Neutral Citation No: [2024] NICA 58	*Ref:* **KEE12575**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*ICOS No:* **24/45738/A01**
	Delivered: **13/08/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND CHANCERY DIVISION

Between:

TERESA MARIE McDONALD

Appellant/Defendant

and

MID ULSTER DISTRICT COUNCIL

Respondent/Plaintiff

_____

Mr McQuitty KC with Mr Magowan (instructed by Phoenix Law) for the Appellant
Mr Andrew Browne (instructed by Mid Ulster District Council) for the Respondent

_____

Before: Keegan LCJ and Scoffield J

_____

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This is an appeal from a decision of Huddleston J ("the trial judge") of 26 June 2024, wherein he made an order for possession of lands in the car park at Greenvale Leisure Centre in Magherafelt ("the Leisure Centre") in favour of Mid Ulster District Council ("the Council") pursuant to Order 113 of the Rules of the Court of Judicature (Northern Ireland) 1980. Order 113, rule (1)(i), which is the relevant rule, provides as follows:

> "Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be

brought by originating summons in accordance with the provisions of this Order."

[2] The appeal is mounted on the basis that the trial judge erred in refusing an adjournment application by the appellant/defendant, Teresa Marie McDonald, to facilitate a judicial review of the council's decision to seek possession. Also, it is claimed that the trial judge's decision was wrong in that he found that the order for possession was compatible with article 8 of the European Convention on Human Rights ("ECHR") and article 14 ECHR.

[3] We heard this appeal on an expedited basis on 2 July, as the order for possession had taken effect on the previous day, 1 July 2024. After hearing submissions, we provided our ruling that day dismissing the appeal. These are the written reasons which we indicated were to follow. We are grateful to counsel in the appeal for their helpful written and oral submissions and for dealing with the hearing at short notice.

Factual background

[4] The appellant is an Irish traveller. She has taken up occupation, together with a number of other Irish travellers, in an overflow car park at the Leisure Centre. Her position is simply that there is nowhere else in the area that she can site her caravan.

[5] By the time this case was heard, whilst three other caravans had arrived at the leisure centre site during the period of the appellant's occupation, it was only the appellant's caravan that was remaining. The others had relocated elsewhere.

[6] The chronology of court proceedings in the Chancery Division is as follows:

(i) The matter was first listed before the trial judge on 12 June 2024. The appellant/defendant sought an adjournment for legal aid purposes and for judicial review pre-action protocol correspondence to issue. This adjournment was granted.

(ii) On the resumed date, 21 June 2024, a further adjournment was allowed until 25 June 2024 for, inter alia, the provision of supporting evidence on the availability of alternative sites in the local authority area to be provided by 24 June 2024.

(iii) On the resumed date a further adjournment application was made and refused and the case proceeded.

[7] As will be apparent the proceedings are relatively recent, having been initiated by summons dated 13 May 2024. The summons was accompanied by grounding evidence in an affidavit from Mr Ryan Black of 16 May 2024, on behalf of the Council. A second affidavit of Mr Black is dated 24 June 2024. In addition, an

affidavit of Mr Gregory Stewart of 3 May 2024, was also provided on behalf of the Council.

[8] On behalf of the appellant there is an affidavit of Kelly Laverty, Accommodation Policy Officer of Craigavon Travellers' Support Committee, which was filed. The credentials of Ms Laverty are rightly not in issue as she is someone with knowledge of the travelling community. This affidavit raises, *inter alia*, the fact that there is an active planning application extant for a bespoke site for travellers in Castledawson.

[9] In terms of the case trajectory, we note that a pre-action protocol letter was sent to the Council in relation to the non-provision of adequate traveller sites in this area. By the time we heard the case, there was no reply to this correspondence and the judicial review application had not yet issued. We also note the contents of a letter from the Northern Ireland Human Rights Commission of 25 June 2024, which indicates an intention to potentially intervene in the intended judicial review, referencing its work and its own report in relation to traveller accommodation in Northern Ireland and the issues that arise thereon.

The judgment at first instance

[10] The trial judge gave *ex tempore* reasons for his ruling and commendably provided a written ruling shortly thereafter, which reflects the comments made by him at the conclusion of the hearing. In the written ruling, the judge reflected the arguments made to him at first instance in para [7], as follows:

> "In discussion with counsel at the hearing on 21 June, Mr Magowan acknowledged that the occupiers have no legal right to be in occupation of the car park in which they have parked their caravans and in respect of which the Order 113 proceedings have been brought."

[11] We also see from the written judgment that the judge, during the course of this hearing, heard oral evidence from Mr Black and Mrs Laverty, although this was of limited duration.

[12] In his judgment the trial judge goes on to explain the parameters of Order 113 in the following terms. He states that:

> "Order 113 is a summary procedure generally brought by the owner of land (here the Council) against a trespasser on that land – someone who is, or remains on the land, without the owner's consent or permission (here the unnamed occupiers). Rule 2 extends the possibility of relief – as here – to persons unknown."

[13] The judge then references relevant authority in this area including *Personal Representatives of Isaac Stevenson v Olive Boyd and occupants* [2020] NICh 14. In addition, he cites *Her Majesty's Principal Secretary of State for Communities and Local Government and Praxis Care and persons unknown* [2015] NICh 5, in which Deeny J set out the threshold for a defence to Order 113 proceedings in the following terms:

> "The defendant must show an arguable case, ... It must be a genuine defence to the plaintiff's claim for possession and not a mere quibble. See a not dissimilar situation with regard to setting aside a statutory demand: *Allen v Burke Construction* [2010] NICh 9."

[14] At para [15] of his judgment the trial judge articulates the approach he adopted when he said that:

> "Where, as in this case, an authority's decision to evict is under challenge, the court must consider whether there is a real possibility that the defendant will be granted leave for judicial review."

[15] The trial judge also referred at para [17] to the context of possession cases which deal with the interplay between property law and article 8 of the ECHR. In this regard he cites *Newport City Council v McDonagh and others* [2021] which, in turn, referred to the case of *Thurrock Borough Council v West* [2012] EWCA Civ 1435. The judge applies the general principles in the latter case of *Thurrock* which are set out between paras [22]-[31] as follows:

> "22. The principles to be applied are clear. First, it is a defence to a claim by a local authority for possession of a defendant's home that the possession is not necessary in a democratic society within article 8(2), that is to say it would be disproportionate in all the circumstances. An order for possession in such a case would be an infringement of the defendant's right under article 8 to respect for his or her home and so unlawful within the Human Rights Act 1998 section 6(1).
>
> 23. Secondly, the test is whether the eviction is a proportionate means of achieving a legitimate aim: Pinnock at [52]. The Supreme Court said there that it would prefer to express the position in that way rather than use the yardstick of confining an arguable article 8 defence to 'very exceptional cases' as mentioned by Lord Bingham in *Kay v Lambeth BC* [2006] UKHL 10, 2 AC 465, at [29] and endorsed by the European Court

in *McCann v UK* (2008) 47 EHRR 913 at [54] and *Kay v UK* [2011] HLR 13 at [73].

24. Thirdly, it is nevertheless clear that the threshold for establishing an arguable case that a local authority is acting disproportionately and so in breach of article 8 where re-possession would otherwise be lawful is a high one and will be met in only a small proportion of cases … The circumstances will have to be exceptional to substantiate an article 8 defence.

25. Fourthly, the reasons why the threshold is so high lie in the public policy and public benefit inherent in the functions of the housing authority in dealing with its housing stock, a precious and limited public resource. Local authorities, like other social landlords, hold their housing stock for the benefit of the whole community and they are best equipped, certainly better equipped than the courts, to make management decisions about the way such stock should be administered.

26. Fifthly, that is why the fact that a local authority has a legal right to possession, aside from article 8, and is to be assumed to be acting in accordance with its duties (in the absence of cogent evidence to the contrary), will be a strong factor in support of the proportionality of making an order for possession without the need for explanation or justification by the local authority: *Pinnock* at [53] and Powell at [37].

29. Sixthly, an article 8 defence on the grounds of lack of proportionality must be pleaded and sufficiently particularised to show that it reaches the high threshold of being seriously arguable.

30. Seventhly, unless there is some good reason not to do so, the court must at the earliest opportunity summarily consider whether the article 8 defence, as pleaded, and on the assumption that the pleaded facts relied upon are correct, reaches that threshold … If the pleaded defence does not reach that threshold, it must be struck out or dismissed. … The resources of the court and of the parties should not be further expended on it.

31. Eighthly, even where an article 8 defence is established, in a case where the defendant would

> otherwise have no legal right to remain in the property, it is difficult to imagine circumstances in which the defence could operate to give the defendant an unlimited and unconditional right to remain … That might be the effect of a simple refusal of possession without any qualification. It is particularly difficult to imagine how that could possibly be appropriate in a case where the defendant has never been a tenant or licensee of the local authority."

[16] Having dealt with the law, the trial judge then sets out his conclusions. The core part of his conclusions is found at paras [21] and [22] of the judgment as follows:

> "[21] Applying the arguments advanced, does not, in my view, achieve the threshold necessary to provide a defence to the possession proceedings as brought. It is my view that the Council is acting proportionately in asserting its proprietary right, in the face of the defendants who have entered the site and propose to remain indefinitely. Indeed, Mr Magowan accepted that the proceedings would be irresistible if it related to private land. The qualification he asserts here is the extent to which the local authority is subject to the Convention rights of his clients. On the question of reasonableness, I am satisfied from the affidavit of Mr Black that the Council has taken into account all relevant factors and have not taken into account irrelevant considerations. There is evidence that the Council sought to apply the NIHE Co-operation Policy in relation to the occupants when they, as a local authority, are not technically subject to it. The Convention points I deal with below.
>
> [22] The one issue that features in that analysis is the question of alternative sites. As I indicated above, one of the reasons I adjourned the case was to allow the question of alternative sites to be addressed. On that question I have two competing affidavits, one by Mr Black and one by Mrs Laverty. Because of the discrepancies I heard from both witnesses under oath. The conflict in evidence did little to assist me, but, in essence, I am satisfied that there is at least as good an alternative site for these caravans elsewhere – not perhaps to the standard that Mrs Laverty spoke of in her evidence in relation to ancillary facilities which one might expect in a transit site,

> or which Mr Magowan suggested in terms of allied facilities that his clients would ideally want, but at least as suitable as the public car park in which they are currently located. I say that, in particular, because I think it is important that one recalls the primary statutory responsibility for the provision of such sites rests not with the Council, but with the NIHE and there is evidence to the court that at least one such site is available although the detail on it was scant."

[17] Finally, we note that in undertaking the proportionality exercise, the judge referred to the following:

(a) The plaintiff is the Council who is the legal owner of the site seeking to remove unlawful occupants – a point which has been accepted as a matter of law and fact by the appellant's counsel.

(b) The plaintiff averred to issues over parking that the occupiers have created, together with a knock-on effect in terms of traffic congestion and related health and safety issues for users and members of the public who have occasion to use or be in the car park.

(c) The plaintiff Council is the statutory body that is charged with the administration of this site for the benefit of the public at large, subject to the statutory obligations which it has to perform.

(d) The plaintiff averred to the view that it is happy to allow access to the car park and Council facilities to the appellant on exactly the same basis as all other users but not, which is her wish, to remain indefinitely as is the appellant's position.

[18] Thus, the trial judge, therefore, found that the proportionality balance fell in favour of the Council. He also dismissed the discrimination claim pursuant to article 14 ECHR. In doing so, he also determined that any positive duty on the Council as asserted by Mr Magowan to accommodate the lifestyle of the appellant is a matter for determination in the judicial review.

Our Consideration

[19] The context of this case is important. The appellant accepts that she is a trespasser on this public land. This is land that is used to service a leisure centre by way of a car park, to which the public and users of the leisure centre are entitled to have access for its use in the normal way. Therefore, there is a high degree of public interest in play given the need to ensure peaceable enjoyment of the land.

[20] However, the legal issue in this case is simply whether, although the appellant has no right to be present on the land, she is able to defeat the claim for possession by means of a defence on public law grounds, namely article 8 of the ECHR.

[21] One other argument was raised by the appellant, namely that to evict her from this site would be to render her homeless within the meaning of Article 3 of the Housing (Northern Ireland) Order 1988. The relevant portions of this article state as follows:

> "(5) A person is also homeless if he has accommodation but—
> …
>
> (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted to place it and to reside in it."

[22] During the course of the argument Mr McQuitty realistically accepted that, even taken at its height, this argument would not sustain the appeal. That is because it is not the order of the court which has rendered the appellant homeless in the sense of this provision. She was not at any time entitled or permitted to reside in her caravan in the car park. The order appealed from is merely a remedy designed to reflect the pre-existing legal position that the appellant does not, and did not, have any right to reside in her caravan at the site. Rather, it is the failure on behalf of the Council to provide a permanent site for the appellant, if anything, which is the core issue. We find the additional argument grounded on the 1988 Order to be entirely without merit.

[23] The appellant was on more solid ground when invoking article 8 of the ECHR. Article 8 is a well-known right which preserves family and private life. It is a qualified right. Interference with private and family life must be justified by a public authority on a number of established grounds which are contained within the structure of article 8(2), which we set out as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of

health or morals, or for the protection of the rights and freedoms of others."

[24] The Housing (Northern Ireland) Order 2003 also sets out the statutory duties in play. Article 125 of the 2003 Order creates a new Article 28A of the Housing (Northern Ireland) Order 1981 which states:

"28A.—(1) The Executive—

(a) shall provide such caravan sites as appear to it to be appropriate for the accommodation of caravans of members of the Irish Traveller community, and

(b) may manage those sites or lease them to some other person.

(2) For the purposes of paragraph (1), the Executive may, under Article 87, acquire land—

(a) on which to construct caravan sites,

(b) which is in use as a caravan site, or

(c) which has been laid out as a caravan site.

(3) The Executive may make such provision as appears to it desirable in connection with caravan sites provided under this Article and, in particular, may provide for the use of those occupying such sites, any services or facilities for their health or convenience that appear to it to be appropriate.

(4) In exercising their powers under this Article, the Executive shall have regard to any model conditions specified by the Department of the Environment under section 5(7) of the Caravans Act (Northern Ireland) 1963.

(5) The Executive shall make in respect of the use of caravan sites provided by it, and of any services or facilities made available under this Article, such reasonable charges as it may determine.

(6) The Executive shall not have power under this Article to provide caravans.

(7) In this Article—

(a) "caravan" and "caravan site" have the same meaning as in the Caravans Act (Northern Ireland) 1963; and

(b) any reference to the Irish Traveller community shall be construed in accordance with Article 5(2)(a) of the Race Relations (Northern Ireland) Order 1997.

(2) Schedule 2, which makes provision for the transfer to the Executive of caravan sites provided by district councils for the accommodation of travelling people, shall have effect."

[25] The uncontroversial position in this case, highlighted by the documentation we have seen and pre-action correspondence, is that the relevant public body, namely the Northern Ireland Housing Executive ("NIHE"), has a duty to provide accommodation. The point at issue is that a planning application for a travellers' site in Castledawson has been extant now for a considerable period. The Council, as the planning authority, is alleged by the appellant to be thwarting or delaying this application resulting in a position where there are no or inadequate sites for Irish travellers within its district. That is why a judicial review is contemplated. However, these public law proceedings are not determinative of the possession case because there are different considerations at play, particularly in relation to the interim position, which is whether or not it is proportionate to require the appellant to move herself from the Leisure Centre to another temporary place of residence pending the resolution of the judicial review application and/or the related planning application.

[26] The protection of travellers' rights was also rightly raised by Mr McQuitty. He made the point that the ECtHR has in several cases referred to the protection to be afforded to Irish travellers as a protected minority. The point is not strictly at issue in this case and will likely be debated in the ensuing judicial review. Thus, it is not necessary for us to discuss the issue further in this judgment. Suffice to say that we take no issue with the general propositions relating to traveller rights and protections established in Convention jurisprudence. Furthermore, we note that the Council in this case brought the application as a last resort and with a measure of sympathy for the appellant. The majority of the issues relied upon by the appellant ultimately resolve, in our view, to the question of whether the judge considered and addressed, in a way which was legally open to him, the issue of whether there were potential alternative sites at which the appellant could reside if the order was made.

[27] Within the above context we distil the questions for determination by this court as follows:

(i) Was the judge entitled to refuse an adjournment in this case?

(ii) Did the judge properly consider the application of article 8 to this case?

(iii) Did the judge properly undertake the proportionality balance if article 8 is engaged?

[28] Dealing with question (i) we can, as we indicated on the day of hearing, indicate our view on this succinctly, as follows. Firstly, the issue of whether to adjourn a case or not is quintessentially a matter of discretion on behalf of the trial judge. We see no error on his part in this regard either in terms of the material that he considered or the factors that he took into account. To our mind the trial judge was quite entitled to reach a decision separating the planning and possession cases. The appellant was able, as she did, to make points about the relevance of the planning issue, as she saw it. However, the judge was not obliged as a matter of fairness or otherwise to grant an adjournment of what is intended to be a summary procedure to await the outcome of another, tangentially-related proceeding. As such, the refusal to adjourn the case was within the ambit of decisions that a trial judge can properly make in this area; and so we dismiss this ground of appeal.

[29] The grounds of appeal that have somewhat more traction are encompassed in questions (ii) and (iii) above relating to whether the trial judge dealt with article 8 properly. In response to this appeal point, Mr Browne tentatively argued that article 8 was not engaged at all in this case given the limited amount of time which the appellant had spent at the site and the lack of legal basis for her having done so. We are not convinced by that argument. It seems to us plain that the concept of family life is encompassed within the desire of the travelling communities to have a site for their caravans; and that the disruption to the appellant's personal life by being forcibly moved on from the site where she had established her home (albeit temporarily) engages article 8. There may be an issue about the strength of the article 8 rights engaged in this case, but we proceed on the basis that article 8 is engaged. We do not consider that the appellant is deprived of a "home" in circumstances where she is being required to move her caravan to another location. More detailed argument about these issues may, however, be required or appropriate in another case which does not require to be addressed with the urgency which this case entailed.

[30] Next is consideration of the legitimate aim offered by the Council for interference with the article 8 rights of the appellant, which we consider are engaged. The Council identified three objectives of the measure in their affidavit evidence, namely the need to avoid a reduction in available car parking spaces; considerations of safety; and the principle that the use of this land be in accordance with the Council's decision-making as its rightful owner. Mr McQuitty, rightly, did not quibble in relation to legitimate aim, as he accepted that the latter two at least could amount to legitimate aims which were sufficient to justify the limitation of a protected right. That approach is correct and legitimate aim is established.

[31] There is also clearly a rational connection between the legitimate aim and the measures taken. We do not believe that a less intrusive measure was really on the cards in this case given the choices open to the Council which were limited.

[32] The appeal comes down to whether the proportionality exercise has been conducted properly. The primary justification provided by the Council is effectively the public interest. Its assessment is set out in the affidavit evidence at para [16]:

> "The unauthorised use of the lands means that there are fewer parking facilities for lawful use. There are 110 car park spaces situated on the lands which are used throughout the day by facility users, facility staff and the Education Authority. There were also suggestions of safety concerns from a caravan in the area."

[33] In conducting this exercise the trial judge referred to the law in this area. No issue is taken with the law and so we simply confirm that it was appropriate to apply *Newport City Council v McDonagh and others* [2021] which, in turn, referred to the case of *Thurrock Borough Council v West* [2012] EWCA Civ 1435. In doing so the trial judge rightly referred to the strong factors which weigh in favour of the public authority. He found the question of an alternative site to be a relevant consideration. We agree that this is a relevant consideration to be held in the balance in the proportionality exercise.

[34] Para [22] of the judgment is the core of the decision (as we have said) and so we have examined it carefully in dealing with question (ii) on this appeal. Having done so we agree with Mr McQuitty that para [22] could have been expressed in clearer terms. However, this was an *ex tempore* judgment produced within a short timescale and in those circumstances, so long as the judgment can be viewed in the round in a comprehensible way and deals with the core issues, a judge should not be castigated for failing to articulate his or her reasoning in a better way.

[35] When the judgment is viewed in the round, we are satisfied that the trial judge was alive to the issues of the appellant's article 8 rights and alternative sites and properly placed these in the balance when determining the proportionality of the Council's intervention in this case and the order he was asked to make. He heard evidence on the issue of alternative sites. Having done so he clearly found that the alternative sites, whilst not perfect, were "at least as suitable as the public car park." This is a factual finding which was open to him. Clearly the trial judge considered all relevant factors. It is plain to us that he had a range of possibilities in mind, namely recreational sites (albeit these may only have been available on a short-term basis) and ear-marked bespoke traveller sites elsewhere in Northern Ireland. The NIHE-owned site which is the subject of the planning application was also raised in evidence, although this was inconclusive as to whether access to it for the caravan would practically be possible. In relation to a bespoke travellers' site,

which is preferable, including the site which is the subject of the planning application, we are not convinced that a move would be insurmountable bearing in mind the NIHE obligations to provide accommodation for traveller families. Indeed, in the course of the appeal we heard that there was a possibility of a further site which may be available to the appellant which had not been raised before and considered by the trial judge. The trial judge also had in mind the fact that living in a public car park was unsuitable and worse than either of the other options given the lack of facilities.

[36] We can readily discern that the trial judge approached the proportionality exercise through the lens of suitability of alternative sites and balanced the options against the public interest in clearing the leisure centre car park. Therefore, we do not agree with Mr McQuitty's primary submission that the judge made a perverse factual finding. That is a high threshold which has not been reached. In summary, we do not consider that the claim of perversity is supported in evidence or that the trial judge's finding is perverse based on the leaving out of account of a relevant factor.

[37] We do accept Mr McQuitty's criticism that the judge has set out the factors in favour of the Council explicitly and not the factors in favour of the appellant. However, we do not think that this omission is fatal as the judge specifically refers at para [21] to the appellant's written arguments at the lower court, which he clearly did take into account. Therefore, we are satisfied that the failure to explicitly mention the actual factors under the rubric of article 8 does not invalidate this decision. He also considered and referred to the NIHE Cooperation Policy, to which the Council had had regard, which makes clear reference to the article 8 considerations in play.

[38] Similarly, the fact that the judge did not mention the effect on the appellant and any relevant children specifically does not undermine this decision. This latter conclusion is particularly so given that the appellant did not file an affidavit in this case. We find that somewhat strange when article 8 rights are in play and the impact on a person's family life is in issue. In these cases, the effects of an interference should really be vouched on affidavit. Nonetheless, it was plain that the appellant's submissions were premised upon the fact that a possession order would give rise to considerable inconvenience and disruption to her and any family residing with her.

[39] There is also an evidential gap in this case in relation to the effect upon children within this family dynamic. Upon probing by the court, Mr McQuitty frankly confirmed that the appellant herself has no children, but children come to stay in the caravan who are the children of her brother. There are other question marks in relation to the evidential foundation for this case under article 8 which unfortunately are unanswered.

[40] In any event, we find the proportionality exercise was properly conducted by the judge and he reached a decision which was open to him for the reasons we have

given. He was entitled to give very significant weight to the Council's legal rights as landowner. We answer all three questions identified at para [27] herein in the affirmative. In addition, we find no basis for the article 14 claim, essentially on the same basis that any interference with rights has been justified by the Council in the context of this case.

Conclusion

[41] It follows from what we have said above that the appeal is dismissed. In our view, the trial judge, within these proceedings, has correctly considered article 8 and article 14 and dismissed both claims as a defence to the application for possession.

[42] Finally, we cannot leave this case without reiterating the fact that an issue remains unresolved in relation to the provision of permanent bespoke sites for travellers in this area, as set out by Mrs Laverty in her evidence. It appears clear to us that there is an obligation on the NIHE as a public authority to facilitate the related planning application in co-operation with the Council. Whether the Council has acted in any way unlawfully in relation to the extant planning application is a matter for determination in other proceedings, if these are pursued. In any event, we sincerely hope that there will be some more permanent solution found for the appellant and other traveller families in the near future which would avoid the type of proceedings with which we have had to deal.