

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION**

**Between:**

**PATRICK LAVERTY  
t/a RGC INTERNATIONAL**

**Plaintiff;**

**-and-**

**DEPARTMENT OF THE ENVIRONMENT FOR NORTHERN IRELAND  
THE ENVIRONMENT AND HERITAGE SERVICE DEPARTMENT**

**Defendant.**

**HIGGINS J**

[1] The plaintiff is the proprietor of a haulage firm trading as RGC International with premises situated in Ballymena. He is involved primarily in the transportation of waste to various recycling sites in Northern Ireland. On 20 September 2004 two vehicles, in blue and white livery, owned by the plaintiff were transporting waste from Dublin to Belfast. The vehicles were identified as HKZ 2145 and HKZ 2148. At approximately mid-day the two vehicles were stopped by a police constable near Banbridge, Co Down. The police constable was accompanied by officials of the Environmental Heritage Service (EHS) of the Department of the Environment for Northern Ireland, as it then was. The two vehicles were detained by the EHS officials and conveyed to a facility at Portadown.

[2] On 21 September 2004 a vehicle in blue and white livery owned by the plaintiff and identified as HKZ 2144 was transporting waste from Dublin to Belfast when it was stopped by police constable accompanied by EHS officials. Like the other two vehicles it was detained by the EHS officials and conveyed to a facility. The waste was removed from the vehicles and

examined by EHS officials. Neither the plaintiff nor anyone acting on his behalf was permitted to be present when the waste was examined.

[3] On 21 September 2004 the plaintiff's legal advisers contacted the Waste and Contaminated Land Unit of the EHS pointing out that the plaintiff had received no written notification or explanation which justified the detention of the vehicles. On 22 September 2004 the plaintiff's legal advisers were informed by an official of the Department in a phone-call that the vehicles were detained in exercise of powers of enforcement under Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997.

[4] On 22 September 2004 the vehicles HKZ 2145 and 2148 were inspected and samples of the waste taken and photographed by officials of the defendant. On 23 September 2004 vehicle HKZ 2144 was similarly inspected and samples taken. It is clear that the defendant's officials were not satisfied with the type, composition and quality of the waste stream in the vehicles inspected.

[5] On 24 September 2004 the plaintiff commenced judicial review proceedings in the Queen's Bench Division of the High Court of Justice in Northern Ireland. It was contended on behalf of the plaintiff that the defendant had acted ultra vires and in an arbitrary manner. The Order 53 Statement sought –

- i. an order of certiorari quashing the decision to detain and retain the vehicles;
- ii. an order for mandamus requiring the vehicles to be returned forthwith;
- iii. interim relief requiring the vehicles be returned forthwith;
- iv. an order for mandamus requiring the EHS to furnish the plaintiff with a written explanation for the detention of his vehicles and the grounds for doing so;
- v. a declaration that the detentions were unlawful; and
- vi. a declaration that the detentions did not comply with Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997.

[6] Leave to bring the judicial review proceedings was granted by Girvan J and a direction given that the vehicles should be returned to the plaintiff. The vehicles were returned on 27 September 2004. On the same date the plaintiff's legal advisers informed the defendant that the plaintiff did not agree to inspections taking place without his presence or that of a person representing him as, allegedly, had taken place in the past.

[7] The plaintiff's vehicles were transporting waste from two waste business premises in the South Dublin County Council area, which Council is a competent authority for waste transportation purposes. The two premises

were International Plant Hire Company Ltd Dublin trading as Greenclean and Lawlor Waste Disposal Ltd trading as Access Waste. The relevant competent licensing authority in Northern Ireland was Belfast City Council, though since October 2004 the defendant has assumed this responsibility. The relevant competent authority in the Republic of Ireland was South Dublin County Council. The waste was being transported by road from Dublin to Amber Merchants Ltd trading as Waste Beater Unit in Kennedy Way Industrial Estate, Belfast. This was said to be a large and technically advanced recycling plant which charges a gate fee per ton. It was suggested that Waste Beater recycles as much as it can and sells this on and the residue is sent to landfill sites. The authorities in Northern Ireland suspected that Waste Beater was a sham concern and that in fact it provided a landfill site for waste from the Republic, at a cheaper rate than would apply in that jurisdiction and was not authorised to do so.

[8] At the end of September 2004 South Dublin County Council requested the return of the waste to enable its Environmental Services Department to carry out a comprehensive visual inspection of the waste. On 1 October 2004 a meeting and inspection of waste was carried out by officials of both Belfast City Council and South Dublin County Council. On 6 October 2004 the waste was returned to the Republic of Ireland and inspected by South Dublin County Council on that date. The officials of South Dublin County Council found that the waste did not appear to breach the identification codes outlined on the TFS Movement/Tracking Form for IE230379 and there was no evidence of putrescible (sic) food waste and no odour from any of the three containers. The waste was found to comply with the waste types permitted to be received by Lawlor Waste Ltd under their waste permit and could be processed at a modern waste recycling facility. On the same date the premises of Lawlor Waste Disposal Ltd were inspected. On 8 October the premises of a concern identified as Greyhound were inspected. On 11 October 2004 the premises of Waste Beater were inspected and were found to be capable of accepting and processing the waste materials recovered from the three vehicles.

[9] The correspondence and documents relating to these inspections and findings were sent to the defendant. It would appear that both South Dublin County Council and Belfast City Council were satisfied there was no reason why movement of waste identified under code IE230379 as provided for in the TFS Regulations 259/93, from Lawlor Waste Ltd to Waste Beaters could not take place. However the defendant retained concerns relating to the Waste Beater facility and as a result all shipments from Lawlor Waste Ltd were suspended. In his affidavit dated 12 October 2004 the plaintiff identified four issues which he felt remained unresolved. These were –

- i. the power of EHS to seize under Article 72 of the 1997 order;
- ii. the demand by EHS for purity in the contents of the loads;

- iii. the issue of whether EHS is permitted to retain the trailers in order to return the loads to Dublin, especially in circumstances where the contents of the loads may have been removed from the trailers for examination, and
- iv. the exclusion by the EHS of Belfast City Council as the “Competent Authority” for the purposes of Transfrontier Shipment of Waste Regulations 1994.

[10] On 9 December 2005 the plaintiff discontinued the judicial review proceedings and the proceedings continued as if begun by Writ of Summons and the case transferred into the Commercial List. The plaintiff’s Statement of Claim served on 6 January 2005 ( and subsequently amended) alleged loss and damage occasioned by negligence, nuisance, conversion, breach of statutory duty and unlawful interference with the plaintiff’s goods, namely the three vehicles detained on 20 and 21 September 2004 and their contents. It was alleged that the defendant had breached the statutory powers contained in the Waste and Contaminated Land (Northern Ireland) Order 1997 and Article 72 in particular. By its defence served on 2 March 2005 the defendant denied the allegations contained in the Statement of Claim and in particular denied that the waste contained in the three vehicles detained on 20 and 21 September 2005 was licensed waste. It was further alleged that the seizure and detention of the vehicles was permitted by virtue of the power contained in and incidental to Article 72 of the 1997 order.

[11] Mr Stephens QC together with Mr A Higgins appeared on behalf of the plaintiff and Mr G Simpson QC and Mr McMillen on behalf of the defendant. The case was opened by Mr Stephens QC. At the end of his opening and having identified the defence put forward he made two applications. Firstly that the court should consider the powers contained identified in Article 72 and secondly that the defendants should open their case and call evidence to justify their actions. Mr Simpson QC submitted that the issue was whether the vehicles had been stopped by the police. If it was accepted that the vehicles had been stopped by the police then the case could proceed upon legal argument concerning the nature and breadth of the powers contained in Article 72. Mr Stephens QC responded that it did not matter whether they were stopped by the police or an authorised officer. It could be said that a police officer stopped one and an authorised officer the other. The following day Mr Simpson QC made submissions relating to Article 72. During these submissions the case was adjourned to enable the parties to consider whether they wished the court to proceed to hear only the preliminary point relating to Article 72 at that stage. Following the adjournment Mr Simpson stated that it was accepted by the defendant that the defendant had no power express or implied to stop vehicles and that the parties had identified the question to be determined by the court. He expressed the question in these terms -

“Do the powers of the defendant under Article 72 of the 1997 order include the power to remove from the scene and to take to an appropriate place a vehicle and to keep it to carry out an examination and investigation?”

[12] Mr Simpson QC accepted that if the court held that such power exists then the defendant requires to show whether examination of the contents of the vehicles was necessary and to justify the examination and extent of it.

The parties have agreed that should the plaintiff’s argument on the interpretation of Article 72 prevail and liability thereby established, the defendant will pay the plaintiff £65,000 compensation for the detention and retention of the said vehicles and the costs of the proceedings.

On 15 July 1975 the Council of the European Communities adopted Directive 75/442/EEC on Waste Disposal ( the Waste Directive). It noted the essential objective to be the protection of human health and the environment against the harmful effects caused by the collection, transport, treatment, storage and tipping of waste and the need to harmonise the laws applicable in Member States. This Directive was amended by a further Directive 91/156/EEC adopted on 18 March 1991. This Directive noted that it was desirable to encourage the recycling of waste and re-usage of waste as raw material. It noted also the necessity to provide for authorization and inspection of undertakings which carry out waste disposal and recovery in order to ensure a high level of protection and effective control. Furthermore it noted –

“Whereas, in order that waste can be monitored from its production to its final disposal, other undertakings involved with waste, such as waste collectors, carriers and brokers should also be subject to authorization or registration and appropriate inspection.”

[13] Article 1 provided inter alia for the establishment of a list of wastes belong to the categories listed in Annexe I, which would be reviewed periodically. Articles 3, 4, 5, 6, 12 and 13 were regarded as relevant and provided as follows.

“Article 3

1. Member States shall take appropriate measures to encourage:
  - (a) firstly, the prevention or reduction of waste production and its harmfulness, in particular by:
    - the development of clean technologies more sparing in their use of natural resources,

- the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards,
  - the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery
- (b) secondly:
- (i) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials, or
  - (ii) the use of waste as a source of energy.

2. Except where Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (\*) applies, Member States shall inform the Commission of any measures they intend to take to achieve the aims set out in paragraph 1. The Commission shall inform the other Member States and the committee referred to in Article 18 of such measures.

#### Article 4

Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- without risk to water, air, soil and plants and animals,
- without causing a nuisance through noise or odours,
- without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.

#### Article 5

1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and

adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialized installations for certain types of waste.

2. The network must also enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.

### Article 7

1. In order to attain the objectives referred to in Article 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to:

- the type, quantity and origin of waste to be recovered or disposed of,
- general technical requirements,
- any special arrangements for particular wastes,
- suitable disposal sites or installations.

Such plans may, for example, cover:

- the natural or legal persons empowered to carry out the management of waste,
- the estimated costs of the recovery and disposal operations,
- appropriate measures to encourage rationalization of the collection, sorting and treatment of waste.

2. Member States shall collaborate as appropriate with the other Member States concerned and the Commission to draw up such plans. They shall notify the Commission thereof.

3. Member States may take the measures necessary to prevent movements of waste which are not in accordance with their waste management plans. They shall inform the Commission and the Member States of any such measures.

## Article 8

Member States shall take the necessary measures to ensure that any holder of waste:

- has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or B, or
- recovers or disposes of it himself in accordance with the provisions of this Directive.

## Article 12

Establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorization, shall be registered with the competent authorities.

## Article 13

Establishments or undertakings which carry out the operations referred to in Articles 9 to 12 shall be subject to appropriate periodic inspections by the competent authorities.”

[14] Subsequently the Waste and Contaminated Land (Northern Ireland) Order 1997 was passed, inter alia, to give effect to the Waste Directive (above) as amended - see Article 19 and Schedule III. Article 19 also required the Department of the Environment to prepare a strategy statement (the Waste Strategy) containing its policies for the recovery and disposal of waste in Northern Ireland. The objectives of the Waste Strategy are set out in Schedule III, the relevant parts of which provide -

### “OBJECTIVES FOR THE PURPOSES OF THE WASTE STRATEGY

1. Ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and, in particular, without-

- (a) risk to water, air, soil, plants or animals;
- (b) causing nuisance through noise or odours; or



- (c) adversely affecting the countryside or places of special interest.
2. Establishing an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs.
  3. Ensuring that the network referred to in paragraph 2 enables-
    - (a) the European Community as a whole to become self-sufficient in waste disposal, and the Member States individually to move towards that aim, taking into account geographical circumstances or the need for specialised installations for certain types of waste; and
    - (b) waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.
  4. Encouraging the prevention or reduction of waste production and its harmfulness, in particular by-
    - (a) the development of clean technologies more sparing in their use of natural resources;
    - (b) the technical development and marketing of products designed so as to make no contribution or to make the smallest possible contribution, by the nature of their manufacture, use or final disposal, to increasing the amount or harmfulness of waste and pollution hazards; and
    - (c) the development of appropriate techniques for the final disposal of dangerous substances contained in waste destined for recovery.
  5. Encouraging-
    - (a) the recovery of waste by means of recycling, reuse or reclamation or any other process with a view to extracting secondary raw materials; and
    - (b) the use of waste as a source of energy."

[15] Part II of the 1997 Order makes provision for granting waste management licences and by Article 4 made it an offence to deposit controlled

waste on any land without such a licence. Controlled waste is defined as 'household, industrial and commercial waste or any such waste'. Part IV under the heading of 'General' makes provision, inter alia, for Supervision and Enforcement (Articles 72 - 74). Article 72 provides -

"72. - (1) An authorised person may, on production (if so required) of his authority, exercise any of the powers in paragraph (2) for the purpose of -

- (a) determining whether any provisions of the pollution control statutory provisions in the case of an enforcing authority are being, or have been, complied with;
- (b) discharging one or more of the functions conferred or imposed on an enforcing authority by or under the pollution control statutory provisions; or
- (c) determining whether and, if so, how such a function should be discharged.

(2) The powers of an authorised person are -

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of subparagraph (a), to take with him -
  - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;

- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
- (h) in the case of any such article or substance as is mentioned in sub-paragraph (g), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely -
  - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that sub-paragraph;

- (ii) to ensure that it is not tampered with before examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control statutory provisions in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those statutory provisions;
- (i) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (j) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records -
  - (i) which are required to be kept under the pollution control statutory provisions for the enforcing authority under whose authorisation he acts, or
  - (ii) which it is necessary for him to see for the purposes of an examination or investigation under sub-paragraph (c), and to inspect and take copies of, or of any entry in, the records;
- (k) to require any person to afford him such facilities and assistance with respect to any matters or things within that

person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this Article;

(1) any other power for a purpose mentioned in paragraph (1) which is conferred by regulations.

(3) The powers which under paragraphs (1) and (2) are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control statutory provisions in the case of that authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made, -

(a) to carry out experimental borings or other works on those premises; and

(b) to install, keep or maintain monitoring and other apparatus there.

(4) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this Article shall only be effected -

(a) after the expiration of at least 7 days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and

(b) either -

(i) with the consent of a person who is in occupation of those premises; or

(ii) under the authority of a warrant by virtue of Schedule 4.

(5) Except in an emergency, where an authorised person proposes to enter any premises and -

- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
- (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this Article shall only be effected under the authority of a warrant by virtue of Schedule 4.

(6) Regulations may make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under paragraph (2)(f).

(7) Where an authorised person proposes to exercise the power conferred by paragraph (2)(g) in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(8) Before exercising the power conferred by paragraph (2)(g) in the case of any article or substance, an authorised person shall consult -

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and
- (b) such other persons,

as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power.

(9) No answer given by a person in pursuance of a requirement imposed under paragraph (2)(i) shall be admissible in evidence in Northern Ireland against that person in any proceedings.

(10) Nothing in this Article shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(11) Schedule 4 shall have effect with respect to the powers of entry and related powers which are conferred by this Article.

(12) In this Article and Schedule 4 -

‘authorised person’ means a person who is authorised in writing by an enforcing authority for the purposes of this Article;

‘emergency’ means a case in which it appears to the authorised person in question -

(a) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or

(b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

‘enforcing authority’ means -

(a) the Department;

(b) a district council in its capacity as an enforcing authority for the purposes of Part III;

- (c) a district council for the purposes of Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978;

‘pollution control statutory provisions’ -

- (a) in relation to the Department, means -

- (i) this Order; and
- (ii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;

- (b) in relation to a district council, means -

- (i) Part III;
- (ii) Part II of the Pollution Control and Local Government (Northern Ireland) Order 1978; and
- (iii) regulations made under section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;

‘premises’ includes any land, vehicle, vessel or mobile plant.

(13) Nothing in section 98 of the Local Government Act (Northern Ireland) 1972 shall apply to functions conferred on a district council under this Order, other than functions under Article 28.”

[16] By reason of the manner in which the case developed, as referred to above, the issue to be determined in the case narrowed considerably. However, what remained to be decided was an important point of



construction of the 1997 Order and raised some fundamental issues relating to the powers of the defendant's officials and the rights of a citizen.

[17] It was submitted by Mr Simpson QC that the 1997 Order should be examined in light of the EU Directive and the nature of the whole scheme relating to waste management. The Court should bear in mind the purpose of the Directive and the legislation and adopt a purposive interpretation of the Order. It was accepted that Article 43 ( Seizure and Disposal of Vehicles used for Illegal Waste Disposal) applied only where the user of the vehicle could not be identified. Article 4 (Prohibition on Unauthorised or Harmful Deposit, Treatment or Disposal etc of Waste) and 5 (Duty of Care etc as respects Waste) create criminal offences. It was submitted that the transportation of some of the contents of the vehicles gave rise to the suspicion that a criminal offence was being committed and in those circumstances the defendant was entitled to investigate whether in fact an offence was committed. The Order permits evidence to be gathered. If a vehicle could not be removed to a suitable facility for detailed inspection then the Order may be rendered nugatory. 'Premises' includes any vehicle ( Article 72(12) ) Article 72(2)( c ) creates a power whereby an authorised person may make such examination and investigation as may in the circumstances be necessary. It was submitted that this permits the authorised officer to take whatever steps are necessary to examine the contents of a vehicle and to investigate the circumstances of the transport of any waste material and any potential criminal offence. Article 72(2)(d) involves interference with property rights to ensure that nothing is disturbed pending examination or investigation. To interpret Article 72(2)( c ) in a manner which would not permit a vehicle to be removed with the contents undisturbed for examination elsewhere would diminish the power provided for in Article 72(2)(d). Article 72(2)(e) permits such measurements, photographs and recordings to be taken as considered necessary for the purpose of any examination or investigation. To take measurements photographs or recordings may require the vehicle to be removed to another suitable location. Article 72(2)(f) permits the taking of samples of any article or substance found in any vehicle or of the atmosphere or specified substance surrounding it. It was submitted that it would be impossible to carry out this task at the roadside. Article 72(2)(g) permits the dismantling of any article or substance found in any vehicle, as well as subjecting it to any process or test. This was bound to involve an interference with property rights and would encompass removal of the vehicle for those purposes. Article 72(2)(h) permits an authorised officer to take possession of any article or substance found in any vehicle for the purpose of examination, to prevent it being interfered with and to ensure its availability as evidence in any proceedings. It is implicit that the exercise of these powers might require the vehicle to be moved to another location. Article 72 (2)(k) provides an authorised officer with wide powers to require any person to afford him facilities and assistance to enable the officer to exercise any of the powers conferred on him by Article 72. This should include assistance in the removal of a vehicle to another location. Mr Simpson

submitted that Article 72(2) clearly contemplates interference with property rights which would include the removal of a vehicle for the purposes of examination of the contents or in furtherance of the investigation. In addition Article 72(3) anticipates further interference with property rights when it permits boring on premises or the installation of monitoring equipment on premises. The police had unlimited powers to stop a vehicle under Road Traffic legislation. If a DOE official stopped a vehicle, not having the power to do so, it would not mean that any subsequent exercise of the wide powers contained in Article 72 would be unlawful (relying on *Kelly v Faulkner*).

[18] It was submitted by Mr Stephens QC that no power to stop and seize a vehicle existed for the purposes of Article 72 or Part IV of the 1997 Order. Part II makes provision for waste on land and transportation of waste by registered carriers and grants limited powers to authorised officers and constables. By Article 38 it is an offence to transport waste without being a registered carrier. Article 42 permits an authorised officer or a constable to stop and search any vehicle and remove samples only for testing. Article 43 permits a justice of the peace to issue a warrant for the seizure of a vehicle if, on a complaint on oath, he is satisfied that there are reasonable grounds for believing that the vehicle has been used in the commission of an offence under Article 4 or 5. The granting of these specified powers was significant when considering the extent of the powers granted by Article 72 and Part IV. It was submitted that a citizen was entitled to the enjoyment of his property without interference. Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides that a person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possession except as provided for law and in the public interest. Article 72 infringes on those property rights and should be interpreted restrictively. Any law providing for interference with peaceful enjoyment of possessions must be clear and compatible with Protocol 1. It was submitted that Article 72 did not permit or envisage any vehicle being stopped and therefore the suggestion that it was contemplated that the vehicle might be by the roadside or at any scene was without foundation. Article 43 in Part II contains the powers to seize a vehicle and Article 43 (5) permits the removal of seized vehicle in accordance with regulations. This is a strong indication that no power to remove a vehicle was created or intended to be created by any provision in Article 72. Significantly Article 72 contains no power to take a vehicle to another location or to direct it to be taken to another location. The defendant places great emphasis on the words 'examination' and 'investigation' and suggests that these invest the authorised officer with power to remove or direct removal. It was submitted that these are ordinary words of the English language and easily understood. Neither includes the power to remove or direct removal. If the vehicle was stopped by a member of the EHS then everything was unlawful as the stopping was a necessary incident of the seizure. The power of the police to

stop is not unrestricted but has to be for a policing purpose and cannot be for a purpose intended by the defendant.

[19] The 1997 Order re-enacted the provisions of Part II of the Pollution and Control and Local Government (Northern Ireland) Order 1978 relating to waste on land but with considerable modification and enlargement of the rules thereto and the powers of the Department. Part II of the 1997 Order makes provision for licensing and control of Waste on Land. Part III makes provision for coping with contaminated land. Part IV is entitled General and includes under the sub-heading Supervision and Enforcement Articles 72 -74. Article 74 creates offences - obstructing an authorised person or failing to comply with any requirement imposed under Article 72, or failing or refusing to provide facilities, assistance, information or permitting any inspections, or preventing a person from appearing before or answering any questions from, an authorised person. Article 73 empowers an authorised person to deal with any polluted article or substance found on any premises which he has power to enter.

[20] Article 72 (1) empowers an authorised person to exercise any of the powers contained in sub-paragraph 2. Sub-paragraph 2 contains twelve separate powers in paragraphs numbered (a) to (l). The powers set out have a sequential pattern. Sub-paragraph (a) empowers an authorised person to enter premises; sub-paragraph (b) empowers the authorised person on entering premises to take another person or necessary equipment or materials and sub-paragraph (c) to make such examination or investigations as may be necessary. Sub-paragraph (d) permits him to direct that the premises (which he has power to enter) shall be left undisturbed and (e) the taking of measurements and photographs. Sub-paragraph (f) authorises the taking of samples of any articles or substances found in or on any premises which he has power to enter and of the air, water, or land in, on or in the vicinity of the premises. Sub-paragraph (g) makes provision for further powers in respect of any article or substance found in or on any premises which the authorised person 'has power to enter'. The whole tenor and structure of sub-section relates to entry on premises dealing with article or substances found on them. It is very comprehensive in what it permits the authorised person to do. Article 72 is clearly designed to permit entry on to land on which waste may be stored or processed and on to plant or vehicles on that land. Sub-sections (5), (7) and (8) reinforce that view. Sub-section 5 envisages the use of force to enter the premises and sub-sections (7) and (8) provides for contact with persons having responsibilities and duties on the premises. The terms of Schedule 4 to the 1997 Order reinforce that view - in particular paragraphs (2) (c) and (d) thereto.

[21] Part II of the 1997 Order and Articles 38 - 43 makes provision for transportation of waste by vehicles and for offences relating thereto. In particular Article 42 empowers an authorised officer or a constable to stop a person (not a vehicle) and require him to produce his authority to transport

waste. In addition both are empowered to search a vehicle and to carry out tests on anything found in the vehicle. Significantly Article 42(1)(b) permits samples to be taken away for testing but no provision is made for the vehicle to be removed elsewhere for test, examination or investigation. Equally significant is Article 42 (2) which provides that nothing in Article 42(1) authorises any person other than a constable to stop a vehicle. Thus the 1997 Order does not make provision directly for an authorised officer to be involved in stopping vehicles nor does it empower such officer or a constable to remove or direct removal of a vehicle from the roadside to another location. Can such powers be inferred from the language of Article 72 read in conjunction with the other Articles in the 1997 Order and the EU Directives.

[22] The Directives are equally comprehensive but nowhere do they relate to the detail of removal of vehicles for examination. More significantly the latest Directive enjoins Member States to take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste (Article 4 supra) and to prevent movements of waste which are not in accordance with their waste management plans (Article 7). It would have been open to Parliament to make direct provision for the removal of vehicles for examination or investigation. It has not done so. I was invited to consider draft legislation and consultation documents on waste management but I do not consider they are appropriate materials for determining an issue which is essentially one of statutory interpretation. Nor do the provisions in England and Wales provide assistance. A purposive interpretation was urged and I consider that is appropriate but in doing so it does not allow the language of Article 72 to be so stretched to include a power to remove, by whomsoever, a vehicle from the roadside to a more appropriate location for examination or investigation. I accept that these words, 'examination' and 'investigation' are wide in nature. While in Article 72(2)(c) they stand alone - "to make such examination and investigation as may in any circumstances be necessary" - they must be read in context. That context is provided by the preceding subparagraphs which describe 'entering' on any premises. Premises are defined to include 'any land, vehicle, vessel or mobile plant'. Mr Simpson suggested that a vessel would have to be brought to a port to enable it to be properly examined or investigated. Any vessel or vehicle can be examined or investigated wherever it may be at the relevant time. Wide though the words are I do not consider they can be interpreted in Article 72 in such a manner as to encompass the removal of vehicles to another location to enable their contents to be examined or investigated. As Mr Stephens observed the language does not contemplate a roadside situation. That is wholly out-with the language of the Article. Detention of a person's property is a fundamental matter which Parliament could only intend by clear language. It has not done so.

[23] It is clear law that only a constable has power to stop a vehicle on a road - Article 180 of the Road Traffic (Northern Ireland) Order 1981 as amended. An authorised officer does not have such power. But neither

person, in my opinion, has the power under Article 72 to remove or direct the removal of a vehicle, however stopped, to another location to be detained there for any length of time. Therefore the answer to the narrow issue which divides the parties is that the plaintiff's vehicles were unlawfully removed and detained and he is entitled to judgment in the agreed sum of £65,000 and costs.