Neutral Citation No. [2014] NIQB 8

Ref: **GIL9109**

Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

Delivered: **17/01/2014**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

EDWARD STERLING

Plaintiff;

-and-

NORTHERN IRELAND ENVIRONMENT AGENCY

Defendant.

GILLEN J

Introduction

[1] The plaintiff's claim in this matter is for damages in respect of loss and damage allegedly sustained by him as a result of the negligence, misfeasance in public office and breach of his rights under Article 1 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as set out in Schedule 1 to the Human Rights Act 1998) (the Convention). The Waste Management and Contaminated Land Unit was an operational team within the Environmental Heritage Service which was the precursor of the current defendant

[2] Mr Orr QC appeared on behalf of the plaintiff with Mr Copeland of counsel and Mr Humphreys QC appeared on behalf of the defendant. I am grateful to both sets of counsel for their painstaking and skilful presentation of the issues in this case. The parties agreed that I should make a determination on the issue of liability before causing them to incur the costs of the attendance of accountants to deal with the quantum aspect of the case.

Background

[3] The plaintiff was the owner of a skip hire business known as Teshan Skip Hire operating at 50 Teshan Road, Ballymena.

[4] In pursuit of that business, the plaintiff held a certificate of registration("the certificate") which entitled him to transport waste under the provisions of the Waste and Contaminated Land (Northern Ireland) Order 1997 ("the 1997 Order"). In essence this order transposes the requirements of the EC Waste Framework Directive into Northern Ireland legislation in order to ensure that waste is managed in a manner that does not cause damage to the environment or harm to human health.

[5] The plaintiff had held such a certificate between 7 May 2000 and 7 May 2003 and again from 8 May 2003 for a period of three years.

[6] On 25 September 2003 at Ballymena Magistrates' Court the plaintiff, trading as Teshan Skip Hire was convicted of an offence under Article 7 of the Pollution Control and Local Government (Northern Ireland) Order 1978 relating to controlled waste only. Ballymena Borough Council was the authority responsible for the legal action. The conviction on 25 September 2003 related to an offence which had occurred on 15 April 2002 in respect of one incident on one single day. He was fined £250 and £500 costs.

[7] Up to that time the plaintiff had been carrying on his business with one lorry and 50 skips on a self-employed basis.

[8] On 9 June 2004 the defendant revoked the plaintiff's certificate of registration as a result of this conviction with effect from 9 June 2004.

[9] The plaintiff exercised his right of appeal against the defendant's decision pursuant to Article 41 of the 1997 Order to the Planning Appeals Commission (PAC).

[10] The appeal was heard by a PA Commissioner on 27 October 2004. By decision dated 22 November 2004 the appeal was upheld and a recommendation made to the PAC that the appeal be allowed and the "revocation of the certificate be cancelled". The successful outcome of the appeal, which was approved by the PAC, was notified to the plaintiff shortly after 7 December 2004.

The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999 provides, where relevant, as follows:

“Revocation of registration

10. (1) Subject to Article 40(6) of the 1997 Order, the Department may revoke a person’s registration as a carrier of controlled waste if, and only if—

(a) that person or another relevant person has been convicted of a prescribed offence; and

(b) in the opinion of the Department, it is undesirable for the registered carrier to continue to be authorised to transport controlled waste.

(2) Where the Department decides to revoke a person’s registration as a carrier of controlled waste, it shall give notice to the carrier informing him of the revocation and of the reasons for its decision.

….

11. (5) Where the Department revokes a person’s registration, the registration shall, notwithstanding the revocation, continue in force until—

(a) the expiry of the period for appealing against the revocation (*which is 28 days)*; or

(b) where that person indicates within that period that he does not intend to make or continue with an appeal, the date on which such an indication is given.

……

The Waste and Contaminated Land Regulations (Northern Ireland) Order 1997 provides, where relevant, as follows:

“41. (1) Where a person has applied to be registered in accordance with any regulations under Article 39, he may appeal to the Planning Appeals Commission if ……………………………..

(a) His application is refused.

………………………………..

> (8) Where an appeal under this Article is made in accordance with regulations under this Article –
>
> (b) By a person whose registration has been revoked,
>
> That registration shall continue in force, notwithstanding the expiry of the prescribed period or the revocation, until the appeal is disposed of."

Relevant exchanges between the parties

[11] Correspondence exchanged between the plaintiff and the defendant and others played a significant role in this case. The relevant chronology of such exchange included the following.

[12] On 16 October 2003 Ballymena Borough Council ("BBC") wrote to Mr Aston of the Waste Management and Contaminated Land Unit indicating that BBC had successfully prosecuted the plaintiff as indicated above and that he appeared now to be operating an unlicensed landfill site adjacent to his home. The letter concluded:

> "This information is being brought to your attention for whatever action you deem appropriate in the circumstances in relation to the company's waste carrier's licence."

[13] On 9 June 2004 Ann Blacker of Waste Management and Contaminated Land (an agency of the defendant and hereinafter called WMCL)) wrote to the plaintiff indicating that in light of Regulation 10 of the 1999 legislation, and his "convictions" regarding illegal waste activities the Department had concluded that it was undesirable for him to continue to transport controlled waste and his "ROC license" i.e his certificate was revoked. It concluded:

> "You have a period of 28 days from the date of this notice in which to appeal this decision."

[14] On 18 June 2004 Colette O'Neill of WMCL wrote to the plaintiff referring to the correspondence of 9 June 2004 and the revocation of his certificate on 16 June 2004 adding:

> "The certificate issued to you on 2 May 2003 remains the Department's property and we require the return of the certificate as soon as possible."

That letter also indicated that contravention carried a fine of up to £5,000.

[15] On 21 June 2004 Ann Blacker wrote to Ms Carey of BBC confirming revocation by the Department but indicating that he had the right to appeal to the PAC adding "because of this the carrier's certificate remains in force for a period of 28 days from 19 June – or until Mr Sterling indicates that he is not going to appeal".

[16] On 22 June 2004 Ms Blacker wrote to the plaintiff in the following terms:

> "I refer to our telephone conversation earlier today regarding the above. I enclose again a copy of our letters of 18 June 2004 and 9 June 2004 which were sent to you previously. The letter of 9 June 2004 explains how to make an appeal against this decision to the Planning Appeals Commission. You have 28 days from 9 June to lodge an appeal. Your certificate remains valid for a period of 28 days from 9 June. You stated during our conversation that you had no previous convictions. Our records show that you were convicted of an offence under Article 5 of the Pollution Control and Local Government (NI) Order 1978. … This is a relevant offence under the terms of the (1999) Regulations."

[17] There was before me a note alleged to have been made by Ms Blacker of the telephone conversation with Mr Sterling referred to in the letter of 22 June 2004. It was dated 24 June 2004 and was couched in the following terms:

> "Note to file
>
> Telecon with Mr Sterling 24/6/04. He is to speak to his solicitor who will contact me. Mr Sterling feels that he has not been convicted and I have confirmed that his solicitors should contact me to discuss."

[18] On 28 June 2004 Ms Carey of BBC wrote to Mr Sterling referring to the revocation including the following paragraphs:

> "Waste deposited in Ballymena's landfill site must be transported by a carrier who has a waste carrier registration certificate issued by the Environment and Heritage Service, and the effect of having a registration revoked is that we can no longer accept your waste at the site. I am advised that this should have effect from 24 June 2004, but if you are appealing against it, you are allowed to continue in

> operation for an additional 28 days. I regret waste from your company cannot be accepted at Ballymena landfill site from 7 July 2004 unless your appeal is successful."

[19] It is to be observed that nowhere in these exchanges is any mention made of the contents of Regulation 41 of the 1997 Regulations as set out in paragraph [10] above.

The evidence

The evidence of the plaintiff

[20] In the course of his evidence and cross-examination the plaintiff made the following points:

- He had started Teshan Skip Hire in January 1993, a business of which he was the sole proprietor.

- He had held a certificate of registration as a carrier of controlled waste since May 2000, and had most recently obtained the renewal in May 2003 for three years.

- On 25 September 2003 at Ballymena Magistrates' Court he was convicted of an offence as set out in paragraph [6] above. I pause to observe that this offence is a prescribed offence as defined in the 1997 Regulations. It related to a controlled waste and not special waste.

- The notice of revocation was issued on 9 June 2004. He claimed he did not receive the letter concerning the revocation until 18 June 2004 together with the letter dated 18 June 2004.

- He spoke to Ms Blacker on Tuesday 22 June 2004. This was the only occasion on which he had a conversation with her.

- He informed her on this occasion that he had no previous convictions whereas she insisted that he had. He also informed her that he was intending to appeal and had contacted his solicitor. The plaintiff asserted she said: "It is irrelevant to contact him as you will never hold a waste licence certificate again".

- His appeal to the PAC was lodged on 25 June 2004 after he had received a letter of 21 June 2004 indicating that he had 28 days to appeal.

- He handed his certificate to Gordon McIlwrath for the purpose of returning it as requested by the defendant in the correspondence of 18 June 2004. He insisted he did not have the certificate between the date of handing it to Mr McIlwrath and the date when it was returned to him by Mr McIlwrath on 25 April 2005.He assumed it had been returned to the defendant.

- He sold his skips and his lorry in September/October 2004 i.e. before the appeal had been finalised. He said he had to do this in order to pay his bills. Moreover he had been advised by Ms Blacker that he would not hold a certificate again. In short after he gave his certificate to Mr McIlwrath he claimed he had never been involved in the business again.

- He did attempt to start up his business again by visiting persons to see if work was available but there was no possibility because he was known as a person who had lost his licence.

- He conceded that in September 2005 he had pleaded guilty to a further six charges of waste management offences for using and disposing of controlled waste on his own land. These offences had occurred between January–April 2004. However he denied that this was the real reason why he had sold up his business and why people were not doing business with him.

- He was unable to understand why the solicitor acting on his behalf had, on 25 June 2004, informed the defendant in writing that the letters of 9 June 2004 and 18 June 2004 had been contained in their letter of 22 June 2004 because this is not what happened.

- He was unable to explain why the correspondence from his own solicitor made no reference at any time to the allegation he now made against Ms Blacker namely that she had told him that he would never have a licence again.

- He denied ever informing his solicitor that he had intended to cease business from 31 July 2004 (contained in a letter of 25 June 2004 from his solicitor to the defendant) and could not explain why this had been inserted into that correspondence.

- He accepted that in light of his lengthy previous experience he was aware that he could continue working with his certificate pending the outcome of the appeal, but he asserted that in light of the correspondence from the defendant which made no mention of the on-going validity pending the appeal, he had concluded that his earlier

understanding must have been erroneous. Accordingly he did not deem it necessary to ask his solicitor about the matter. He felt the BBC were in "cahoots" with the defendant and hence it had written to him indicating that he could not carry any further waste.

- He denied ever having told Ms Blacker that she should speak to his solicitor.

The evidence of Ms Blacker for the defendant

[21] Ms Blacker gave evidence on behalf of the defendant. In the course of her examination-in-chief and cross-examination she made the following points:

- She is now a Senior Principal Scientific Officer in the NIEA. The Waste Management and Contaminated Land Unit was an operational team within the Environmental Heritage Service which was the precursor of the current agency.

- She was responsible for enforcement and implementation of the 1997 legislation.

- She drew a distinction between waste management licences, which vest permission held by premises specifying the waste that can be accepted and on the other hand a waste carrier certificate of registration which simply authorises the holder to transport controlled waste in vehicles he owns. He is not entitled to dispose of it. The latter was the certificate held by the plaintiff.

- It was the duty of local authorities at that time to bring prosecutions for breaches of the 1997 legislation (that situation has currently now changed and enforcement action is taken by the relevant Department).

- It was normal for the local authority which had brought a prosecution to report this matter to the defendant.

- Once the conviction had been reported to the defendant, it, by way of letter of 9 June 2004, revoked the waste carrier's certificate of registration of the plaintiff. It took some time to do this because investigations into further offences had progressed to the point where more knowledge had been accumulated about the site and the behaviour of the plaintiff.

- There was no record in her Department of it ever having received the revoked certificate (there would be a record made of this on the file because it is an important document) and also no record of that certificate ever having been returned. She was adamant therefore that her Department had never had possession of the certificate after its revocation.

- Dealing with the telephone meeting of 22 June 2004 with the plaintiff, she stoutly denied ever having alleged to him that he would never hold a certificate again. She asserted that she would never have said this for two reasons. First because she knew that even if a certificate was revoked it could always be restored on appeal. Secondly in any event he did not have a waste management licence rather than a carrier's certificate.

- As a regulator, she did not consider it her role to provide advice to someone who the agency was regulating. There would be a conflict of interest in so doing. She therefore firmly denied ever providing any advice to the plaintiff beyond general guidance about the validity of the certificate in terms of 28 days post revocation and the right to appeal. It was never intended that he should rely on such advice.

- She had never met the plaintiff prior to this matter, had only spoken to him on one occasion and certainly bore no grudge against him.

- The correspondence to him had been in standard form simply giving him guidance as to what was to be done. It was reasonable to identify an appellate body although she recognised this constituted detailed advice.

- She recognised that his livelihood depended on such a certificate.

- In offering the advice and guidance, she had to keep an appropriate balance, vis a vis her role as a regulator. It was inappropriate to revoke a certificate and then assist that person in his defence of such an action.

The plaintiff's case

[22] In essence the plaintiff's case was that the defendant had negligently advised him that he was no longer authorised to transport waste with revocation of the certificate and had negligently failed to advise him that the certificate remained valid pending the appeal which he indicated he intended to pursue. It had delayed in returning physical possession of his certificate until five months after a successful appeal and had in effect therefore prevented him carrying out the operation of his business. The defendant had also caused and permitted Ballymena Borough Council to be prematurely and incorrectly informed that the plaintiff would cease to be legally registered to carry out his business on the expiration of 28 days from 19 June 2004.In short the defendant had offered an advisory service which went beyond merely being part and parcel of the defendant's system for discharging its statutory duties. The advisory service that it provided was capable of giving rise to a duty of care and the defendant had failed to meet that in the circumstances where his livelihood depended on the licence and he was one of a small number of people holding such a licence.

[23] The plaintiff had pleaded in addition misfeasance in public office in carrying out these negligent acts and breach of Article 1 of the First Protocol of the Convention but it was clear from the submissions of counsel that such matters were only being faintly pursued.

The defendant's case

[24] In essence the defendant's case was that:

- The defendant did not owe a duty of care to the plaintiff.

- The plaintiff had suffered only economic loss and was not able to bring itself within the negligent misstatement principles of Hedley Byrne v Heller [1964] AC 465.

- To establish misfeasance in public officer the plaintiff must prove malice or bad faith whether by intention or reckless indifference and it had failed to do so in this instance.

- The ECHR added nothing of substance to this case

Principles governing this application

[25] It is trite law to state that the fact that the carelessness or omission of a defendant harms the plaintiff will be irrelevant as far as a negligence claim is concerned unless the defendant owed the plaintiff a duty to avoid harm.

[26] Essentially the concept of a duty of care denotes those circumstances in which a person will be held responsible for the consequences of his /her negligence. In the field of negligence the common law develops incrementally on the basis of a consideration of analogous cases where a duty has been recognised or desired (Marc Rich and Co AG v Bishop Rock Marine Co Ltd [1996] AC 211, 236B-C per Lord Steyn).

[27] The test to be applied is whether the situation is one "in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other". (Caparo Industries plc v Dickman [1990] 2 AC 605, 618A per Lord Bridge).

[28] In applying that test the court has regard to analogous cases "where a duty of care has or has not been held to exist … the world is full of harm for which the law furnishes no remedy". (D v East Berkshire Community Health NHS Trust [2005] 2 AC per Lord Rodger of Earlsferry at (100).

[29] The circumstances in which courts have been willing to impose duties of care on public authorities began to expand rapidly in the 1990s in part due to the influence of the Convention. For example local authorities can now be held liable for educational negligence, as can Social Services, emergency services and even the police.

[30] I interject at this stage to advert briefly to the well-known principles set out in the seminal case of Hedley Byrne v Heller [1964] AC 465 which are as follows:

- A duty to take care can be owed by the maker of a statement to a person who has suffered financial loss caused by relying on that statement.

- If in the ordinary course of business a person seeks advice or information from another, who is not under any contract or fiduciary obligation to give it, in circumstances in which a reasonable man so asked would know that he was being trusted or that his skill or judgment was being relied on and such person without clearly disclaiming responsibility for it, proceeds to give the advice or information sought, he accepts a legal duty to exercise such care as the circumstances require in making his reply.

- Such a relationship between the parties may be general or specific to the particular transaction.

- One party must have assumed or undertaken a responsibility towards the other; that party is to be possessed of a special skill in a broad sense which he undertakes to apply to assist the other who relied upon such skill.

[31] However it is well established that local planning authorities will not generally owe a duty of care to claimants whose property is damaged or who suffer personal injury as a consequence of a decision to grant planning permission to the owners of neighbouring lands. The reason behind this is that the imposition of liability would undermine the purposes behind the regulatory regime governing planning. (See Booth and Squires "The Negligence Liability of Public Authorities" at 14.06). Thus where there is a potential conflict between the interests of plaintiffs and the wider interest which a statutory scheme was intended to protect, a duty of care ought not to be imposed that might undermine a public authority's efforts to protect the wider interests. If a duty were owed to individual claimants it would run counter to Parliament's intent in creating the statutory regime (Booth and Squires op. cit. at 14.11).

[32] An analogous principle in my view applies to public authorities such as the defendant exercising regulatory powers designed to prevent damage to the environment and the health of the public at large as a result of pollution. Whilst there is a paucity of authority on the negligent liability of environmental regulators, I consider that the circumstances in which such regulators are likely to be found to

owe a duty of care can be derived from cases involving the planning authorities. It is to those authorities that I now turn to a series of cases which repay study and outline the principles that have guided me in this case.

[33] Tidman v Reading Borough Council [1994] 3 PLR 72 concerned a plaintiff who, in the event unsuccessfully, sought damages from a planning authority who had erroneously misinformed him during the course of a telephone conversation that his land could not be used for light engineering works without planning permission. This caused him to lose a sale with consequential loss and damage. Whilst this, and the subsequent cases that I mention of first instance hearings may not be a binding authority properly so called, nonetheless they are decisions which purport to apply established principles to their particular factual matrix and have permitted me to draw a number of conclusions.

[34] First, per Buxton J at p. 92 in Tidman , a person who seeks advice or guidance from a local authority about a planning application that he has in mind to make does not necessarily place the local authority in a position where they owe him a duty of care under the rule in Hedley Bryne.

[35] The private interest of a particular individual cannot be allowed to override the interests of the public at large in their performance of the planning process (see Buxton J at p. 92). I extend this analogy to the environmental protection process.

[36] A local authority may well give initial and general guidance. However that such guidance is sought and is available is very different from saying that the seeking of and giving of such guidance creates a relationship of foreseeable reliance and responsibility under the Hedley Byrne doctrine or that it is fair, just or reasonable in the circumstances of all the parties that it should be so (see also paragraph 40 of this judgment).

[37] It is possible that a formal approach to a local authority which was known by the local authority to have serious implications, which was put on a formal basis and to which the local authority chose to respond, might conceivably generate a duty of care albeit such a case would require very careful consideration (per Buxton J at [93] of Tidman). I consider this caveat to be no more than an application of the conventional Hedley Byrne principles.

[38] In the case of Tidman, who was a businessman engaged in a deal involving a large sum of money, it would have been "overwhelmingly reasonable" for the local authority to conclude that he would use professional advice and that they could have thought that he was relying on such advice (per Buxton J at [94]).

[39] Harrow v Secretary of State for the Environment [2000] Env. LR 212 is also a first instance case which purports to apply established principles. In this case the plaintiff unsuccessfully claimed against a local planning authority whose office had

allegedly made a negligent misstatement to her during a conversation to the effect that if she removed a hotel site from her development plan, an environmental assessment would be unnecessary. The authority, as in the instant case, knew that the plaintiff had her own lawyer who could advise on the matter.

[40] At p. 219 Kennedy LJ said:

> "… Although there can be liability in law for negligent misstatements, that liability only arises when the relationship between the maker of the statement and the person to whom it is addressed is such as to give rise to a duty of care … Such a duty can arise when advice is sought in relation to a planning matter but as Buxton J indicates in (*Tidman*) it is only likely to arise in exceptional circumstances. The ordinary process of giving routine advice to an applicant for planning permission in answering such questions as he or she may raise, especially when the applicant is one known to have her own professional advisors, does not give rise to any duty of care."

[41] In Welton v North Cornwall D.C. [1997] 1 WLR 570 a local authority was held liable for negligent misstatement where an environmental health officer negligently required the owner of premises to undertake unnecessary work to secure compliance with the Food Safety Act 1990 causing the owner to incur substantial and unnecessary expenditure.

[42] Rose LJ at page 580H instanced at least three categories of conduct in which the existence of a statutory enforcement duty might arise:

> "First, there might be conduct specifically directed to statutory enforcement, such as the institution of proceedings before the magistrates, the service of improvement notice …. Such conduct, even if careless, would only give rise to common law liability if the circumstances were such as to raise a duty of care at common law and such a duty is not raised if it is inconsistent with or has a tendency to discourage the due performance of the statutory duty. Secondly, there is the offering of an advisory service: insofar as this is merely part and parcel of the defendants' system for discharging its statutory duties, liability will be excluded so as not to impede the due performance of those duties …. But insofar as its goes beyond this, the advisory service is capable of giving

> rise to a duty of care …. Thirdly there is the conduct which is at the heart of this case, namely the imposition by Mr Evans, out with the legislation, of detailed requirements enforced by threat of closure and close supervision."

[43] In Kane v New Forest District Council [2002] 1 WLR 312 a planning authority created a source of danger since it had required a developer to construct a footpath when it knew that the site lines to the road made it dangerous to use. Hence an injured pedestrian successfully claimed. The court held that there was no blanket immunity for authorities when, in the exercise of their planning functions, they actually caused a dangerous situation to be created.

[44] In X (minors) v Bedfordshire C. C. [1995] 2 AC 633, a claim was brought against a public authority arising from discharge by them of statutory functions in the field of childcare and education. The court drew a distinction between cases where it is alleged the authority owes a duty of care in the manner in which it exercises a statutory discretion and cases in which a duty of care is alleged to arise from the manner in which the statutory duty has been implemented in practice. As for the former, the courts will only intervene if the exercise of discretion falls outside the statutory ambit giving rise to the common law duty and even then it will not apply if it relates to matters of policy. The latter is more likely to be approached and determined according to the principles of responsibility and reliance inherent in Hedley Bryne. However even here the question of whether there is such a common law duty, and if so its ambit, must be profoundly influenced by the statutory framework within which the acts complained of were performed (per Lord Browne-Wilkinson at 370).

Application of the principles to this case

[45] I have come to the conclusion that the plaintiff must fail in this action and his case be dismissed for the following reasons.

[46] First, I do not consider that the plaintiff in this case has satisfied the requirements of Hedley Byrne because he has failed to show that the defendant had assumed a responsibility towards him. This legislation is robustly contrived to ensure the public duty of the defendant was to prevent the environment being polluted and to protect the health of human beings. This is an instance where, as in the Bedfordshire case, the issue must be profoundly influenced by the statutory framework to which I have earlier referred. There was no evidence that it had assumed an individual responsibility to the plaintiff overriding the general obligation owed to the public. In short there was no evidence that the defendant intended the plaintiff to rely on the statements made to him in the course of the correspondence.

[47] Secondly, the plaintiff has failed to show that it was reasonable for him to rely on the statements given by the Department. I am satisfied they were given as part of the ordinary process of giving routine advice and answering any questions raised. This general advice and guidance was given about the particulars of his revocation and his right of appeal. Insofar as it was set out it, it was accurate. The fact that it was not fully comprehensive (omitting to mention the continuing validity of the certificate pending appeal) does not render the defendant liable because it was not reasonable for the plaintiff in the circumstances to rely upon it being comprehensive. Were it otherwise, it would be seriously contrary to the public interest since the likely outcome would be that it could create a chill factor in the defendant giving such guidance or general advice at all.

[48] Thirdly, I find no evidence to substantiate the claim that this case fell into the second category adumbrated by Rose LJ in Welton's case i.e. that it was more than part and parcel of the defendant's system for discharge of its statutory duties especially where it was known that he had retained his own solicitor. Moreover the plaintiff admits that he knew from past experience that the certificate did remain valid until the appeal process was over. He had ready access to his own solicitor should he have had cause to doubt this. This case clearly does not come within the categorisation in Welton's case.

[49] I do not consider that the importance of this appeal to the plaintiff or the fact that he was one of a small number of people holding such a licence, was any more relevant to his case than were the important issues for the plaintiffs in Tidman's or Harrow's case. That it was important to him does not serve to alter the confines of the duty owed by the defendant.

[50] On the issue of importance of this appeal to the plaintiff, I am in any event unpersuaded by him that his giving up of his business was in any way connected with the correspondence from the Department about the appeal process or the lack of information about the validity of a certificate pending the outcome of the appeal. The letter of 25 June 2004 from his own solicitor made it clear that he intended to give up his business by 31 July 2004. I can conceive of no reason why the solicitors would have written this letter unless it was on clear instructions from the plaintiff. It would be completely illogical to have sold his business at least before the appeal had been heard in any event if he was intending to continue in the business had the certificate not been revoked .

[51] I also reject the evidence of the plaintiff that he was influenced by the absence of the certificate once he had allegedly returned it to the defendant. I do not believe that this left the plaintiff in a state of tormented ignorance. I am satisfied by the evidence of Ms Blacker that if the defendant had received that certificate from Gordon Mclwrath and Company, receipt of same would have been recorded on the Department file of the plaintiff and, when it was returned, that also would have been recorded. Such an important document would undoubtedly find its way into

the records of the defendant. I am satisfied that this certificate was given to the plaintiff's solicitor and returned by that firm to the plaintiff without it having in the interim being passed on to defendant. No correspondence to the contrary was produced before me.

[52] Very responsibly Mr Orr did not press the issue of misfeasance in a public office. I find absolutely no basis for such a claim. In particular I have determined:

- The plaintiff had been involved in illegal dumping on his own land and thus any belief to this effect held by the defendant was true.

- I do not believe that Ms Blacker informed the plaintiff on 22 June 2004 that he would never hold a "waste management licence again". This was inaccurate not only because he never held such a licence (the licence he held was a certificate of registration to carry waste) but the absence of any reference to this allegation in the correspondence from the plaintiff's solicitor underlines the implausibility of this assertion. I believe that this allegation has all the accusatory fervour of a disillusioned litigant bent on thinking the worst of the defendant and reveals the stitch work that tacked fact and fiction together in the plaintiff's evidence**.** The correspondence of Ms Blacker is icily transactional setting out the details of the appeal with lambent precision. Her brief note of the telephone conversation reflects the measured engagement that Ms Blacker permitted with the plaintiff.

- The defendant was perfectly entitled to resist the plaintiff's appeal however unsuccessful this resistance may have proved to be. It is not evidence of malfeasance. Similarly the decision of the defendant to judicially review the PAC decision is not evidence of malfeasance in the circumstances of this case.

- I have already indicated I do not accept that the defendant did wrongly withhold the defendant's certificate of registration between June 2004 and 26 April 2005.

[53] Finally I note that Mr Orr did not attempt to argue that a consideration of Article 1 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 added anything to the issues already outlined in this case.

[54] I therefore dismiss the plaintiff's case with costs to the defendant.