



**The Four Neighbouring Law Commissions
Joint Annual Conference 2020**

**The Proceedings of the Joint Annual Conference 2020
of the Four Neighbouring Law Commissions**

The Law Commission of England and Wales

The Scottish Law Commission

The Law Reform Commission of Ireland

The Jersey Law Commission

held online and hosted by the Jersey Law Commission

on 3 July 2020

Annual Meeting of the Four Neighbouring Law Commissions

**Online meeting of the Four Neighbouring Law Commissions
Hosted by the Jersey Law Commission
Friday, 3 July 2020**

The Rule of Law and The Response To COVID-19

FOREWORD

The COVID-19 pandemic has brought about challenges to governments globally as they have had to respond quickly to the public health emergency by adopting stringent measures to combat the spread of the virus. In the jurisdictions served by the four neighbouring Law Commissions, the responses of the respective governments have not been uniform and such differences cannot be attributed to the different levels of the spread of the virus only. The differences between these responses, at least partially, are also anchored in the diverse constitutional arrangements of the four jurisdictions. Moreover, the governments have at times struggled to balance their responses with the respect for fundamental rights and freedoms and respect for the rule of law.

Striking the balance between the urgency of the responses required by a public health crisis and the rule of law is a challenge for every legitimate government. Achieving the balance not only protects human rights and safeguards institutions but may also help to support the measures required by the emergency by sustaining public trust in the institutions and in the legitimacy and necessity of the measures introduced. It is an issue that has been considered in both international instruments and national legal frameworks including the World Health Organization's International Health Regulations; the International Covenant on Civil and Political Rights (ICCPR) and the Siracusa Principles; the UN 2030 Sustainable Development Agenda; and the Venice Commission Rule of Law Checklist. Ten principles to reconcile the immediate exigencies of a crisis with the long-term legitimacy offered by the rule of law may be derived from these sources: legality, necessity, proportionality, non-discrimination, time

limits, non-derogable rights, international obligations, parliamentary scrutiny, effective remedy and transparency.¹

Bodies engaged with law reform such as the Law Commissions attending this online Joint Annual Meeting of the four neighbouring Law Commissions have a role in supporting governments achieve the best outcomes. The meeting presented a timely opportunity to take stock of what measures had been introduced and to evaluate their compatibility with human rights and the rule of law.

The discussion allowed examination too of the fundamental principles which should guide the governments across the jurisdictions as they embark upon the exit strategy from the adopted measures and consideration of the principles that should govern the action of the Governments in future should similar situations arise.

Presentations were made by each of the Law Commissions for England and Wales, Ireland, Scotland and Jersey. The Law Commission of England and Wales gave an oral presentation about potential post-COVID law reform priorities and did not present a formal paper to the meeting. The papers prepared by or digests of the presentations from each of the Law Commissions of Ireland, Scotland and Jersey follow.

Clive Chaplin
Chairman of the Jersey Law Commission
July 2020

¹ These issues are considered in detail in the consultancy paper [The Rule of Law in Times of Health Crisis](#) developed by the Bingham Centre for The Rule of Law at the British Institute of International and Comparative Law, from which this list of the ten main principles is taken.

Meeting of the Four Neighbouring Law Commissions 2020

Hosted by the Jersey Law Commission

3 July 2020

The Rule of Law and The Response To COVID-19

The Legislative Response in Ireland

The Law Reform Commission of Ireland

Ireland, in parallel with our nearest neighbours in the United Kingdom and our neighbours in the rest of Europe, has experienced profound public health, societal and economic shockwaves since the arrival of the global pandemic Covid-19 in the State. The various policy and legislative responses to Covid-19 in Ireland have also broadly mirrored those taken elsewhere in the jurisdictions in which we each carry out our work.

The first part of this Paper examines the legislative responses in Ireland. This is done with the considerable benefit of the decision of the High Court (Meenan J) in *O'Doherty and Waters v Minister for Health and Ors*,² in which the Court rejected a challenge to the legislative responses to Covid-19 enacted in March this year by the Oireachtas (Parliament of Ireland). We look forward to the discussion of this decision, and comparable challenges in England and Wales, including the decision the High Court of England and Wales (Swift J) in *R (Hussain) v Secretary of State for Health and Social Care*,³ in which judgment was delivered just over a week after the decision in the *O'Doherty and Waters* case.

The second part of the Paper discusses some of the responses that this Commission considers may be relevant in the medium to long term in the wake of Covid-19. It is clear that Covid-19 has had profound effects on the operation of our legal systems as well as on how we carry out our work, including our conferences! As law reform agencies, we are well placed to identify how to respond to disruptive occurrences, whether a global pandemic or disruptive technologies such as Artificial Intelligence. We complete the Paper by setting out a brief description of the Commission's current and planned projects for 2020-2021.

1. The legislative responses in Ireland to Covid-19 and dismissal of legal challenge.

In the [*O'Doherty and Waters*](#) case, the applicants, who are former journalists and who represented themselves as lay litigants, challenged the validity of two Acts of the Oireachtas

² [2020] IEHC 209.

³ [2020] EWHC 1392 (Admin).

enacted in March in response to the Covid-19 global pandemic, and aspects of the detailed Regulations made under the first of those Acts. Their case was based on the grounds that the Acts breached a number of the rights protected under the Constitution of Ireland of 1937.

As you will be aware, the Constitution of Ireland provides that any law enacted by the Oireachtas that is found by the High Court (or, on appeal, the Court of Appeal or Supreme Court) to be in breach of any provision of the Constitution is void and has no legal effect. A declaration of unconstitutionality has therefore been aptly described as a “judicial death certificate”⁴ for such legislation.

(a) The spread of Covid-19 and the international law role of WHO

The judgment of the High Court in the [O'Doherty and Waters](#) case provides a useful timeline of the spread of international knowledge of Covid-19 from the beginning of 2020. The judgment also alludes to the role played under international law by the World Health Organization (WHO), which is a specialised agency of the UN.

As we now know, the novel form of pneumonia since named Covid-19 had been circulating in the city of Wuhan in late 2019, hence “Covid-19” rather than “Covid-20”. On 4 January 2020, the World Health Organization (WHO) reported a cluster of pneumonia-type cases in Wuhan, in the Hubei Province of the People’s Republic of China. Less than three weeks later, on 22 January 2020, the WHO issued a statement that there was evidence of human to human transmission in Wuhan of this disease, and that more investigation was needed to understand the full extent of transmission.

On 30 January 2020, the WHO reconvened its Emergency Committee, which advised that the outbreak constituted a Public Health Emergency of International Concern (PHEIC) within the meaning of the WHO [International Health Regulations \(IHR\) of 2005 as amended in 2016](#). The IHR constitute an international agreement between 196 countries, including all WHO Member States, to work together for global health security. The IHR include agreed specific measures to limit the spread of health risks from highly infectious diseases, including preventative measures, reporting requirements to WHO when a highly infectious disease arises, subsequent public health hazard and risk assessments based on the “precautionary principle”, and travel and trade restrictions which are aimed at ensuring that that traffic and trade disruption is kept to a minimum consistent with public health risk assessment.

On 11 February 2020, the WHO advised that this coronavirus disease would be officially named Covid-19. Covid-19 was declared a pandemic by the WHO on 11 March 2020.

With international travel, it was inevitable that Covid-19 would spread well beyond the borders of China. The first country in Europe to experience a significant outbreak of Covid-19 was Italy. The effects on the health service, society and the economy were devastating. It was only a matter of time before Covid-19 spread to Ireland. This happened on 29 February 2020.

⁴ Henchy J in the Supreme Court decision in *Murphy v Attorney General* [1982] 241, at 307.

The first death in Ireland related to Covid-19 was reported on 11 March 2020, when there were 43 confirmed cases. At the time the application in the [O'Doherty and Waters](#) case was before the High Court on 5 and 6 May 2020, in Ireland there were some 22,248 confirmed cases of Covid-19 and 1,375 deaths.

At the time of writing (30 June 2020), the total number of confirmed cases in Ireland is 25,462, while the death toll from Covid-19 in Ireland is 1,735.

It is the case that, thanks to enormous collective efforts by Government, public health professionals and the overwhelming majority of citizens, the Covid-19 curve has been flattened since the disease first emerged in Ireland in March. As we are all aware, we are by no means out of the woods yet. Significant public health risks remain, both from Covid-19 and the effects of isolation from the “lockdown”, and which continue to be weighed against the need to maintain a functioning society, including the economic life of a functioning society.

(b) Overview of the two Irish Covid-19 Acts, and their use of Preambles or Recitals.

In response to the Covid-19 pandemic, the Oireachtas enacted two Acts in quick succession in March. These were the [Health \(Preservation and Protection and other Emergency Measures in the Public Interest\) Act 2020](#) (“first Covid-19 Act 2020”) and the [Emergency Measures in the Public Interest \(Covid-19\) Act 2020](#) (“second Covid-19 Act 2020”).

The first Covid-19 Act 2020 contains the framework for the lockdown and can, broadly, be traced to the public health precautionary principle set out in the internationally agreed WHO [International Health Regulations \(IHR\) of 2005 as amended in 2016](#), referred to above. The contents of the lockdown in the first Covid-19 Act 2020 includes virtually unprecedented restrictions on free movement of persons, both nationally and internationally, and at one stage virtually complete shutdown of all high street, retail, outlets with the exception of food outlets. Freedom of assembly was also severely restricted for some time, including in its connection with religious ceremonies, whether daily or weekly services and prayer gatherings. It also placed severe restrictions on other life events, whether religious or secular, such as weddings and funerals. In addition, the first Covid-19 Act 2020 contained enforcement mechanisms, including police powers and the prospect of criminal prosecutions and, on conviction, significant fines and the possibility of a sentence of imprisonment. In summary, this involved restrictions that would, in any other context (other than, perhaps, in wartime) be regarded as entirely impermissible in a democratic society governed by internationally agreed standards and the rule of law.

The second Covid-19 Act 2020 addressed the need for significant emergency financial and other regulatory interventions to mitigate to some extent the effects of the lockdown enacted in the first Covid-19 Act 2020. Financial interventions included wage subsidy arrangements to facilitate continuity of employment for businesses whose activities were disrupted by the lockdown, and enhanced social security payments for those who were “furloughed” following the lockdown. Regulatory interventions included extensions of the period of validity of various licences, and facilitating online arrangements for regulatory bodies to carry out their functions. Thus, the second Covid-19 Act 2020 amended the [Residential Tenancies Act 2004](#), notably by prohibiting for a period of three months: (a) serving a notice of termination in relation to the tenancy of a dwelling and (b) prohibiting rent increases on dwellings. The

second Covid-19 Act 2020 also amended the [Mental Health Act 2001](#), including making special provision for appointing members of Mental Health Tribunals (who review detention orders in designated mental health institutions) where this was not possible in the usual way under the 2001 Act “due to the exigencies of the public health emergency” posed by Covid-19.

Outside the parameters of either Act, separately, online arrangements have been put in place to ensure some level of continuity in the administration of justice, including through remote hearings and socially distanced jury trials.

Turning to the format of the two Covid-19 Acts, it is worth noting that both Acts contain detailed, and in fact identical, Preambles or Recitals as part of their Long Titles. These are relatively rare features of legislation enacted in Ireland, though as we know they were common in 19th century legislation enacted in the UK Parliament, and they are an invariable feature of EU legislative instruments. Nonetheless, they have been used in recent years in Ireland in connection with some of the drastic legislation enacted in the wake of the Recession that emerged in 2008, including legislation that provided for across-the-board salary cuts for civil and public servants. The use of such Preambles or Recitals has now been followed in the comparable emergency that emerged this year with Covid-19.

Thus, the Long Titles to the first Covid-19 Act 2020 and the second Covid-19 Act 2020 include the following text:

“WHEREAS an emergency has arisen of such character that it is necessary for compelling reasons of public interest and for the common good that extraordinary measures should be taken to deal with the immediate, exceptional and manifest risk to human life and public health posed by the spread of the disease known as Covid-19;

AND WHEREAS the State is and its citizens are, in significant respects, highly exposed to the effect of the spread of the disease known as Covid-19; and having regard to the constitutional duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity, it is necessary to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or slow the risk of persons being infected with the disease known as Covid-19;

AND WHEREAS as a consequence it is necessary for the State to take the measures in this Act to address the emergency and to defend and vindicate the rights of citizens to life and to bodily integrity;

Be it enacted by the Oireachtas as follows:”

(c) The Preambles or Recitals invoke the constitutional setting.

It is worth noting that these Recitals refer explicitly to the constitutional context against which both Covid-19 Acts were enacted, namely “the constitutional duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity.” This is a reference to Article 40.3 of the Constitution of Ireland, which provides:

“1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.”

You will notice that, while Article 40.3 refers to the right to life and three other rights, there is no reference to a right to “bodily integrity.” This right is, in effect, an implied or “unenumerated” right under Article 40.3. The concept of implied or unenumerated rights under Article 40.3 of the Constitution of Ireland was first recognised by the High Court and Supreme Court in the 1960s,⁵ at the same time as the US courts recognised the comparable concept of “penumbral” rights under the US Constitution.

Another aspect of the invocation of the constitutional setting is that Article 40.3 requires the State to protect such rights “as far as practicable”. This is a phrase commonly used in legislation, and describes both the high standard of the obligation (higher than “reasonably practicable”, for those of us who learned the case law on the factory legislation), while also recognising the limit to its extent: no more than what is feasible to protect those rights.

(d) The challenged provisions in the first Covid-19 Acts described.

This Paper focuses on the challenge to certain provisions of the first Covid-19 Act 2020.⁶ Section 10 of the first Covid-19 Act 2020 amended the [Health Act 1947](#) (the 1947 Act), which contained controls concerning infectious diseases that addressed previous pandemics such as the scourge of tuberculosis of the mid 20th century. It was necessary to amend the 1947 Act in order to address the specific problems that arose from the Covid-19 pandemic. Therefore, section 10 inserted a new section 31A into the 1947 Act, entitled “Regulations for preventing, limiting, minimising or slowing the spread of Covid-19”. This reads:

“31A. (1) The Minister [for Health] may, having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 ... make regulations for the purpose of preventing, limiting, minimising or slowing the spread of Covid-19 ... to deal with public health risks arising ... and, ... such regulations may, in particular, provide for all or any of the following:

- (a) restrictions to be imposed upon travel to or from the State;
- (b) restrictions to be imposed upon travel to, from or within geographical locations to which an affected areas order applies;
- (c) without prejudice to the generality of paragraph (b), restrictions to be imposed upon persons or classes of persons resident in, working in or visiting locations referred to in paragraph (b) including (but not limited to)—
 - (i) requiring persons to remain in their homes, or

⁵ See [Ryan v Attorney General \[1965\] IESC 1](#), [1965] IR 294.

⁶ As noted above, the second Covid-19 Act 2020 amended several pieces of legislation, including the [Residential Tenancies Act 2004](#) and the [Mental Health Act 2001](#), for the purposes of mitigating the adverse economic consequences resulting, or likely to result, from the spread of Covid-19 and to mitigate its impact on the administration of vital public service functions. In the [O'Doherty and Waters](#) case, the High Court held that, because the applicants had not established that they would be affected by those provisions, they did not have the standing to challenge them: [\[2020\] IEHC 209](#), at paragraph 57 of the judgment.

(ii) without prejudice to any other provisions of this Act or regulations made thereunder requiring persons to remain in such other places, as may be specified by the Minister;

(d) the prohibition of events, or classes of events, ...

(f) the safeguards required to be put in place by owners or occupiers of a premises or a class of premises ... in order to prevent, limit, minimise or slow the risk of persons attending such premises of being infected with Covid-19;

(g) the safeguards required to be put in place by owners or occupiers of any other place or class of place, (including the temporary closure of such place or class of place) in order to prevent, limit, minimise or slow the risk of persons attending at such place or class of place of being infected with Covid19;

...

(k) such additional, incidental, consequential or supplemental matters as the Minister considers necessary or expedient for the purposes of giving full effect to the regulations.

(2) When making regulations under subsection (1), the Minister—

(a) shall have regard to the following:

(i) the fact that a national emergency has arisen of such character that there is an immediate and manifest risk to human life and public health as a consequence of which it is expedient in the public interest that extraordinary measures should be taken to safeguard human life and public health;

(ii) the fact that a declaration of Public Health Emergency of International Concern was made by the World Health Organisation in respect of Covid-19 and that Covid-19 was duly declared by that Organisation to be a pandemic;

...

(6) A person who—

(a) contravenes a provision of a regulation made under subsection (1) that is stated to be a penal provision,

(b) obstructs, interferes with or impedes a relevant person in the course of exercising a power conferred by regulations under this section on that relevant person... shall be guilty of an offence.

(7) A member of the Garda Síochána who suspects, with reasonable cause, that a person is contravening or has contravened a provision of a regulation made under subsection (1) that is stated to be a penal provision, may, for the purposes of ensuring compliance with the regulation, direct the person to take such steps as the member considers necessary to comply with the provision."

In addition, section 11 of the first Covid-19 Act 2020 amended the 1947 Act by inserting a new section 38A into the 1947 Act, entitled "Detention and isolation of persons in certain circumstances", and which reads:

"38A. (1) Where, having regard to the matters specified in subsection (2), a medical officer of health believes in good faith that—

- (a) a person is a potential source of infection, and
- (b) the person is a potential risk to public health, and
- (c) his or her detention and isolation is appropriate in order to—
 - (i) prevent, limit, minimise or slow the spread of Covid-19, and
 - (ii) minimise the risk to human life and public health,and
- (d) such person cannot be effectively isolated, refuses to remain or appears unlikely to remain in his or her home or other accommodation arranged, or agreed, by the Health Service Executive, the officer may in writing order the detention and isolation of such person in a hospital or other place specified in the order (including such other hospital or other place as may subsequently be appropriate and specified in the order) until such time as the medical officer certifies that the person's detention is no longer required for the purposes of this section...

(4) A medical officer of health who makes an order under subsection (1) shall keep the detention order under review and ensure that a medical examination of the person who is the subject of the order is carried out as soon as possible and in any event no later than 14 days from the time the person has been detained.

(5) A person who is the subject of an order under subsection (1) may request that his or her detention be reviewed by a medical officer of health, other than the officer who makes the order concerned, on the grounds that he or she is not a potential source of infection."

In accordance with the Regulation-making power in these provisions, the Minister for Health made the [Health Act 1947 \(Section 31A – Temporary Restrictions\) \(Covid-19\) Regulations 2020](#) (SI No.121 of 2020). These Regulations concern, among other matters, the restriction of movement of an "applicable person", that is, a person whose place of residence is located within an area in which an "affected areas order" applies. Regulation 4 of these Regulations provides:

- "(1) An applicable person shall not leave his or her place of residence without reasonable excuse.
- (2) Such reasonable excuse... includes an applicable person leaving his or her place of residence... to -
- (a) provide, or assist in the provision of, an essential service, whether for remuneration or not,
 - (b) go to an essential retail outlet for the purpose of obtaining items (including food, beverages, fuel, medicinal products, medical devices or appliances...
 - (e) attend a medical appointment or accompany, to a medical appointment, any other person residing in the relevant residence or a vulnerable person...
 - (g) donate blood or accompany any other person residing in the relevant residence to donate blood...
 - (i) exercise, either alone or with other persons residing in the relevant residence,
 - (j) attend to vital family matters (including to provide care to vulnerable persons),
 - (k) attend the funeral of [prescribed family members]...

(l) fulfil a legal obligation (including attending court, satisfying bail conditions, or participating in ongoing legal proceedings).”

These restrictions, constituting the detail of the “lockdown”, and relevant exemptions, will be familiar to everyone at our virtual Conference.

(e) Standing of the applicants and the threshold for the constitutional challenge.

In the [*O'Doherty and Waters*](#) case, the High Court (Meenan J) considered whether the applicants had standing to bring their claim. The Court noted that sections 31A and 38A of the 1947 Act, as inserted by the first Covid-19 Act 2020, set out the statutory basis for the restrictions on the free movement of people, the detention of people in certain circumstances, the closure of premises and the prohibition of certain events. The stated purpose of these restrictions is to halt the spread of Covid-19 and, thus, are designed to affect every person residing in the State. This clearly includes the applicants. Thus, the Court was satisfied that the applicants had standing to challenge the constitutionality of these sections.

As to the threshold that applies where persons challenge the constitutional validity of legislation, the Court noted that the well-established case law was very clear:⁷

“The burden is on the applicant to depose to such facts in his/her grounding affidavit which, if proven, could make an arguable case in law that has a prospect of success. A case that is contrary to case law or contrary to the clear wording of an Article(s) in the Constitution would not be such a case. If there were not such a requirement then an application for leave would be a pointless procedure. The application for leave has a low threshold but it is, nonetheless, a threshold.”

(f) Consideration of the substantive arguments.

The High Court then went on to consider the substance of the arguments made by the applicants. The provisions of Article 40.3 of the Constitution, concerning the personal rights of the citizen, have already been cited.

In addition, the applicants relied on Article 41 of the Constitution, which deals with the Family, and which provides, in part:

“1.1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.”

The reference in the 1937 Constitution to the Family as the primary and fundamental unit group of society anticipated comparable recognition in international conventions agreed in the second half of the 20th century, including Article 16.3 of the 1948 Universal Declaration of Human Rights, Article 23.1 of the 1966 UN International Covenant on Civil and Political Rights (ICCPR) and the Preamble to the 1989 UN Convention on the Rights of the Child (UNCRC).

⁷ [2020] IEHC 209, at paragraph 29 of the judgment.

In considering the application of these provisions, the High Court accepted that the rights in Article 40.3 or 41 were engaged by the first Covid-19 2020 Act. Thus, in relation to the argument under Article 41, the Court stated:⁸

“There is no doubt but that these restrictions do interfere with normal family life, but this is not a breach of Article 41.”

The central part of the applicants’ argument was that the first Covid-19 2020 Act was a disproportionate attack on both the personal rights of citizens under Article 40.3 and of the rights of the Family under Article 41.

(g) Challenge based on proportionality.

It is worth noting in this respect that arguments as to the proportionality of legislative interference with constitutional rights have become a regular feature of cases in jurisdictions with a written Constitution; and, indeed, in jurisdictions such as the United Kingdom and Ireland that have transposed into domestic law the Council of Europe’s Convention on Human Rights and Fundamental Freedoms (ECHR). Indeed, that appears to be the gist of the challenge in [R \(Hussain\) v Secretary of State for Health and Social Care](#),⁹ noted briefly below.

The origins of the *proportionality* test may be difficult to trace, but in Ireland’s case they are derived from case law of the Supreme Court of Canada from the 1980s and later, and adopted in a series of decisions of the High Court and Supreme Court in Ireland since the 1990s. In *Heaney v Ireland*,¹⁰ the High Court (Costello J) quoted the following statement of the proportionality test:

“1. The objective of the impugned provision must be of sufficient importance to warrant overriding a constitutionally protected right or freedom; it must relate to concerns which are pressing and substantial in a free and democratic society before it can be characterized as sufficiently important.

2. Assuming that a sufficiently important objective has been established, the means chosen to achieve the objective must pass a proportionality test; that is to say they must:

(a) be ‘rationally connected’ to the objective and not be arbitrary, unfair or based on irrational considerations;

(b) impair the right or freedom in question as ‘little as possible;’ and

(c) be such that their effects on the limitation of rights and freedoms are proportional to the objective.”¹¹

⁸ [2020] IEHC 209, at paragraph 52 of the judgment.

⁹ [2020] EWHC 1392 (Admin).

¹⁰ [1994] 3 IR 593, at 607.

¹¹ This is the proportionality test laid down by the Supreme Court of Canada in *R v Chaulk* [1990] 3 SCR 1303, at pp.1335-1336, cited in *Heaney v Ireland* [1994] 3 IR 593, at 607. The internal quotes (‘rationally connected’ and

This test has been cited with approval, and applied, in many subsequent decisions of the Irish courts. In the [O'Doherty and Waters](#) case, while this also appeared to be the basis for the applicants' claims, it is also true to say that the applicants failed to reach any evidence-based threshold to support their assertion. In three paragraphs of the judgment in the case, the High Court (Meenan J) noted the absence of any basis for their claim. The first two of those paragraphs are:¹²

"54. To begin to make an arguable case that these restrictions and limitations of rights are disproportionate, it was necessary for the applicants to put on affidavit some facts which, if proven, could support such a view. There was a complete failure by the applicants to do so. The narrative in their "statement required to ground application for judicial review" ended on 16 March 2020 when some 268 cases of Covid-19 and the deaths of two persons were reported. The application for leave was made ex parte four weeks later, on 15 April 2020, without the narrative being updated. The applicants' grounding affidavit was sworn on 5 May with still no update in the narrative. This was, now, some seven weeks after the date on which the applicants had ended their narrative. It is worth noting that on 5/6 May, the Department of Health stated that there were some 22,248 cases of persons having Covid-19 and 1,375 deaths. The applicants made no reference to this.

55. In their Statement of Grounds and submissions to this Court, the applicants questioned the accuracy of the figures given for the numbers of persons infected with Covid-19 and the number of deaths reported. They went a good deal further and maintained that the science involved was "fraudulent". Other than their views, the applicants identified no supportive expert opinion either in the Statement of Grounds or grounding affidavit. As opposed to this, the respondents filed an affidavit of Ms. Bernie Ryan, Principal Officer in the Department of Health, which set out, in detail, the background and reasons for the legislation in question. The applicants did not seek to reply to this affidavit."

The High Court then commented:¹³

"56. Unfortunately, in making their case for leave the applicants, who have no medical or scientific qualifications or expertise, relied upon their own unsubstantiated views, gave speeches, engaged in empty rhetoric and sought to draw an historic parallel with Nazi Germany – a parallel which is both absurd and offensive. Unsubstantiated opinions, speeches, empty rhetoric and a bogus historical parallel are not a substitute for facts."

The Court concluded that the applicants had not made any arguable case in support of their claim that the first Covid-19 Act 2020, or the Regulations made under it, were unconstitutional. On that basis, the Court refused them the relief sought.¹⁴

The Commission notes that the judgment in the [O'Doherty and Waters](#) case was delivered on 13 May 2020. On 21 May 2020, the High Court of England and Wales (Swift J) delivered judgment in [R \(Hussain\) v Secretary of State for Health and Social Care](#),¹⁵ in which it was

'little as possible') are quotes in *R v Chaulk* [1990] 3 SCR 1303, at pp.1335-1336, from the decision of the Supreme Court of Canada in *R v Oakes* [1986] 1 SCR 103.

¹² [2020] IEHC 209, at paragraphs 54 and 55 of the judgment.

¹³ [2020] IEHC 209, at paragraph 56 of the judgment.

¹⁴ [2020] IEHC 209, at paragraph 60 of the judgment.

¹⁵ [2020] EWHC 1392 (Admin).

argued that the temporary ban on religious services in Regulations made by the Secretary of State, that were broadly similar to the equivalent Irish Regulations, was a disproportionate interference with the right to express religious beliefs under Article 9 of the ECHR. Having heard arguments from counsel representing both sides, the Court rejected the claim.

It may be useful to set out in full the relevant passages from the judgment, which succinctly describe the arguments that arise in a fully argued case on proportionality:¹⁶

“19. The Covid-19 pandemic presents truly exceptional circumstances, the like of which has not been experienced in the United Kingdom for more than half a century. Over 30,000 people have died in the United Kingdom. Many, many more are likely to have been infected with the Covid-19 virus. That virus is a genuine and present danger to the health and well-being of the general population. I fully accept that the maintenance of public health is a very important objective pursued in the public interest. The restrictions contained in regulations 5 to 7, the regulations in issue in this case, are directed to the threat from the Covid-19 virus. The Secretary of State describes the "basic principle" underlying the restrictions as being to reduce the degree to which people gather and mix with others not of the same household and, in particular, reducing and preventing such mixing in indoor spaces. I accept that this is the premise of the restrictions in the 2020 Regulations, and I accept that this premise is rationally connected to the objective of protecting public health. It rests on scientific advice acted on by the Secretary of State to the effect that the Covid-19 virus is highly contagious and particularly easily spread in gatherings of people indoors, including, for present purposes, gatherings in mosques, churches, synagogues, temples and so on for communal prayer.

20. For the purpose of his disproportionality submission, the Claimant points to various other activities which are permitted by the 2020 Regulations as most recently amended on 13 May 2020. These include taking exercise, including with one member of another household; visiting parks and open spaces for recreation; visiting houses in connection with the purchase, sale, rental of a residential property; going to local tips and recycling centres. Businesses that are now permitted to open include outdoor sports centres and garden centres. The Claimant submits that none of these is necessarily any more essential than being able to attend communal Friday prayers at his mosque. Put in terms of the proportionality test set out by the Supreme Court in *Bank Mellat v HM Treasury*, the Claimant's submission is that the means used, so far as they prevent the use of places of worship, are more than is necessary to achieve the legitimate aim – i.e. that a less intrusive approach could have been taken without compromising the achievement by the Secretary of State of his legitimate objective.

21. In this way, the Claimant questions the Secretary of State's priorities. Why are matters such as those mentioned above permitted when attendance at a place of worship in fulfilment of a religious obligation is not? While the Secretary of State's order of priorities is a legitimate matter for public debate, in terms of whether the decision on it contained within the 2020 Regulations is lawful, he must be allowed a suitable margin of appreciation to decide the order in which steps are to be taken to reduce the reach and impact of the restrictions in the 2020 Regulations. What steps are to be taken, in what order and over what period will be determined by consideration of scientific advice, and consideration of social and economic policy. These are complex political assessments which a court should not lightly second-guess.

22. In the circumstances of the present case, the issue is not whether it is more important, for example, to go to a garden centre than to go to communal prayer; the issue is not whether activities that are now permitted and those that are prohibited are moral equivalents. Rather, the question is as to the activities that can be permitted consistent with effective measures to reduce the spread and transmission of the Covid-19 virus; that so far as they interfere with Convention rights, strike a fair

¹⁶ [2020] EWHC 1392 (Admin), at paragraphs 19 to 26 of the judgment.

balance between that inference and the general interest. That will be a delicate assessment. There will be no single right answer. The Secretary of State is entitled, in my view, to adopt a precautionary stance.

23. Yet, even putting those points to one side, and even accounting for the use of social distancing measures such as those that the Claimant proposes, it is possible to recognise a qualitative difference in terms of the risk of transmission of the virus between a situation such as a religious service where a number of people meet in an enclosed space for a period of an hour or more, and the transitory briefer contact likely in a setting such as that of shopping in a garden centre.

24. In this case I do not think there is any realistic likelihood that the Claimant's case on Article 9 will succeed at trial. The infringement of his Article 9 rights is not disproportionate. In reaching this conclusion I have taken account of the requirement under section 13 of the Human Rights Act to pay particular regard to Article 9 rights.

25. I have also considered carefully the judgment of the German Constitutional Court dated 29 April 2020 in F (1BBQ 44/20). In that case, the German Constitutional Court granted relief so as to permit Friday prayers to take place. It concluded that a general prohibition in German law brought in to address the Covid-19 pandemic was in breach of Article 4 of the German Constitution since the law did not allow for exceptional approval to be granted for religious services on a case-by-case basis. I do not regard that judgment as providing any template, let alone precedent, for me to follow. I am unaware of the particular factual circumstances prevailing in Germany at the particular time at which this decision was taken - how the threat to public health was assessed, what was its extent and so on. However, even if circumstances were exactly the same in Germany and the United Kingdom. That does not require the conclusion that what the court has required in Germany must happen here too. First, the question for me at this stage concerns the margin of appreciation and the overall fair balance. This is a situation, as I have said, with no right answer. I must assess the Secretary of State's response to it as set out in the 2020 Regulations on its own terms. Second, the prohibition in regulation 5(5) of the 2020 Regulations is subject to the exceptions set out in regulation 5(6). Third, even though the exceptions so prescribed in the Regulations are of general application rather than permitting the possibility of case-to-case exceptions, that approach, the use of a bright line or bright lines, if you will, is not an impermissible form of response to circumstances such as those presented by the Covid-19 pandemic.

26. Taking account of the points I have already made as to the nature and extent of the interference, the justification submissions made by the Secretary of State are likely to be sufficient. It is not to the point that the Claimant only brings his case on behalf of himself and on behalf of his own mosque. The submissions made for him are essentially generic, hence the Secretary of State's response pitched at a generic level is a valid response. Thus, while I can readily appreciate and sympathise with the Claimant's frustration at the impact of the 2020 Regulations on his religious convictions, I do not consider that any of the evidence relied on or submissions made on his behalf are likely to satisfy a court that the Secretary of State has failed to strike a balance that is fair."

We note the Court's citation of a decision of the German Constitutional Court. We are aware of at least one similar citation in an Irish court.¹⁷ We very much look forward to the discussion on Friday of these matters, which have been raised in judicial proceedings in at least these two neighbouring jurisdictions to date.¹⁸

¹⁷ *Murphy v Attorney General* [1982] IR 241, at 272-273 (High Court, Hamilton J) and 284-285 (judgment of the Supreme Court).

¹⁸ We also understand that, on Thursday 2 July, the crowd-funded claim by Mr Simon Dolan will have been heard: <https://www.crowdjustice.com/case/lockdownlegalchallenge/>.

2. How law reform can respond to Covid-19, and our planned projects for 2020-2021.

In this second part of the Paper, we discuss some of the responses that this Commission considers may be relevant in the medium to long term in the wake of Covid-19. They are based primarily on a number of the Commission's Reports that have been published in the last decade, many of which are in the process of being implemented.

We emphasise that these have been identified in the specific context of the law in Ireland, but perhaps some of these suggestions may be of relevance in other jurisdictions.

(a) Regulatory and supervisory systems: a framework of core powers

- **Core regulatory powers:** the Covid-19 pandemic has indicated the importance of regulatory and supervisory systems, including in the health care and social care settings. The Commission's recent work in this area, the 2018 [Report on Regulatory Powers and Corporate Offences](#), identified a "core" set of six regulatory powers that could form the basis for effective regulatory systems. These core powers were referred to when the Government published a Draft Bill in January to establish an Online Media Regulation Commission and Online Safety Commissioner. The Commission will also refer to the analysis in the 2018 Report in its current project on a regulatory framework for adult safeguarding, referred to below.

(b) Criminal law reform

- **Threatening and menacing online communications:** Covid-19 has also, unfortunately, appeared to have provided an opportunity for a minority of individuals and organised gangs to use online tools for harmful and menacing purposes. In its 2016 [Report on Harmful Communications and Digital Safety](#), the Commission recommended reform of the criminal law to address harmful communications, including threatening and menacing online communications. The Irish Government has supported a Private Member's Bill on this, and it is expected that this legislation will be progressed during 2020).
- **Pre-trial criminal hearings, including disclosure and discovery:** Covid-19 has underlined the need to enhance and develop pre-trial hearings in criminal trial proceedings. The Commission has recommended, in its 2014 [Report on Disclosure and Discovery in Criminal Cases](#), reform of the pre-trial process concerning disclosure of documents in criminal cases. The Irish Government has drafted the Heads/Scheme of a Criminal Procedure Bill to modernise the law on pre-trial hearings in criminal cases.

(c) Civil law reform

- **Insurance contract law for individual consumers and SMEs:** Covid-19 has identified a common issue surrounding insurance contracts: whether individual consumers and SMEs clearly understand the scope of cover that they have. The Commission's work on this area, the 2016 [Report on Consumer Insurance Contracts](#), led to the enactment of the [Consumer Insurance Contracts Act 2019](#), which requires a Ministerial Commencement Order to come into force, anticipated in the coming months. Our analysis, and hence the 2019 Act, derived huge benefit from the analysis in the reports

that emerged from the Law Commissions' Joint Project and the resulting UK legislation on insurance contract law enacted between 2010 and 2015.

- **Decision-making capacity law:** Covid-19 has raised questions concerning how we regulate health care and financial decisions that affect all individuals. The Commission's work in this area influenced the development and enactment of the [Assisted Decision-Making \(Capacity\) Act 2015](#), many provisions of which require Ministerial Commencement Orders to come into force, also anticipated in 2020. The Commission continues its work in this area, on a regulatory framework for adult safeguarding.

(d) Reform of law of evidence and court procedures

- **Law of evidence:** the Commission's proposed reforms on the law of evidence, in the 2016 [Report on Consolidation and Reform of Aspects of the Law of Evidence](#), could assist the efficiency of civil and criminal court hearings, including:
 - a presumption of admissibility for electronic and paper business records;
 - clarifying the admissibility of electronic signatures; and
 - as envisaged in the June 2020 Programme for Government, modernising the law on oaths and affirmations (currently contained in the [Oaths Act 1888](#)).
- **Court procedures:** similarly, and complementing other reforms being considered by the Civil Justice Review Group (chaired by the former President of the High Court, Mr Justice Peter Kelly), the Commission proposals on court procedure, in its 2010 [Report on Consolidation and Reform of the Courts Acts](#), include:
 - using standardised and easily understood terms in civil proceedings;
 - imposing case conduct principles on parties in civil cases; and
 - enabling Statutory Rules of Court to support use of ICT.

3. Conclusion

We end this Paper with a brief description of the Commission's projects for 2020-2021.

The Commission's current work programme includes research projects on:

- the principles and procedure for suspended sentences,
- whether it would be constitutionally permissible to enact legislation on capping (general) damages in personal injuries actions,
- accessibility of legislation in the digital era,
- Ireland's practices in implementing international agreements,
- contempt of court,
- third party litigation funding,
- compulsory acquisition of land,
- a regulatory framework for adult safeguarding,
- civil and criminal liability of not-for-profit unincorporated bodies such as clubs,
- decision-making processes in, and appeals from, non-court administrative bodies, and
- review and consolidation of sexual offences law.

The Commission has already published its consultative Issues Papers on a number of these projects. It will publish its final Reports, including final recommendations and draft Bills, on at least the first four projects by the end of this year.¹⁹

When the Commission has completed current projects, it will, by the end of the year, determine which of the remaining projects from its Fifth Programme of Law Reform (approved by Government in 2019), will be prioritised. The remaining projects concern:

- Privacy and Technology in the Digital Era
- Compensating Victims of Crime
- Regulation of Detention in Garda Custody
- Protective Costs Orders
- Liability of Hotels and Related Establishments
- Aspects of the Law of Evidence (bad character evidence; privilege)
- Aspects of Family Law (proper provision on divorce; foreign divorces)
- Aspects of Land and Conveyancing Law (adverse possession; prescriptive easements)

The Commission will also continue its Access to Legislation research work, which comprises:

- the publication and maintenance of over 380 Revised Acts (administrative consolidations of these Acts), which provide the public, the business community, public servants, the judiciary and the legal profession with the up-to-date text of these Acts, and which are cited and relied on by the courts;²⁰
- the maintenance of the Legislation Directory on the electronic Irish Statute Book (eISB), hosted by the Office of the Attorney General, which provides a comprehensive tracking of all amendments made to all Acts of the Oireachtas since 1922;
- the maintenance of the Classified List of In-Force Legislation, a searchable full text database of all in-force Acts of the Oireachtas (over 2,000) and in-force statutory instruments (over 15,000); and
- the development by 2022 of a comprehensive list of secondary legislation from the years 1821 to 1922 that remain in force, which will complete the pre-1922 Statute Law Revision Project (SLRP).

¹⁹ The project on Ireland's practices in implementing international agreements will be completed by the publication of a Discussion Paper, which will be primarily descriptive of the State's treaty practice, including examples of good practice.

²⁰ Revised Acts were most recently cited by the Supreme Court in *The People (DPP) v FE* [2020] IESC 5 (decided in February this year).

Meeting of the Four Neighbouring Law Commissions 2020

Hosted by the Jersey Law Commission

3 July 2020

The Rule of Law and The Response To COVID-19

Covid-19 response by Government in Scotland

The Scottish Law Commission

The Coronavirus Act 2020

UK Act. Preceded by close consultation and joint working by UK and devolved governments.

Passed at Westminster Parliament with Sewel consent of devolved legislatures. Fast tracked in 4 sitting days. Royal Assent on 25 March 2020.

The aims of the Act: to give further powers to Government to slow the spread of the disease; to reduce the resourcing and administrative burden on public bodies; to limit the impact of potential staffing shortages on the delivery of public services.

Conferred new powers on devolved Ministers in devolved areas – such as health, education and justice.

Regulations made under these powers by Scottish Ministers to tackle the pandemic. They place restrictions on movement and public gatherings; and require a wide range of premises and businesses to close.

The Regulations made in the jurisdictions within the UK were initially similar in scope. They have since been amended in different ways in devolved jurisdictions.

The Coronavirus (Scotland) Act 2020

The Scottish Government introduced additional legislation in the Scottish Parliament to respond to the pandemic. The Act received Royal Assent on 6 April 2020.

The Act increased protections for tenants to prevent evictions, allowed participants in court proceedings to appear by video link; extended time limits for criminal proceedings; provided powers to release prisoners early; relaxed planning and licencing rules; and provided short term protection for debtors.

The Coronavirus (Scotland) (No. 2) Act 2020

The Scottish Government introduced a further Bill to the Scottish Parliament, adding to changes to the Coronavirus (Scotland) Act 2020. These covered changes to some obligations of public bodies; changes to protect certain student tenants; support for carers and power to reduce non-domestic rates; and changes to criminal procedure to enable essential justice business to continue. Royal Assent on 26 May 2020.

Financial provision

The UK Government announced major spending packages to respond to the outbreak. Devolved administrations received additional funding.

The UK Treasury created several UK wide financial support schemes, to partially fund the salaries of furloughed workers, expand entitlement to statutory sick pay, and provide support for the self-employed and for larger businesses.

Co-ordination between administrations

Ministers from devolved administrations initially participated in meetings of the Civil Contingencies Committee chaired by the Prime Minister. Also in meetings of Ministerial implementation groups established to look at specific aspects of the coronavirus response.

By early June the UK Government established instead two new cabinet committees to co-ordinate its response to coronavirus.

Each of the devolved administrations has a chief medical officer and a chief scientific adviser. They work with the UK equivalents, to provide co-ordinated advice to government advisers in all four jurisdictions.

Emerging from lockdown

In the early phase of the crisis, the four governments closely co-ordinated their response, with a UK wide joint action plan published on 3 March.

As the UK has started to move out of lockdown, the four governments have each taken their own approach to lifting restrictions. Each published their own plan for re-opening the economy, with Northern Ireland and England moving at a faster pace than Scotland and Wales, for example by opening non-essential retail premises and pubs and restaurants.

Each of the four administrations published its own roadmap for easing lockdown restrictions. The UK with a 3-step phased approach; the Scottish Government with a 4-phase route map

Meeting of the Four Neighbouring Law Commissions 2020

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3 July 2020

The Rule of Law and The Response To COVID-19

Covid-19 related emergency Legislation in Jersey

The Jersey Law Commission

Overview and Concerns

The status of the emergency legislation.

Jersey went down the route of introducing the key emergency measures through secondary legislation. On the one hand, this allowed proceeding with a speed which certainly was required at the time. However, it also meant that measures did not go through the scrutiny that primary legislation would have been subjected to. In particular, a '*projet de loi*' (primary legislation) is subjected to a review of compatibility with the [Human Rights \(Jersey\) Law 2000](#) which does not apply to the secondary legislation. This has now resulted in a number of measures adopted being incompatible with the [Human Rights \(Jersey\) Law 2000](#).

The adoption process.

While it is not questioned that the unprecedented nature of the pandemic required swift action on behalf of the executive, the Law Commission is concerned about the manner in which the emergency measures were proposed and adopted. It was not at all uncommon for a draft to be tabled late on a Friday afternoon with adoption proceeding the following Monday/Tuesday. Coupled with the previous point, this has resulted in the adoption of measures which do not meet the essential elements of the principle of legality: the necessity and proportionality.

The temporal scope of the measures.

While the measures were introduced through the secondary legislation, the Law Commission is concerned that no temporal restrictions have been placed on their operation: in principle, measures introduced to address the exigencies of the emergency situation should be subject to automatic, periodic review with the view of revising and stopping them as the emergency situation passes and normality returns. This is not the case in Jersey as generally no review

process is taking place, although the [Covid-19 \(Safe Distancing\) \(Jersey\) Regulations 2020](#) do contain (at Regulation 5) a mechanism for periodic review

The implementation of emergency measures.

The Law Commission is concerned over the lack of specific guidance to professionals on the implementation of the measures introduced. Thus, for example, as the [COVID-19 \(Screening, Assessment and Isolation\) \(Jersey\) Regulations 2020](#) came into force on 28 March 2020, it was not accompanied by any guidance to the police or other law enforcement bodies on its implementation despite the fact that the Regulation put in place numerous restrictions the violations of which may lead to an arrest.

The Mitigation legislation

The Government of Jersey has addressed the economic consequences of the Covid-19 pandemic and the related legislative restrictions with a range of measures including:

Financial Measures

- Co-Funded Payroll Scheme
- Financial support for business owners, sole-traders and partners
- Business Disruption Loan Guarantee Scheme
- Deferral of payment of Social Security contributions and Goods and Services Tax

Residential tenancies

- The [Covid-19 \(Residential Tenancy\) \(Temporary Amendment of Law\) \(Jersey\) Regulations 2020](#) amend the [Residential Tenancy \(Jersey\) Law 2011](#) with package of measures:
 - preventing tenants from being evicted due to financial hardship caused by coronavirus;
 - introducing a suspension on rent increases to protect tenants from additional financial hardship; and
 - enabling tenants to extend their tenancies during the coronavirus outbreak should they so wish.
 - court moratorium on tenancy actions
 - Ministerial Guidance, setting out framework for:
 - Tenants to notify landlords, with supporting evidence, of inability to pay rent/comply with tenant covenants due to Covid-19 related financial hardship

- Landlords to notify tenants of inability to comply with lease covenants
- Agreement of concessions between parties to be formalised in Temporary Voluntary Arrangements

Guidance not legally binding but compliance or otherwise may be used as evidence in any subsequent tenancy action or application by landlord or tenant for Government support packages

Commercial tenancies

- No legislative change but:
 - Court moratorium on tenancy actions
 - Ministerial Guidance in similar terms to the residential tenancy guidance.

Wills and Probate

- The [COVID-19 \(Signing of Instruments\) \(Jersey\) Regulations 2020](#) allow:
 - Wills to be witnessed by audio-visual link rather than requiring witnesses to be physically present with the testator when signing
 - Applications for grants of probate/administration (where made through Jersey lawyer) to be made by audio-visual link
 - Attestation of probate-related documents to be made by audio-visual link.

General insolvency reforms

- Traditionally, Jersey law has been creditor focused in keeping with the needs of an offshore finance centre where corporate transactions need to respect the rights of secured parties and other creditors.
- However, this may mean that the needs of local businesses and individuals in a modern insolvency context are not necessarily promoted.
- There is a clear concern that COVID-19 has (and will) place local businesses under considerable financial pressure.
- A number of potential insolvency reforms are being discussed between government and the Jersey finance industry. Potential areas for reform include:
 - the introduction of a regime for company voluntary arrangements
 - guidance in relation to credit arrangements in the context of COVID-19
 - a review of the financial limits applicable for initiating insolvency proceedings

- The challenge will be bringing these reforms to the market quickly whilst also preserving Jersey's reputation as an offshore finance centre.
- The Viscount (who is the executive officer of the Royal Court) has in the meantime issued a guidance note on wrongful trading. The Viscount would administer a desastre (i.e. insolvent winding up) and would therefore be the person making a wrongful trading claim against directors. The statement places the risk of wrongful trading in context and highlights the practical steps that directors ought to take in order to benefit from the statutory defence (i.e. that they have taken reasonable steps with a view to minimising the potential loss to creditors).

Judicial Review of Legislation

A judicial review application was brought by a Jersey resident challenging the lawfulness of the Co-Funded Payroll Scheme:

- [Scott v The Minister for Treasury and Resources and the AG](#) [2020] JRC 095
- [Scott v The Minister for Treasury and Resources and the AG](#) [2020] JCA 114.
- The applicant, who could not benefit from the Scheme, due to having been made redundant prior to its introduction, alleged that the Scheme was discriminatory in its application and wasteful of the Island's resources.
- Both the Royal Court and the Court of Appeal accepted that the applicant had sufficient interest to bring the application for leave but held that there was no arguable case to challenge the Scheme on any of the established JR grounds, i.e. illegality, irrationality or procedural impropriety.

“The Scheme may produce unfairness for some, but that does not make it susceptible to judicial review in the absence of irrationality or illegality. The fact that the Applicant objects to the Scheme does not in itself mean that it is unlawful. An appeal to principles of fairness or efficiency cannot transform a political decision into one that is vulnerable to public law challenge. Many political decisions involve making hard choices and often result in disparity in treatment in individual cases, where citizens or groups of citizens may consider that they have been treated unfairly. This does not mean that the decision is unlawful or irrational in the absence of evidence of a breach of law or manifest absence of valid reasoning.” (Paragraph 8 of CA judgment)

2 July, 2020