proper balance of public and private interests.

[29] Article 1 of the First Protocol protects existing entitlement to property. Future income does not constitute a "possession" within the meaning of Article 1 of Protocol 1 unless it has been earned or an enforceable claim exists. In Ambruosi v Italy (2002) 35 EHRR 5 it was found that there was violation of Article 1 of Protocol 1 when a decree deprived the applicant of fees, costs and expenses obtained under previous judgments of the national courts. At paragraph 20 the European Court of Human Rights restated the position that future income constitutes a "possession" within Article 1 of Protocol 1 only if it has been earned or where an enforceable claim to it exists. The issue was whether the future income had been earned or there was an existing enforceable claim, and on finding that there was such entitlement the ECHR found that the decree amounted to an interference with the applicant's right to the peaceful enjoyment of her possessions. In the present case the applicant's present entitlement only extends to the remuneration presently applicable and any claim to greater remuneration is not a possession for the purposes of Article 1 of Protocol 1.

[30] However, the applicant's claim is made under Article 14 in conjunction with Article 1 of Protocol 1. This requires the applicant to establish that the claim falls within the ambit of Article 1 of Protocol 1 and this can arise even though there has been no violation of Article 1 of Protocol 1.

[31] The ambit of Article 1 of Protocol 1 may extend to claims to contributory State benefits, and possibly to circumstances where contributions have not been made by the claimant. The issue was considered by Laws LJ in R (on the application of Carson) v Secretary of State for Work and Pensions (2003) 3 All ER 577. The applicant was a South African resident who had lived and worked in England and paid national insurance contributions. She received a UK retirement pension but annual price inflation increases were only paid to UK residents. An application was made for Judicial Review of the Secretary of State's failure to pay the annual increases on the basis of a violation of Article 14 when read with Article 1 of Protocol 1. The Court of Appeal found that the payment of contributions gave rise to species of pecuniary right such as to constitute a possession for the purposes of Article 1 of Protocol 1. Laws LJ reviewed the authorities to the effect that Article 1 of Protocol 1 does not guarantee the right to a pension, but the right to benefit from a social security system to which a person has contributed may in some circumstances be a property right protected by the Article. In Koua Poirrez v France (30 September 2003) a non-contributory benefit denied to non-nationals was found to be within the ambit of Article 1 of Protocol 1 and the denial was discriminatory under Article 14. Simor and Emersons Human Rights Practice at paragraph 14.004 refers to Koua Poirrez and suggests that Carson may have been wrongly decided.

[32] Whatever may be the position in relation to a contributory or non-contributory State benefit system it does not advance the debate about the

ambit of the Article in relation to the present case concerning a claim for increased remuneration arising in the context of contractual arrangements in the area of employment. I do not accept that the applicant's claim to increased remuneration is within the ambit of Article 1 of the First Protocol, being a claim to which the applicant aspires rather than being an entitlement. If the applicant's claim under Article 14 and Article 1 of Protocol 1 were well founded then the whole scheme of the Regulations in relation to part time workers would be unnecessary.

Discrimination and Equal treatment.

[33] The applicant's third ground relies on breach of a principle of equal treatment arising in public law and in Community law. In public law it has not been established that there exists any freestanding principle of equal treatment. Rather the concept of equal treatment is a feature of irrationality where like cases should be treated alike unless there is good reason to treat them differently, allowing for the reasonable range of discretion open to the decision maker. In Community law the principle of equality has been described in De Smith Woolf and Jowell's Judicial Review of Administrative Action as one of the "unwritten general principles". It represents a restatement of non-discrimination in that like situations must not be treated differently and different situations must not be treated alike, unless there is objective justification for such treatment. In the present proceedings the principle of equal treatment does not add to a consideration of the treatment of the applicant other than in terms of Wednesbury unreasonableness/irrationality.

Evidence of discrimination

[34] In considering the above grounds the issue of the discrimination has not been addressed. The applicant's approach to the issue of discrimination is to adopt the approach of the general measures introduced to deal with discrimination against part time workers. This involves consideration of the comparable nature of the positions of the part time and the full time coroners and the differential treatment of the part time and full time coroners and the justification for such different treatment.

[35] In Sinn Fein's Application [2004] NICA4 the Court of Appeal stated that it was necessary, in order to establish discrimination in any field, to identify comparators, that it is say the persons or bodies by comparison with whom the complainant claimed to have been treated less favourably. The Court adopted the approach of Brooke LJ in Wandsworth London Borough Council v Michalak [2002] 4 All ER 1136, paragraph 20, where four questions were set out, namely -

1. Do the facts fall within the ambit of one or more of the substantive Convention provisions.
2. If so, was there different treatment as respects to that right between the complainant on the one hand and other persons put forward for comparison (the chosen comparators) on the other.
3. Were the chosen comparators in an analogous situation to the complainant's situation.
4. If so, did the difference in treatment have an objective and reasonable justification – in other words did it pursue a legitimate aim and did the differential treatment bear a reasonable relationship of proportionality to the aims sought to be achieved.

Brooke LJ emphasised that the questions are only a framework and there is potential overlap between the considerations that are relevant when determining the last two, possibly the last three questions (para. 22). Laws LJ in R (Carson) v Secretary of State[2003] 3 All ER 577 at paragraph [61] suggested that the true relation between questions 3 and 4 may have been left unresolved. A compendious question was proposed in place of question 3 –

> Are the circumstances of X and Y so similar as to call (in the mind of a rational and fair minded person) for a positive justification for the less favourable treatment of Y in comparison with X?

[36] The concept of the "comparable" full time worker is not easy to apply, as illustrated by Matthews v Kent and Medway Towns Fire Authority [2004] 3 All ER 620. Fire services employ full time firefighters and "retained" firefighters who work part time. Retained firefighters brought proceedings in the Employment Tribunal under the English equivalent of the 2000 Regulations claiming less favourable treatment than comparable full time firefighters in relation to pension, pay and sick pay. While the Employment Tribunal had found that the part time and full time firefighters were employed under different types of contract the Court of Appeal held that the part time and full time firefighters were employed under the same type of contract. Further the Employment Tribunal and the Court of Appeal held that the retained firefighters were not engaged in the same or broadly similar work as the full time firefighters within the meaning of the English equivalent of Regulation 2(4) of the 2000 Regulations. The Tribunal had found that the full time firefighters had measurable additional job functions and fuller, wider jobs. The judgment of Maurice Kay LJ in the Court of Appeal records that the Tribunal sat for ten days to hear the case and the members later met for a further five days in chambers to deliberate about their decision. The essential firefighting functions of the part timers and the full timers did not render their work the same or broadly similar. However it is of no benefit to examine further the details of the respective positions of the retained and the full time firefighters. The case illustrates the need for a close examination of

the respective positions of the full time and part time workers in the light of all the evidence.

[37] In the present case there is a dispute between the applicant and the respondents as to the whether the full time and part time coroners are engaged in the same or broadly similar work. On the issue of comparability the applicant emphasises the essentially similar nature of the relationship with the respondents and the functions of the officeholders and the performance of their duties. The respondents emphasise the role of HM Coroner for Greater Belfast, describing him as the head of a coronial service with significant managerial responsibility. On the issue of differential treatment the applicant emphasises the less favourable position of the part time coroner in relation to the level of pay and the arbitrary manner of its calculation, pension provision, expenses and in relation to staff and services.

[38] Having considered the nature of the issues raised by the applicant in these proceedings I return to the respondents grounds for contending that Judicial Review was inappropriate, namely that there was no public law issue arising in these proceedings, that there was a significant factual dispute and that any remedy would be found in an Industrial Tribunal. In relation to the applicant's first ground concerning the Directive/Regulations I have found that in the circumstances of the present case any issue of discrimination is a matter for the Industrial Tribunal so that no public law issue arises in these proceedings. In relation to the second ground concerning Article 14 and the right to property under Article 1 of the First Protocol I have found that the case is not within the ambit of the Article.

[39] In relation to the third ground of equal treatment I have found that issue to be an aspect of irrationality. The present case involves the exercise of a statutory discretion by the respondents as to the remuneration of the applicant. In the arena of an employment dispute a public law issue may arise. When viewed solely as an issue relating to the exercise of the respondents discretion under the statute as to the appropriate remuneration for the applicant the matter becomes a factual pay dispute. The introduction of discrimination as a basis for advancing the claim does not in the present case convert the factual disputes into public law issues. The factual issues include substantial differences surrounding the actual work undertaken by part time coroners and full time coroners as well as the comparability of the two groups and the character of differential treatment. A resolution of these factual disputes arising on the discrimination issue is unsuited to Judicial Review proceedings, which generally involve evidence on affidavit and rarely require examination of witnesses. The applicant's discrimination claim, as Mr Lynch puts it, "bristles with detailed factual disputes." There is also force in the respondents' contention that the Court is being engaged in the negotiations between the part time coroners and the respondents in relation to their remuneration dispute. The same concerns would apply to the issue of

Article 14 discrimination in relation to Article 1 of Protocol 1 if the applicant's claim fell within the ambit of the Article and it became necessary to consider the factual basis of the discrimination claim in that context.

[40] For the above reasons I do not accept that the present circumstances give rise to public law issues warranting proceedings by way of Judicial Review. Rather, the differences between the parties partake of the nature of an industrial dispute involving substantial factual issues such that proceedings by way of Judicial Review are rendered inappropriate.