Maurice Landers (litigant in person) Applicant in person v The Information Commissioner – 2020/53/MCA

Dear Mr. Justice Ferriter,

I submit this supporting written argument for my hearing on April 25th as I believe my argument at my hearing on February 24th, 2022, was completely misinterpreted by the judge (I'll refer to "you" and "your" below). Therefore, I will just read verbatim from this written document (it will take approx. 10 to 15 mins since most if not all the points I raise have already been presented/exhibited during my first hearing) at the hearing so that there will be little chance of misinterpreting what I said.

RECAP OF MY ARGUMENT

To begin, I'll go back over my argument at the hearing. I proved that the internal audit plan existed. I referred you to Chartered Accountants Ireland's (ICAI) statement, "The member firm provided us with a copy of the internal audit plan for the NPRF as presented to, and subsequently agreed with, the NPRF and the NTMA, and the matter complained of appears to have been outside the scope of the internal audit work undertaken by the member firm."

However, in your judgement you chose the words that follow the words, "The member firm provided us with a copy of the internal audit plan...", that is, "...as presented to and subsequently agreed..." as meaning that the internal audit plan was in fact a power point presentation (PPP). This is just not correct. I've prepared business tender documents and proposals for example which I've 'presented' to various people and organizations, and it would be inconceivable that someone else (ICAI and the NTMA) could subsequently claim at a later date that the only thing I provided was a PPP of said documents. This would mean that you're saying that ICAI (and the NTMA) is saying that PwC never did the job they were paid to do by the Irish taxpayer.

I say inconceivable because in addition to the above statement, I also referred you to the decisions by the Head of Professional Conduct of ICAI and ICAI's Conduct Committee in two appeals I made with regards to the above statement (p.30 and 39, Book of Pleadings), and both affirmed that, "A query has been raised as to whether the audit plan provided to the Executive by the member firm related to the correct period and in this regard I am satisfied." (more on "correct period" further down after John McCarthy bio)

Therefore, ICAI was satisfied with the time period of this audit plan provided to the Executive by the member firm (I emphasize "by the member firm"). The member firm clearly referred to the audit plan as "our engagement letter" in their letter to me as per Exhibit C (p. 22/23, Book of Pleadings). I referred to this letter and the words "engagement letter" both in my affidavit

and at the hearing. It was part of my proof in addition to the above statement by ICAI. I had shown you during my argument that the Information Commissioner (and NTMA) had received (before he made his decision) both the email within which is ICAI's statement above AND the letter I received from PwC with the words "our engagement letter" as above AND I referred you to Exhibit C within which is the email (Nov. 29, 2017) on p.23 of the Book of Pleadings where ICAI both states that it received the letter PwC sent to me and specifically refers to "...the terms of reference in their engagement letter...".

I can't understand why you chose to leave out this critical part of my proof because the PwC letter clearly and definitively proves that the internal audit plan was not a PPP but an actual audit plan document and corroborates that ICAI's statement above ("The member firm provided us with a copy of the internal audit plan") did indeed mean the actual internal audit plan. I refer you as an example to the website of John McCarthy Consulting (jmcc.ie), and his article on Letters of Engagement. I also have a print screen of this article if you require it in case it disappears from the site like what happened on the Information Commissioner's website when an explanation of his significant powers mysteriously disappeared shortly after I had referred to it in one of my Reports.

The article begins:

Under the code of ethics of the professional accountancy bodies, it is mandatory for accountancy practices, when signing up a new or existing client, to obtain a signed letter of engagement setting out the terms of the business agreement and contracted services. This blog provides tips and advice on writing effective engagement letters to avoid unnecessary client disputes. The letter of engagement is a formal letter and is in fact a contract between the accounting or audit firm and the client. Among the many purposes of the letter is to ensure that all parties are aware of their respective responsibilities, resulting in greater clarity and hopefully fewer disputes and/or misunderstandings. For complete article, see Letters of Engagement - John McCarthy Consulting (jmcc.ie)

Clearly, one could not make a judgement that such an engagement letter is instead a PPP.

John McCarthy, while having nothing to do with my case, is well qualified in the auditing profession. See his bio on his website immediately below:

John McCarthy FCA, AITI, Dip. IFRS , Dip. Insolvency, Certificate in UK and Irish GAAP.

John is a regular speaker on accounting and audit compliance, anti-money laundering (AML) reviews and training, audit and investment business cold and hot file reviews and audit/accounting technical matters. He started John McCarthy Consulting Ltd. in 2009.

He has extensive experience in the provision of technical and strategic support to practicing accountants in Ireland. John has spoken at seminars and conferences for Chartered Accountants Ireland (CAI), the Association of Chartered Certified Accountants (ACCA), the Institute of Certified Public Accountants in Ireland (ICPAI), for the Chartered Institute of Management Accountants (CIMA), the Cork Society of Chartered Accountants, Members in Practice Committee in Ireland, Mercia UK, CCH Wolters Kluwer (now Croner-I) in the UK and the Institute of Chartered Accountants of Scotland (ICAS).

He is also a regular speaker for credit unions on their anti-money laundering (AML) responsibilities.

John is a member of Chartered Accountants Ireland (CAI) and of the Institute of Chartered Accountants in England and Wales (ICAEW).

In 2021 John joined the 'Brains Trust' – a group of UK accountancy experts, consultants and trainers with a like-minded interest in technical accounting/auditing matters. The group meets regularly, to discuss the latest developments in the profession.

Additionally, as part of my analysis of the audit plan presentations given to me by the NTMA/NPRF as per my second affidavit, I state (p.378, top, Book of Pleadings):

(Beginning of quote) If you look at the audit plan presentation for 2009, you will see that it was patchworked together from audit plan presentations from other years because if you look at each page starting on the second, you'll notice that the year of the document identification on the bottom left corner of each page, which states, "Internal Audit Plan for the year ended 31 December 2009 Pricewaterhouse Coopers", changes to the year 2008 on pages 18 and 19. Likewise, if you look at the 2010 presentation, the year of the document identification on page 9 is different from all other pages. So, PwC/NPRF just patched these presentations together just to give me something and we have no way of knowing how authentic they are or what has been added/subtracted. (End of quote)

Therefore, it is clear that the above referenced people/bodies within ICAI, that is, the Head of Professional Conduct and the Conduct Committee, must have been referring to the actual internal audit plan and not the PPP because otherwise they would have lied when they stated in their formal decisions that, "A query has been raised as to whether the audit plan provided to the Executive by the member firm related to the correct period and in this regard I am satisfied."

They can't have been satisfied with correct period if it was the PPP they were referring to.

I very clearly referred to Section 23 in the statute (FOI Act 2014) during my proof (about 15 mins into my argument/hearing) after I had proved that the internal audit plan did indeed exist (contrary to the claim by the NTMA and subsequently affirmed by the Information Commissioner that it didn't exist) when I referred to Exhibit A, p.15, Book of Pleadings.

Therefore, it was clear from the beginning that my point of law was Section 23 of the statute not only from my affidavit where it was referenced/written at the very beginning but also because I specifically referenced Section 23 during my proof close to the beginning of my argument/hearing after I had proved that the audit plan does indeed exist (if the High Court hearing was based on a point of law, and the only section I quoted from the statute was Section 23, then this was clearly my point of law - what other point of law could it have been? I didn't quote any other section), and that I would next prove inadequacy on the part of the Information Commissioner by showing that he was aware that the audit plan existed before making his final decision.

I stated, "I now want to prove, bear with me here your honor, that the Information Commissioner was aware that it existed and HENCE the inadequacy of his decision."

I subsequently proved that all of the above documents/emails (aside from my reference to John McCarthy) were provided to the Information Commissioner before his decision on my case. I presented to you my application to the Information Commissioner for an appeal (p.257, Book of Pleadings) within which all documents were provided via my Reports. Therefore, I proved not only that the internal audit plan existed but that the Information Commissioner knew that the audit plan existed before he made his final decision on my appeal. I stated clearly that the Information Commissioner's decision was therefore inadequate (Section 23).

During my proof you had asked me if I thought that the internal audit plan referenced by ICAI actually meant the PPP's and I clearly stated effectively that PPP's are not ever referred to as engagement letters (PwC) or internal audit plans (ICAI), and that neither PwC nor ICAI ever referred to them as PPP's in all the communications I've had with them. I made the point that if we accept this to be the case then we're in trouble as any PPP out there as part of any contract can now be used in lieu of a contract. I said that if the NTMA could say after my FOI appeal that they only have PPP's and not the internal audit plans, then when I contacted ICAI and PwC earlier, they would have made this distinction and referred to the audit plan as a PPP and not an internal audit plan or and engagement letter.

Bear in mind I also proved that the NTMA was aware that the internal audit plan existed (engagement letter) before making its decision on my final appeal (that only the PPP's existed) when I referred you to p.318 of the Book of Pleadings, email of June 5, 2019, wherein a copy of my update Report was provided (link to it) which includes PwC's letter to me referencing the "engagement letter".

But what is concerning me, and perhaps unfounded, is that you were aware of the PPP's at this stage as you mentioned them to me even though I never mentioned them until later on, and it was only after lunch when you said that you had a chance over lunch to read our affidavits and the final decisions of the Information Commissioner and the NTMA - how were you aware of the PPP's at that stage and so attuned to a point which was part of your judgement in support of the Information Commissioner's decision? You had stated, "Mr. Landers, you originally made an application to the NTMA for the audit plan and they did give you originally some power point presentation, is it?"

Can you clarify where you heard about the PPP's prior to reading any documents relating to the case and before I mentioned it. I can't find it on the recording of the hearing and so perhaps I missed it.

I'd like to add that ICAI can't have been referring to the PPP's when in your judgement (pt.19) you state, "The relevant PowerPoint presentations were in evidence before me on the appeal and are detailed presentations running to some 40 pages. They appear to be entirely consistent with the reference in the CAI decision to "a copy of the internal audit plan for the NPRF as presented to and subsequently agreed with the NPRF commission and the NTMA."" (you underlined the words "as presented to and subsequently agreed") because ICAI said they received the same letter from PwC as I did (p.23, Book of Pleadings) within which ICAI quoted from the letter, "PwC have referred in their reply to the fact that the internal audit work they were engaged to undertake for the years ending 31 December 2009 to 2011 was set out in the terms of reference in their engagement letter...".

Therefore, clearly ICAI was not referencing the PPP's when it stated, "The member firm provided us with a copy of internal audit plan for the NPRF..." (part of CAI sentence you quoted above with beginning added by me)

Note - the member firm only had the "engagement letter" and not the PPP's!!

Also, you stated in part above, "running to some 40 pages". This would give the impression that the PPP's were comprehensive enough to be used in lieu of the actual internal audit plan? In fact, I was given three audit plan presentations by the NTMA relating to the years 2009, 2010 and 2011. Two are in the Book of Pleadings by the Information Commissioner which relate to years 2009 and 2010. My case is based on the year 2010 and so the only presentation applicable here (from the perspective of it representing the internal audit work scope for that year) is the 2010 one which is approx. 20 pages. That's half the 40 page figure you stated.

And if ICAI was referring to the audit plan as a PPP, they would have clearly said so long before the NTMA made this claim.

The only way you can make the above judgement (pt.19) is if you asked ICAI if this was the case. Did you ask them? You're effectively representing ICAI's opinion when making this judgement. You can't make it without consulting them. There is no way a professional body like ICAI could refer to PPP's as audit plans. It would be inconceivable.

And you're the only one who made this judgement as neither ICAI nor PwC ever claimed that respectively the internal audit plan and engagement letter they referenced was the PPP.

And how could ICAI say, "...and the matter complained of appears to have been outside the scope of the internal audit work undertaken by the member firm." if they didn't receive the actual internal audit plan because based upon my analysis (beginning p.377, Book of Pleadings) of the PPP's, while it can't be definitively proven, it would nevertheless be ridiculous to conclude that my allegations were outside the scope of PwC's internal audit work.

If ICAI is now going to claim, which would be most unusual, that which you stated in your judgement, then I'd like to see the email from PwC to ICAI (per ICAI "The member firm provided us with a copy of internal audit plan...") wherein is attached a copy of the PPP as opposed to the actual internal audit plan.

To accept that ICAI meant a PPP when they stated "internal audit plan", as incredulous as this sounds, would mean that precedent has now been set that engagement letters or contracts and the like are now binding based on PPP's alone?

Immediately after I proved that the Information Commissioner knew the audit plan existed before he made his decision, you stated that my key point was that, "...the Information Commissioner effectively errored fundamentally in ruling on your appeal..." I replied, " Yes your honor, and errored I would add maybe a few other adjectives but errored at the very least your honor." You accepted this.

How could a body such as the Information Commissioner, knowing that an internal audit plan existed, affirm a decision by the NTMA that it didn't exist, and then you initially conclude (based on my referring to Section 23, inadequacy) that the Information Commissioner errored, and then subsequently rule in your judgement that my point of law was based on the irrationality of the Information Commissioner's decision? Does inadequacy mean to err? Or does it mean something much more serious? Or both?

I will expand on this irrationality point of law pivot following (next paragraph) but it seems the goal posts were moved by you and the Information Commissioner during the hearing from my point of law being whether the Information Commissioner errored to it being based on the irrationality of the Information Commissioner's decision on my case, a more difficult point of law to win on I believe.

As regards your assuming the irrationality of the Information Commissioner's decision as being my point of law, I believe you chose this after I had referred you to Q.5 of the NTMA's submissions to the Information Commissioner (p.422, Book of Pleadings) where I not only pointed out that these submissions do not represent evidence (3 pages and 6 questions) and that the Information Commissioner simply accepted the answers by the NTMA without any type of verification process, but I also specifically cross referenced the second sentence in Q.5 (the NTMA's answer) i.e. "As mentioned at number 4 above the NTMA's understanding is that PwC did not submit 'final' or 'formal' audit plans once an audit plan presentation was agreed at Audit Committee level." against what the Information Commissioner had stated in his Legal Submissions (p.439, Book of Pleadings, pt.57) i.e. "Thirdly, the Commissioner's decision was not that the document never existed or is not held by some other party."

I stated that this statement by the Information Commissioner was untruthful (and yet you never even mentioned it in your judgement).

I continued that the complete paragraph (pt.57) was nothing but word play and semantics and an abuse of the law. When I then briefly summarized my case so far that I had proven that the audit plan existed and that the Information Commissioner knew that it existed before making his final decision on my case, and the untruthful statement by the Information Commissioner in his Legal Submissions (pt.57 immediately above), I stated that, "...this flies in the face of fundamental reason and common sense at the very least..." and "...in fact I'd add irrationality to it to be soft on the Information Commissioner..."

How did you then conclude irrationality as being my point of law? While the decision by the Information Commissioner was certainly irrational and all of the above and more I believe, I never even wrote or mentioned irrationality in my affidavits not did I even vocally reference irrationality to any section of the Act during my hearing. It was clearly for emphasis and rebuttal to the case law the Information Commissioner presented within which these words were mentioned. On the other hand, I had referred to Section 23 of the statute, that is, the inadequacy of the Information Commissioner's decision, in both my affidavit and vocally during my argument, and yet you never even ruled on this point of law in your judgement. You can't assume and rule on a point of law that has not been referenced by the applicant to a specific section of the statute while ignoring one that was. Section 23 was, irrationality was not.

I even again referred to Section 23 immediately after the Information Commissioner's rebuttal and at the beginning of my rebuttal when after I corrected the Information Commissioner about what I had said during my argument about Section 45, and that all I was saying is that

Section 45 might not have to be applied here, "...because I proved inadequacy on the part of the Information Commissioner under Section 23."

Note - you reminded me multiple times of the time constraint which has a tendency, particularly to a lay litigant doing this for the first time, to cause one to lose focus.

I then moved on to my second order in my Notice of Motion and I explained that the Information Commissioner had gotten from me a copy of the audit plan presentations before he made his decision and that after an analysis by me of these PPP's, while such an analysis is not definitive since the PPP's are not the actual internal audit plan, I stated that nobody could conclude, rationally or reasonably (adjectives used in case law presented by Information Commissioner), that the internal audit plan work by PwC was outside the scope of the allegations I had made against the NTMA, which should have been a red flag to the Information Commissioner because as I had explained during my argument the Information Commissioner knew that PwC had claimed their internal audit work to be outside the scope of my allegations.

You wouldn't allow me to continue on this line of argument as you effectively stated that my complaint to ICAI, which I had referred to, was not an FOI matter and not therefore before the Court. I was quick to accept your direction in this regard as you are the judge and I felt under the time pressure mentioned above and I had to get through a lot.

However, this is the exact point where you pivoted (and/or connected the error point of law to the irrational point of law) from stating my point of law as one based on an error on the part of the Information Commissioner to one based on the irrationality of his decision on my case when you said, "...you say there's an error of law...you contend it was irrational of the Information Commissioner to have refused to allow your appeal against the final review by the NTMA."

No, I had clearly stated Section 23, the inadequacy of the Information Commissioner's decision, after I had proven that the audit plan existed and that he knew it existed before making his final decision. I never once mentioned errored (you mentioned errored and I agreed "at the very least") or irrationality as a point of law. You chose them from the adjectives I quoted from the case law the Information Commissioner presented. You can't seemingly take advantage of one adjective among others that I had used for emphasis and decide to claim it as my point of law.

Anyhow, in that my analysis was submitted as part of my sworn affidavit, the analysis certainly was part of the proceedings and relevant written testimony without including ICAI as per your requirement (you referred to the 40 page PPP's yourself in your judgement), and as per my analysis (p.378, Book of Pleadings), it certainly should have raised a big red flag for the Information Commissioner as regards the scope claim by ICAI and PwC even if they weren't parties to the proceedings.

My analysis also proves there was an actual internal audit plan beyond just the presentations (p.379, first part of Part II, Book of Pleadings - the part of presentation referenced is on p.361), specifically the quote, "In our proposal document we outlined our internal audit methodology." Therefore, since this sentence was written within the PPP (2010) it means that it refers to a document outside of the PPP.

In addition, Part V of my analysis further along states that the NTMA could not find any other documents besides the PPP's. If you look at the timetable on p.374 of Book of Pleadings, how is it even possible to complete this timetable based only on the PPP? It's not! Where are all the other documents that support this timetable schedule? They don't exist is what we've been told by the NTMA and Information Commissioner. Does this mean the NTMA was cooking the books? What company or professional body would accept this standard of accountancy? How can you do all this subsequent stuff past October 2010 on the timetable in Part V if there wasn't an actual audit plan before or after the actual presentation (box in top right corner) in October 2010? The "proposal document" above therefore had to have been written before October 2010 because it's not mentioned in the timetable in Part V.

Therefore, the timetable itself also supports Part II of my analysis that there was an actual audit plan beyond the PPP's, and the Information Commissioner knew this. These two points above (scope and further proof that audit plan existed) also support the inadequacy of the Information Commissioner's decision.

Getting back to the irrationality point of law you inaccurately claimed I made, I'd like to point out that when the Information Commissioner started his rebuttal (5 mins before lunch) you initially seemed to be under the impression that my point of law was Section 23 as per my argument when trying to clarify the appropriate sections of the statute with the Information Commissioner, but the Information Commissioner then referred you to I believe Section 22 and Section 24 (I did interject stating that my point of law was Section 23 but you told me not to speak as it was the Information Commissioner's time to speak).

The Information Commissioner seemed to then explain to you the FOI process as if you never knew what it was about. I got the impression that my point of law was being steered away from that which I had already stated i.e. Section 23. You seemed to let the Information Commissioner tell you that we were dealing with the "general jurisdiction" when you asked him. Shouldn't this be the other way around, where you determine the general jurisdiction (Section 22) in this case? So by dealing with the general jurisdiction here, does this negate my point of law under Section 23? This makes no sense?

You seemed to agree with the Information Commissioner and you again at this point stated that my key point was the irrationality of the Information Commissioner's decision. Again, you

seemed to be pushing a point of law I didn't make and one which I believe is more difficult to win on.

Whether my appeal to the Information Commissioner was made under Section 22 is irrelevant because my appeal to the High Court (which the Information Commissioner allowed) was on a point of law related to Section 23 of the Act, that is, the inadequacy of the Information Commissioner's decision on my case. I'm entitled to make my own point of law at the High Court since I am the Applicant.

My point of law can be different than the Section of the Act upon which my appeal was reviewed by the Information Commissioner. It doesn't have to be the same at the High Court. The general jurisdiction doesn't preclude any other parts of the Act applying in this case. Section 22 can't preclude Section 23 from applying especially since Section 23 relates to the powers of the Information Commissioner. Neither you nor the Information Commissioner can redefine my point of law as you see fit, nor can you claim there was no identifiable point of law by me when I had clearly stated Section 23 and the inadequacy of the Information Commissioner's decision multiple times.

I reiterate, my point of law, Section 23, was both in written form in my affidavit and expressed vocally multiple times during my hearing, including my specifically referring to this section of the statute immediately after my proof where I proved that the internal audit plan existed and that the Information Commissioner knew that it existed before making his decision on my case. It was the basis of my proof. A point of law based on irrationality of the Information Commissioner's decision was never even mentioned in my affidavit nor even referenced to any part of the FOI statute during my hearing. While I also claimed irrationality, unreasonableness and other adjectives present in the case law cited by the Information Commissioner, this was clearly supplemental and used for emphasis and rebuttal. I read very little in your decision about my argument/proof. As the Applicant, I would have thought that I'd at least have gotten equal billing. Most of your judgement quoted from the Information Commissioner. You never even addressed my proof.

You stated, "...because certainly on the face of the NTMA submission document, (slight stutter) on a quick read of it it seems to explain why it didn't have documents beyond the power point presentations." I'm quite amazed you could come to such an initial conclusion based on a quick read of it, but nevertheless, you made my point for me in that the Information Commissioner should have properly verified the information he was given by the NTMA by doing more than just a read of it and blindly accepting it.

The Information Commissioner (counsel) replied "Exactly Judge" and went on to say that the real legal issue is did the Information Commissioner err.

It's funny because immediately after lunch at the beginning of the Information Commissioner's rebuttal, the Information Commissioner defines my point of law as being the irrationality point you kept inaccurately emphasizing during my argument before lunch by stating that I had provided no identifiable point of law in my argument (even though Section 23 was written at the beginning of my affidavit and I had referred to it vocally immediately after my proof), and that the issue at hand is did the Information Commissioner act irrationally.

When you asked the Information Commissioner just before lunch to give you a quick tour so that you could have the relevant documents in sequence you told the Information Commissioner before he gave his tour that my key point was the irrationality of the Information Commissioner's decision. The Information Commissioner then immediately after lunch just happened to use this irrationality key point that you had stated was my point of law. He wasn't using it before you mentioned it to him. You seemed to put words in his mouth as he had just before lunch stated that the real legal issue here is whether the Information Commissioner had erred.

Your emphasis on irrationality certainly gave the Information Commissioner the opportunity to change his definition of my point of law from an error on the Information Commissioner's part to one based on irrationality on his part, never mind what I believe to be an outright cover up on his part.

I would like to note that some in my party at the hearing informed me that there was a person (male) in attendance at the very back of the court room in plain clothing. I saw the same person conversing with the Information Commissioner's counsel outside the court room. Do you know who this person was?

Before finishing my argument portion of the hearing (before my rebuttal), I had mentioned a potential pattern of abuse on the part of FOI bodies (government departments and agencies) including the Information Commissioner when I brought to your attention that Section 15(1)(a) had been used by them multiple times with regards to my case and that in each case, any 'evidence' these bodies provided the Information Commissioner per his review was never even verified by him but rather just blindly accepted as a matter of fact.

This is not how the Information Commissioner is meant to function. I also mentioned the fact that the NTMA had left out in their decision on my final appeal the first sentence of the complaint I made to them back in I believe 2016, and ICAI also omitted material information in my complaint from their decision/review on my final appeal. That's at least several instances (the figure I gave you was seven I believe at the hearing) of potential and actual abuse of the statute relating to just one case.

I suggested that whenever Section 15(1)(a) is used (i.e. a document does not exist or cannot be found) by any FOI body it is incumbent upon the Information Commissioner to use his significant powers to verify that this is indeed the case, that a document does not exist or cannot be found. A serious subsequent verification procedure should be followed at all times if

this option is used by any FOI body otherwise it will be considerably abused as it has been in my case. This is exactly why the Information Commissioner has been given his "significant powers".

MY REBUTTAL - other references I made at the hearing that support my Section 23 (inadequacy) point of law

After the Information Commissioner's rebuttal, and during my rebuttal, I referred you to p.431 of the Book of Pleadings, pt.20, and cross referenced this against the NTMA's submissions on pages 419-422 of same Book to clearly make the point that these 3 pages (NTMA's submissions) do not represent evidence. In addition, I referred to the other three points made under pt.20 and that not only was the Information Commissioner's decision inadequate but also certainly unreasonable and erroneous at the least, and therefore that I had proven that the Information's decision should be set aside.

I even referred you to p.64 in the Book of Authorities, pt.7, which the Information Commissioner had just used as a case law example, where it states, "The respondent, through his officials, carried out a comprehensive review of the decision of the Department and in the process reviewed all copies of correspondence between the Department and the appellants concluding that a number of searches had been made in different sections of the Department and that various records had been provided to the appellants..." (Note - the respondent was the Information Commissioner)

The above statement is how the Office of the Information Commissioner is supposed to work. Trust but verify. The Information Commissioner is the highest level FOI body over all other lower level FOI units and he cannot just accept 3 pages of answers to his questions, and suspicious answers at that, at face value. What do we need the Information Commissioner for if this is the case?

The information Commissioner tried to show similarities between my case and this case law (pt.7 above) but in doing so made the very point, in part at least, I had made that the NTMA's submissions do not represent evidence and that the Information Commissioner's acceptance of this three page submission by the NTMA did not represent a "comprehensive review" on his part. The Information Commissioner just accepted these limited answers to his limited questions to the NTMA without any type of verification process.

I referred you back to p.422 of the Book of Pleadings, Q.5, and the troubling and suspicious response by the NTMA to this question (more on this following), again referring to the inadequacy (Section 23) of the Information Commissioner's decision.

I referred you to p.435 of the Book of Pleadings, pt.38, and a front running scenario on the part of the NTMA and the Information Commissioner. I had been told by the NTMA that if I did not

receive a decision on my appeal by November 5th, 2019, I could appeal to the Information Commissioner (the NTMA FOI unit stated, "This means that you can expect a decision letter to issue not later than 5 November 2019."). I made my appeal to the Information Commissioner on November 6th, 2019. After I had appealed to the Information Commissioner, the Information Commissioner then forwarded my appeal back to the NTMA which the Information Commissioner told me he was required to do under per Section 22(6) of the FOI Act.

Therefore, the NTMA had a copy of my appeal to the Information Commissioner before they made their late decision on my appeal to them (NTMA). I said at the hearing that this was ridiculous and a front running scenario. It was too late at that stage for the NTMA to provide me with a decision/ruling on my appeal.

I referred you to p.437 of the Book of Pleadings, pt.45, and mentioned that the Information Commissioner's duty is to go above and beyond just taking reasonable steps. Here I was referring to p.405 of the same Book where in an extract from the Information Commissioner's website it stated that one of the main functions of the Information Commissioner is "Fostering an attitude of openness among FOI bodies by encouraging the voluntary publication of information above and beyond the minimum requirements of the Act."

I had copied and pasted the above extract into my Gmail years earlier. The Information Commissioner has since removed this statement and others referring to his powers from his website.

I referred you to p.437 of the Book of Pleadings, pt.48, where I stated that by choosing the "does not exist" option, it allowed the Information Commissioner to circumvent the correct search process.

I referred you to p.227 of the Book of Pleadings, pt.2, where I pointed out the inadequacy of the NTMA's searches and search words when I stated, "Nowhere in the search key words did the NTMA include PwC, which you would think would be the first key word used to make such a search." I continued, "So why is the most critical word missing, PwC?" I then referred you to p.94 of the Book of Pleadings, pt.7, without reading it out as I was almost out of time.

CROSS REFERERNCING THE ABOVE WITH YOUR JUDGEMENT

Because you misinterpreted my argument (point of law) as being one based on the irrationality of the Information Commissioner's decision, the points you made in your judgement are moot and not relevant, in particular points 8 & 11.

Even if these two points were applicable, the material before the Information Commissioner would not come even close to the standard of "sufficient" (point 11) that you state in your judgement (correction - the case law requires "a substantial amount of material" per point 10). As demonstrated above, the three pages of submissions by the NTMA (answers to six questions the Information Commissioner asked the NTMA), that were just blindly accepted by the Information Commissioner without any sort of verification process, neither come close to a "sufficient" or "substantial amount of material" standard nor a standard of evidence.

The submissions, in addition to the Information Commissioner's decisions/replies copied in your judgement, were just words on paper. It's a scenario not unlike when a mother asks her child if he/she did their homework, and the child replies that they did, only for the mother to find out from the teacher the next day that they never did their homework. Is this the standard the Office of the Information Commissioner adheres to?

One might get the impression (points 12 - 29) from the almost complete billing the Information Commissioner receives in your judgement that you were trying to embellish the quantity of material before the Information Commissioner to fit the "substantial amount of material" requirement of the case law. You never even went into any detail on my proof that the internal audit plan existed and that both the Information Commissioner and the NTMA knew that it existed before they made their decisions on my appeal. You repeatedly mention the word "detailed" when referring to the NTMA's responses to the Information Commissioner. This is not true. There was very little if nothing detailed in their responses.

In point 20 of your judgement you state, "The applicant sought an internal review of the NTMA's decision. When he did not receive a decision sufficiently quickly for his purposes, the applicant sought a review, by email of 6th November, 2019, by the Commissioner of the deemed refusal of his request." You certainly seem to be experienced at using words judge. As per my rebuttal section above, this was a front running scenario (p.435 of the Book of Pleadings, pt.38) on the part of the NTMA and the Information Commissioner.

To reiterate, I had been told by the NTMA that if I did not receive a decision on my appeal by November 5th, 2019, I could appeal to the Information Commissioner (the NTMA FOI unit stated, "This means that you can expect a decision letter to issue not later than 5 November 2019."). I made my appeal to the Information Commissioner on November 6th, 2019. Was I wrong to make an appeal the day after the time limit, given to me by the NTMA for them to make their decision, had expired? Is this what you mean by not "sufficiently quickly" for my purposes? After I had appealed to the Information Commissioner, the Information Commissioner then forwarded my appeal back to the NTMA which the Information Commissioner told me he was required to do under per Section 22(6) of the FOI Act.

Therefore, the NTMA had a copy of my appeal to the Information Commissioner before they made their late decision on my appeal to them (NTMA). I said at the hearing that this was ridiculous and a front running scenario. It was too late at that stage for the NTMA to provide me with a decision/ruling on my appeal.

So you wrote off a front running scenario in your judgement as being a "...he did not receive a decision sufficiently quickly for his purposes..." scenario?

As regards point 26 in your judgement, you never mentioned that I had referred to the response by the NTMA to question 5 (p.422 of the Book of Pleadings), which you included/quoted (and not in italics) as part of your own sentence i.e. "...the NTMA contacted PwC via email prior to issuing its original decision on 25 September, 2019 notifying PwC of the intention to release the audit plan presentations in full." as being at the least a very stupid response and that I believed it to be deceitful by informing PwC what its intentions were in order to have them on the same page. Their answer to the question makes no sense other than to be deceitful. I had expressed both in my affidavit and at the hearing that the NTMA never answered the question it had been asked by the Information Commissioner, that is, "Can (the NTMA) confirm if PwC were consulted about the records sought in this case?"

Based on the above, I can't for the life of me figure out why you included this quote in point 26 of your judgement as if it were a credible, informative response by the NTMA (which response was also accepted as being such by the Information Commissioner).

In you discussion (conclusion) section, while point 30 is moot because as mentioned my point of law was based on Section 23, it nevertheless is an unusual judgement for the High Court to make based on what I stated above in the recap of my argument, that is:

(Begin quote) As regards your assuming irrationality as being my point of law, I believe you chose this after I had referred you to Q.5 of the NTMA's submissions to the Information Commissioner (p.422, Book of Pleadings) where I not only pointed out that these submissions do not represent evidence (3 pages and 6 questions) and that the Information Commissioner simply accepted the answers by the NTMA without any type of verification process, but I also specifically cross referenced the second sentence in Q.5 (the NTMA's answer) i.e. "As mentioned at number 4 above the NTMA's understanding is that PwC did not submit 'final' or 'formal' audit plans once an audit plan presentation was agreed at Audit Committee level." against what the Information Commissioner had stated in his Legal Submissions (p.439, Book of Pleadings, pt.57) i.e. "Thirdly, the Commissioner's decision was not that the document never existed or is not held by some other party."

I stated that this statement by the Information Commissioner was untruthful (and yet you never even mentioned it in your judgement). (End quote)

The High Court's role is not to wear blinkers and ignore evidence and proof by the applicant or respondent. The High Court is above the Information Commissioner. The High Court is there to also set precedent. The High Court can't ignore lies under oath on the part of the Information Commissioner.

Your statement in point 31 seems demeaning in tone when you say in part, "The applicant appears to have convinced himself that there must be audit plan documents beyond the presentations he has received."

Perhaps this is a stratagem used by the High Court to reinforce judgements by giving the impression that the applicant doesn't know what he's talking about? We'll let others decide that if you wish. I must say, I have found it quite amusing over the years how the complainant is always made out to be the bad guy and treated with such indifference in Ireland. Whistleblowing and trying to hold the Irish Government seems to be lost on those tasked with overseeing these gombeens.
As regards the sufficiency of material argument you make in same point, I have addressed this above.

As regards point 32, you state, "There is no objective basis in the communications from CAI to suppose that some other undisclosed audit plan documents exist."
Yes, very cleverly put. What you failed to mention was that which I stated above at the beginning of the recap of my argument, that is:

(Begin quote) Therefore, ICAI was satisfied with the time period of this audit plan provided to the Executive by the member firm (I emphasize "by the member firm"). The member firm clearly referred to the audit plan as "our engagement letter" in their letter to me as per Exhibit C (p. 22/23, Book of Pleadings). I referred to this letter and the words "engagement letter" both in my affidavit and at the hearing. It was part of my proof in addition to the above statement by ICAI. I had shown you during my argument that the Information Commissioner (and NTMA) had received (before he made his decision) both the email within which is ICAI's statement above AND the letter I received from PwC with the words "our engagement letter" as above AND I referred you to Exhibit C within which is the email (Nov. 29, 2017) on p.23 of the Book of Pleadings where ICAI both states that it received the letter PwC sent to me and specifically refers to "...the terms of reference in their engagement letter...".

I can't understand why you chose to leave out this critical part of my proof because the PwC letter clearly and definitively proves that the internal audit plan was not a PPP but an actual audit plan document and corroborates that ICAI's statement above ("The member firm provided us with a copy of the internal audit plan") did indeed mean the actual internal audit plan.
(End quote)

As regards point 34, if the NTMA paid PwC using taxpayer funds to carry an internal audit and prepare an internal audit plan, and the NTMA subsequently claims the audit plan never existed (in their submissions) even though PwC (and ICAI) claim they have a copy (I proved this at my hearing and above), where do you propose one would get a copy of this plan? I assume the High Court can order the release of a document from whomever it believes (or it has been

informed, via proof) has a copy regardless of whether or not there is a basis for such a request in the statute?

FINALLY...

I don't believe I should pay the costs for this case as I'm entitled as an Irish citizen to make a complaint to the Office of the Information Commissioner, which is a taxpayer funded body, without having to incur costs. If subsequently the Information Commissioner allows me to appeal his decision to the High Court, he should have to disclose potential costs associated with this action since as a lay litigant I assumed it was a continuation of my original complaint to the Information Commissioner which did not require any cost outlay. The Information Commissioner did not disclose these potential costs in his final decision where he had informed me that I could appeal to the High Court. He had an obligation to make such a disclosure. Additionally, I find it incredulous that a complainant would be deterred from seeking justice by having to potentially pay court costs when a matter relates to oversight of the Irish Government.

Therefore, I ask you to not only amend your decision based upon the above recap of my hearing/argument etc. by informing the Information Commissioner that his decision was inadequate under Section 23 and that he has to release the internal audit plan to me, a copy of which he can request from PwC (which the Irish taxpayer has already paid for). PwC already sent a copy of the internal audit plan to ICAI during ICAI's assessment of my complaint, and so it will be easy for the Information Commissioner to get his hands on a copy. He could have easily requested a copy of this document prepared at the Irish Publics' expense and given it to me before I appealed my case to the High Court and avoided all these costs he claims were incurred by me.

I also ask that you order an investigation into the practices of the Office of the Information Commissioner which seems to do nothing else but coverup on behalf of the Irish Government.

Finally, I request that the Information Commissioner and his team be ordered to personally pay the costs for this case. I don't believe I or the Irish taxpayer should have to incur the costs of his cover up on behalf of the Irish Government.

The Information Commissioner's behavior in this case has been nothing but a charade and an abuse of the law and the public trust. Had the Information Commissioner's role not been one in the public interest, then I could to some extent understand this type of legal defense, but this case is not your typical plaintiff/defendant scenario. The Information Commissioner should not

be defending against the public interest. In this case he decided to pervert the course of justice and not defend the public interest. There's absolutely nothing in the requested document that needs to be protected from the public, and nothing was ever stated by the Information Commissioner as being such. I've never come across such a twisting of the law as I heard the Information Commissioner's defense team do during the hearing against something he should be defending.

I'll add to this that it's pretty disgusting that not even one Irish solicitor would represent my case, and I showed you evidence of this. I had to use the services of a U.S. attorney to assist me with my case. It's a shameful day when an Irish citizen is denied legal representation by Irish solicitors and has to use the services of a U.S. attorney instead. The new LSRA seems as incompetent and meaningless as the Law Society based on my recent communication with them.

As a lay litigant, I received no leniency from you whatsoever in terms of my request for some extra time to present my case (30 mins) which I believe the judge who was originally going to hear my case would have allowed, and I wasn't allowed to introduce any new exhibits when I made this request at the hearing. The Information Commissioner on the other hand was given much latitude in that although he was a week late in providing me with his legal submissions, you still allowed them in court. I had requested that they be inadmissible as he had been late in filing documents before (on two occasions) even though I filed/stamped all my documents on time over the two or so years since my original for mention and I was based in the U.S. Leniency seemed to favor the Information Commissioner.

While my knowledge of the law is relatively limited to some post graduate corporate and contract law modules, and some practical legal exposure in business, my takeaway from all of this is that you can't just apply any and all case law to any new case as you see fit. If using a particular case law, it has to have a close resemblance to a new case and its full context. For example, discretion used in one case to prevent the release of a document does not give the Information Commission authority to use this discretion the exact same way in every other case he's involve in in future. Discretion works both ways. While the Information has discretion per the case law, there has to be a reason behind why he uses it one way or the other.

I could find very little case law relating to the Information Commissioner and so it's clear that new precedents have to be set here. Otherwise, we'll have a small, limited number of cases determining the outcome of all future cases. In fact, I mentioned that of the 15 to 16 cases I scanned through, I found only one that referred to the Information Commissioner's Section 45 powers and that was where it was it was used (Section 45(6)) in his favor, allowing him to prevent the release of a document (I believe I referred to Michael Grange and Information Commissioner and Minister for Foreign Affairs and Trade - 2016 380 MCA). I would have thought his significant powers would be peppered throughout the limited case law in the public interest? In fact, the Information Commissioner seems finds every excuse to twist case law against the public getting its hands on documents. It's mindboggling!

To paraphrase, wasn't the FOI Act designed to enable the public to obtain access to the greatest extent possible consistent with the public interest information held at public bodies?

The case law evidence undoubtedly proves otherwise.

All the Information Commissioner had to do from the beginning in his public interest role was to call up PwC and ask them for a copy of a document (engagement letter) that the NTMA had paid for with tax payer funds, and there would have been no costs incurred whatsoever, and I wouldn't have been put on this merry-go-round these past number of years.

I can only assume that you misinterpreted my case/argument since I was a lay litigant and you were more used to cases being presented to you through solicitors who are more familiar with court procedure and more experienced in presenting their cases. I do not want to believe that the High Court will continue to allow itself to be misled by a body like the Information Commissioner.

Personally, if given the choice, I would prefer not to have to spend more time on this case by now having to take other actions such as for example putting together a case study of all my documentation for others to judge in lieu of a corrected judgement by you, and so I respectfully ask you judge to correct the misleading direction by the Information Commissioner in your judgement.

Kind regards,
Maurice D. Landers
April 20, 2022