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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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APPLICATIONS FOR JUDICIAL REVIEW BY TREVOR CARSON, NORMAN JOHNSTON, RONALD GEORGE and DAVID ALEXANDER GARDNER

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WEATHERUP J

[1] These four applications for judicial review relate to decisions of the Department of Agriculture and Rural Development imposing penalties on the applicants for over-declarations of land holdings in connection with applications under the Single Farm Payment Scheme. Mr Larkin QC and Mr Girvan appeared for the applicants and Mr Maguire QC and Mr Caul appeared for the respondent.

The Single Farm Payments Scheme.

[2] Arising out of the reform of the Common Agricultural Policy (CAP) the Single Farm Payments Scheme (SFP) was introduced in Northern Ireland on 1 January 2005. SFP directed payments at farm holdings rather than farm production. Only one person could apply for SFP in respect of any parcel of land. In 2005 approximately 32% of agricultural land in Northern Ireland was held in conacre. The four applicants claims for SFP included lands that each held in conacre and in respect of which the respective landowners had also claimed SFP.

[3] Wylie's Irish Land Law refers to conacre as the right to till land, sow crops in it and to harvest them in due course and that such arrangements are 'lettings' or 'contracts' that do not normally create tenancies (paragraph [20.25]). The development of modern conacre arrangements was discussed by Gibson LJ in Maurice E Taylor (Merchants) Ltd v Commissioner of Valuation

[1981] NI 236, where conacre letting was described as a system of agricultural land tenure which was believed to be peculiar to Ireland.

[4] Under the former CAP scheme based on farm production the conacre farmer, rather than the landowner, would generally claim the farm subsidy. Further to the adoption of the SFP, with entitlements based on responsibility for the holding rather than production, there were perceived to be tax advantages for landowners if they claimed SFP, rather than the conacre farmer. The Department's approach was to emphasise to applicants for SFP the need for agreement between the landowner and the conacre farmer as to responsibility for the land and the entitlement of only one of them to claim the SFP. All applicants were warned that over-declaration of land may lead to penalties being imposed. Whereas in 2004 there were some 25,000 applications for farm subsidy and penalties were imposed in 388 cases, in 2005 there were 41,700 applications for SFP, which included 3,500 duplicate claims for land holdings, in respect of which 1,160 penalties were imposed.

[5] Commission Regulation EC 796/2004 laid down detailed rules for the implementation of the integrated administration and control system provided for in Council Regulation EC 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers. "Farmer" means a person "who exercises an agricultural activity". "Agricultural activity" means the "production, rearing or growing of agricultural products *or maintaining the land in good agricultural and environmental condition"*. "Good agricultural and environmental condition" is subject to a community framework, with Member States being entitled to define the minimum requirements for good agricultural and environmental conditions. The expanded meaning of a "farmer", to include the words in italics above, provided the opportunity for the landowner of the conacre letting to become eligible for SFP if the landowner rather than the conacre farmer had the requisite degree of responsibility for the land.

[6] Article 15 of EC 796/2004 provides for amendments to SFP applications, with this proviso -

> "3. Where the competent authority has already informed the farmer of irregularities in the single application or where it has given notice to the farmer of its intention to carry out an on-the-spot check and where that on-the-spot check reveals irregularities, amendments in accordance with paragraph 1 shall not be authorised in respect of the agricultural parcels affected by the irregularities."

[7] Article 19 provides for adjustment of obvious errors in SFP applications -

> "Without prejudice to Articles 11-18, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority."

[8] Article 22 provides for withdrawal of SFP applications by an applicant, with this proviso:-

> "However, where the competent authority has already informed the farmer of irregularities in the aid application or where the competent authority has given notice to the farmer of its intention to carry out an on-the-spot check and where that on-the-spot reveals irregularities, withdrawal shall not be authorised in respect of the parts of the aid application affected by the irregularities."

[9] Article 51 provides for reductions and exclusions of payments to an applicant in cases of over-declaration of land entitlement, with the penalty being determined by the scale of over-declaration. Article 68 provides for exceptions from the application of reductions and exclusions as follows:-

> "1. The reductions and exclusions provided for in Chapter 1 shall not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.
>
> 2. The reductions and exclusions provided for in Chapter 1 shall not apply with regard to the parts of the aid application as to which the farmer informs the competent authority in writing that the aid application is incorrect or has become incorrect since it was lodged, provided that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed the farmer of any irregularity in the application.
>
> The information given by the farmer as referred to in the first subparagraph shall have the effect that the aid application is adjusted to the actual situation."

[10] Thus applications for SFP may adjusted as follows –

- amended under Article 15, provided the farmer has not received notice of irregularities or of an on-the-spot check that reveals irregularities,

- adjusted for obvious errors under Article 19,

- withdrawn under Article 22, provided the farmer has not received notice of irregularities or of an on-the-spot check that reveals irregularities.

- in the event of over-declarations, the reductions and exclusions do not apply under Article 68.1 where the farmer submitted factually correct information or where the farmer is not at fault.

- in the event of over-declarations, the reductions and exclusions do not apply under Article 68.2 where the farmer gives notice that the application is incorrect, provided the farmer has not received notice of an on-the-spot check and has not been informed of an irregularity.

[11] The Department issued an explanatory guide on SFP. The guide stated that an applicant was to declare all land in the holding, which must include all land owned, leased or taken in conacre, including any common land with a right to graze. From the land on the holding an applicant was required to identify those fields on which he wished to establish entitlements. At page 4 of Part 6 the guide addressed the question of establishing more than one entitlement on a land parcel as follows:-

> "Requests to establish entitlements on the same area of land by more than one farmer will not be accepted and the parties involved will be required to resolve any disputes over who has the right to the land. As two people cannot establish entitlements on the parcel of land, one person may be penalised for over-declaring the area of land in their 2005 single application forms. You should consider carefully which areas of land you are entering into SFP, particularly any land you rent or take in conacre. If there is a dispute relating to tenure, you must resolve this before submitting a 2005 single application form."

The first applicant.

[12] The first applicant applied for SFP on 11 May 2005. The claim for 20.45 hectares of land included two fields, amounting to 6.88 hectares, which the first applicant held in conacre. On 11 May 2005 the landowner also included the 6.88 hectares in a claim for SFP. By letter dated 6 December 2005 to the first applicant the Department referred to a "discrepancy" that had been identified in the claim. It was stated that if the first applicant had leased the fields identified he should contact the landowner as soon as possible to resolve the duplicate claim. Two forms were included with the letter, the first identified as DF2 which was to be completed by whoever was entitled to the SFP and the second identified as DF3 was to be completed by whoever was not entitled to the SFP. The applicant returned DF3 on 10 January 2006 on the basis that he was not entitled to the SFP for the two fields. His explanation for the over-declaration was stated in these terms –

"It was a misunderstanding. Before completing my AACS form I had spoke with the owner of the ground and it was agreed that I would claim for the ground. The owner forgot this arrangement."

[13] In the meantime the landowner, who had also received a 'discrepancy letter', returned form DF2 and received the SFP for the two fields. By letter dated 23 February 2006 the Department notified the applicant that a penalty would be imposed for the over-declaration. The applicant appealed and on 30 August 2006 the Department rejected the appeal. The applicant appealed further to an independent Panel and on 13 June 2007 the independent Panel recommended that the appeal be dismissed. The Panel decision expressed disquiet about the outcome and stated its conclusion that the applicant could not be said to be at fault at any stage and had acted with complete honesty and openness throughout. The Panel also expressed its concern that by submitting form DF3, when the appellant felt he had no alternative but to do so in order to secure any payment, he was forced into a position of having to accept a degree of culpability which could not be found. The Panel concluded that there was no obvious error, expressed the view that the penalty was grossly disproportionate and urged the Minister to give careful consider to the Panel's concern about the legal and moral status of form DF3. By letter dated 18 October 2007 the Department notified the first applicant of the decision to accept the recommendation of the Panel and dismiss the appeal.

[14] The grounds for judicial review are:-

(i) The decision was unlawful and in breach of Article 68.1 of EC 796/2004 in that the applicant's application was factually correct when submitted.

(ii) The decision was unlawful and in breach of Article 68.1 of EC 796/2004 in that the applicant was demonstrably not at fault.

(iii) The decision was unlawful and in breach of Article 68.2 of EC 796/2004 in that the applicant corrected information in advance of any irregularity being notified to him.

(iv) The decision was unlawful in that the Minister erred in respect of the definition of obvious error under Article 19 of EC 796/2004.

(v) The decision was unlawful in that the Minister erred in not concluding that the application had been partially withdrawn and the partial withdrawal had been accepted by the Department contrary to Article 22.1 and 22.2 of EC 796/2004.

Obvious error.

[15] The first applicant contends that the over-declaration amounts to an "obvious error" under Article 19. The European Commission issued a working document on the concept of obvious error for the purposes of Article 12 of EC 2419/2001 in relation to aid applications in the animal premium and crops sectors. The Commission advice was that as a general rule an obvious error had to be detected from the application documents. The error may be clerical, such as boxes not filled in or information lacking, or the error may result from a coherence check of the documents where contradictory information emerges, such as arithmetical mistakes or inconsistencies. In addition obvious errors may emerge from cross-checks of applications with independent databases. Examples involve mistakes in reference numbers. The Department's guidance at paragraph 2.18 gave examples of obvious errors based on the Commission guidance.

[16] The independent Panel report concluded that the applicant's over-declaration could not be regarded as an obvious error and the Department accepted that conclusion. There is no basis for setting aside the import of the Commission guidance or the Department guidance on the interpretation of obvious errors for the purposes of Article 19. Nor is there any basis for setting aside the conclusion of the Panel or the Department on the question of obvious error. I am satisfied that the first applicant's over-declaration is not capable of amounting to an obvious error for the purposes of Article 19.

Notice of irregularity by the Department.

[17] The applicant contends that the Department had not informed the applicant of an irregularity in the application so as prevent amendment under

Article 15 or partial withdrawal under Article 22 or notice by the applicant under Article 68.2 so as to prevent the application of a penalty. The applicant contends that the 'discrepancy letter' from the Department of 6 December 2005 and the reminder of 23 December 2005 are not instances of the Department having "informed the farmer of irregularities". Rather the applicant contends that the notices issued by the Department were a request to the applicant and the landowner to resolve the duplicate claims and in so doing the Department offered the applicant a choice of standard form replies, one of which would have enabled the applicant to proceed with the claim in respect of the conacre holding.

[18] I am unable to accept this argument on behalf of the applicant. It is apparent that the Department's letter of 6 December 2005 was a standard form response to cross-checks on applications for SFP resulting in a 'discrepancy' being identified in the applicant's claim, namely that the applicant and another farm business had made duplicate claims. This amounted to an "irregularity" for the purposes of Article 2(10) of the Directive, if the applicant was not entitled to claim, as proved to be the case. A claim for land in respect of which the applicant had no entitlement to claim amounted to "non respect of the relevant rules for the granting of the aid in question." I am unable to accept that any irregularity only arose when the applicant returned form DF3 declaring that he did not have the right to claim SFP in respect of the conacre holding. The irregularity arose from the making of the claim in respect of which the applicant was to acknowledge that he was not entitled to claim. That one of the duplicate claimants was entitled to make the claim for SFP does not displace the irregularity that arose from the other duplicate claimant. Accordingly the first applicant had been informed of the irregularity by the Department's letter of 6 December 2005 and was thereby precluded from amending the application under Article 15 or partially withdrawing the application under Article 22 or relying on Article 68.2 to prevent the application of a penalty.

[19] In addition the applicant contends that the proviso to Article 68.2 only arises where two conditions are satisfied, namely that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check and secondly that the authority has not already informed the farmer of any irregularity in the application. Thus the applicant draws attention to the conjunctive in Article 68.2, in contrast to the use of the disjunctive in Articles 15 and 22 where the conditions are expressed in the alternative.

[20] I am unable to accept the applicant's argument on the effect of the proviso to Article 68.2. The form of wording appears to reflect the negative basis on which the two conditions have been expressed which in turn arises because the proviso operates to prevent the farmer relying on an exception granted by the first part of Article 68.2. In any event I am satisfied that it cannot have been the intention of Article 68.2 that both conditions had to be

satisfied as that would be contrary to the application of Article 15 and Article 22 and would appear to be impracticable. It is impracticable because if a farmer has already been informed of an irregularity why should the imposition of penalties depend upon a further requirement that he be informed of intention to carry out an on-the-spot check?

Article 68.1 – factually correct information or absence of fault.

[21] The first part of the exception from penalty under Article 68.1 is that the farmer submitted factually correct information. The circumstances of the first applicant's case could not be regarded as the submission of factually correct information. When an applicant agrees that he had no entitlement to claim in respect of some of the lands included in the application then the information cannot be treated as having been correct.

[22] This leaves the applicant's claim based on the operation of the no fault provision under Article 68.1. The independent Panel report concluded that the applicant "…. could not be said to be at fault at any stage and acted with complete honesty and openness throughout." The Panel then addressed the obvious error argument under Article 19 but did not address the no fault argument under Article 68.1. The Department's decision letter indicates that the Minister accepted the Panel's recommendation that the appeal would be rejected and does not refer to the no fault issue.

[23] While the no fault issue does not appear to have been considered by the Panel it was included in the Department's Case Officer report to the Panel where at page 10 under the heading "Policy Interpretation" the comment is made that in most cases the no fault provision involves proving that the Department was at fault. However it is stated that there may be "…. other relatively rare situations …." where the no fault provision can be applied. The paragraph ends by stating that misunderstandings between two parties do not constitute a lack of fault because, the Case Officer asserts, at least one party is at fault for the misunderstanding to occur.

[24] First of all it must be too sweeping to state that it would be a relatively rare situation where Article 68.1 could apply in the absence of fault by the Department. The requirement is for the absence of fault on the part of the applicant rather than the presence of fault on the part of the Department. Secondly it must also be too sweeping to state that a misunderstanding between two parties cannot constitute no fault under Article 68.1. The Department's approach was developed by Joseph Kerr, Deputy Principal in the Department, at paragraph 79 of his affidavit. Addressing the applicant's reliance on no fault under Article 68.1 Mr Kerr referred to the applicant's claim that his application was factually correct at the time it was submitted and that the application may have become factually inaccurate. Mr Kerr

stated that it had been concluded that these assertions by the first applicant were incorrect. He then continued to the effect that the applicant had acknowledged in his appeal that the landowner had also submitted a claim for the fields in question and the applicant did not invoke his agreement with the landlord but undertook to accept liability for incorrectly claiming the fields in question.

[25] It should be noted that in Article 68.1 the removal of the penalty arises either where the farmer submitted factually correct information or alternatively where he could show otherwise that he was not at fault. The acceptance by the conacre farmer that the landowner had the entitlement to claim the SFP appears to be treated not only as a basis for concluding that the information submitted was not factually correct but also that the conacre farmer was at fault. The Department's consideration of this issue in another case is of interest.

[26] Bridget Glendenning, Principal Officer in the Department, filed a most comprehensive affidavit setting out the circumstances of a further duplicate claim involving a landowner and a Mr Doherty who held the land in conacre. Both applied for the SFP in 2005 and both received the Department's standard form discrepancy letter together with forms DF2 and DF3. Doherty's position was that he had agreed with the landowner that he (Doherty) would make the SFP claim. The landowner's position was that he had agreed that Doherty would make the SFP claim but later he did claim SFP after being advised to do so for tax purposes. Faced with the discrepancy letter from the Department, Doherty and the landowner could not reach agreement as to who was entitled to make the SFP claim. Accordingly both the landowner and Doherty returned form DF2 in which each stated that he was entitled to the SFP claim. The Department resolved the duplicate claim in favour of the landowner and considered Doherty to have over-declared. Mr Kerr explains that "…. given that [the landowner] was the owner of the land and in the absence of any formal agreement transferring control to Mr Doherty the Department determined that as [the landowner] had continued to maintain his right to claim the land, ultimately the right to claim for aid purposes rested with [the landowner].

[27] Accordingly Doherty had over-declared and was liable to penalty. The Department excused Doherty under the no fault provision in Article 68.1. Mr Kerr explains at paragraph 37:-

> "The Department was satisfied on the basis of the written evidence of the verbal agreement between Mr Doherty and [the landowner] as provided by [the landowner] on 1 August 2007 that Mr Doherty had submitted factually correct information when he completed his IACS/2005 single application.

> The Department also had cognizance with the fact that Mr Doherty continued to maintain his position in respect of his right to claim the land."

[28] The Department was satisfied that there was no fault on the part of Doherty. The burden was on the farmer to satisfy the Department under Article 68.1. The Department was so satisfied on the basis of the agreement between the landowner and the conacre farmer that the latter would make the SFP claim. The added ingredients in the Doherty case, compared to that of the first applicant, are that the landowner provided written confirmation of the agreement and further that the conacre farmer continued to maintain his claim. As to the written confirmation, that is an aspect of the proofs that would go to satisfy the Department in a particular case that there was such an agreement. There may be other means of satisfying the Department or the independent Panel on a case by case basis that genuinely there was an agreement. Judging by the comments of the independent Panel in the first applicant's case it does not appear to be in doubt that the Panel members were satisfied that there was such an agreement between the landowner and the applicant.

[29] The other aspect is that Doherty insisted that he had the right to claim the SFP. An element of fault-finding on the part of conacre holders who relent in respect of duplicate claims made after an agreement with the landowner appears from the comments of Mr Kerr at paragraph 79 of his affidavit when he stated that the first applicant did not invoke his agreement with the landlord but undertook to accept liability for incorrectly claiming the fields in question. The realities of relationships between the landowner and the conacre holder emerge from the affidavit of Angus Cuthbert, the membership director of the Ulster Farmers Union which supports these applications. At paragraph 21 Mr Cuthbert referred to the need for a conacre farmer to maintain good relations with the landlord. When faced with duplicate claims the Department issued letters requiring the landowner and the conacre farmer to reach mutual agreement as to who was entitled to make the SFP claim. This was an understandable approach as the Department would not want to become involved in resolving disputes about responsibility for the land and entitlement to claim the SFP. In any event the Department appears to resolve such disputes in favour of the landowner where there is no mutual agreement, as appears from the Doherty case. However there will be pressure on the conacre farmer and the landowner to agree that only one of them should proceed when there are duplicate claims and one can readily understand that the relationship with the landlord would influence the conacre farmer. To treat a concession by the conacre farmer at that point as an acceptance of culpability may not fully reflect the realities of these relationships, given that, as is said to be the position in the first applicant's case, the landowner had reached a prior agreement with the conacre farmer and had withdrawn from that agreement.

[30] The concluding words of Article 68 are that "The information given by the farmer as referred to in the first subparagraph shall have the effect that the aid application is adjusted to the actual situation." Adjusting the application to the actual situation of the first applicant, if it were to be established that the no fault provision applied, would involve deleting the claim in respect of the conacre holding so that no penalty fell to be imposed.

[31] There are grounds for concluding that the first applicant was not at fault for the purposes of Article 68.1. The burden is on the first applicant to establish the application of the exception. It is a matter for the Department to consider all the circumstances to determine if there was no fault on the part of the applicant. As the independent Panel hearing the applicant's appeal does not appear to have reached a conclusion on the no fault issue in formulating its recommendation, it is proposed to quash the decision and to refer the matter back to the Panel to reach a conclusion and to make a further recommendation accordingly.

[32] The other applicants relied on the same grounds for judicial review. The above findings apply equally to the other applicants, save for the following consideration of the no fault provision under Article 68.1 in relation to each of the other applicants.

The second applicant

[33] The second applicant applied for SFP in relation to 75.45 hectares of land, which included 6 fields amounting to 8.69 acres which the second applicant held in conacre. On receiving the discrepancy letter from the Department the second applicant completed form DF3 indicating that he was not entitled to claim SFP in respect of the 8.69 acres. His explanation was -

"I understood that I was leasing the land entitlements. This was a misunderstanding on my behalf."

In his grounding affidavit the second applicant explains that he had been instructed by the landlord's agent, a Mr Harry Lynn, in advance of completing the SFP application form, that he was to claim for any subsidies relating to the land including the single farm payment.

[34] The Panel findings reject the obvious error argument and do not comment on the no fault argument. However the Panel propose that the second applicant should consider bringing a civil action for damages against

the landowner for the loss suffered. I assume this amounts to a conclusion by the Panel, although unstated, that the second applicant was not at fault.

[35] The difference between the first applicant and the second applicant is that in the latter case the agreement about the claim for SFP was reached between the conacre farmer and an agent of the landowner rather than the landowner directly. This does not involve a difference in principle, provided it can be established that the person purporting to be the agent of the landowner had the requisite authority to act on behalf of the landowner.

[36] There are grounds for concluding that the second applicant was not at fault for the purposes of Article 68.1. The burden is on the second applicant to establish the application of the exception. As the Panel does not appear to have reached a conclusion on this issue in formulating its recommendation, it is proposed to quash the decision and to refer the matter back to the Panel to reach a conclusion and to make a further recommendation accordingly.

The third applicant.

[37] The third applicant claimed SFP for 127.29 hectares which included 2 fields of 17.73 hectares which the applicant held in conacre. The third applicant completed form DF3 indicating that he was not entitled to SFP in respect of the 2 fields. His explanation was –

"Misunderstanding. Only claiming conacre."

In his affidavit the third applicant explained that he had rented the fields for the previous 20 years and that he had no indication from the landlord, who had no active involvement in the management of the land, that he was claiming the single farm payment to the land. It appears that the third applicant did not communicate with the landowner prior to making the application for SFP.

[38] The Panel findings reject the obvious error argument. Reference is made to the casual arrangement between the conacre farmer and the landowner and that the third applicant had made no effort to clarify the situation with regard to SFP. I assume this amounts to a conclusion by the Panel, although unstated, that the third applicant was at fault.

[39] The difference between the first and second applicants and the third applicant is that in the latter case there was no agreement between the conacre farmer and the landowner as to the claim for SFP. The Department's guide made it clear that applications could only be made by one person in respect of any land and that it was for the parties to decide who would be claiming. The

third applicant did not attempt to reach any agreement with the landowner and cannot claim to have been misled by the landowner.

[40] There are no grounds for concluding that the third applicant was not at fault. His application for judicial review will be dismissed.

The fourth applicant.

[41] The fourth applicant made a claim for SFP in respect of 45.12 hectares, which included 4 fields amounting to 4.66 hectares which the applicant held in conacre. He completed form DF3 indicating that he was not entitled to claim SFP in respect of the conacre lands. His explanation was –

"Form was filled in wrong".

In his affidavit the fourth applicant stated that the form had been filled in by his agent, who had been instructed to claim for only 40.46 hectares, but the agent had included the 4 fields and the fourth applicant had signed the application form without noticing the addition.

[42] The Panel findings reject the obvious error argument. It was accepted that the fourth applicant gave clear instructions to his agent not to include the 4 fields and that it was due to the agent's error that the claim form included those fields.

[43] The difference between the first, second and third applicants and the fourth applicant is that latter did not intend to claim for the lands held in conacre but signed the form without noticing that his agent had included the 4 fields. The acts of the agent are the acts of the principal. In Barachander Farms v The Scottish Ministers [2008] CSIH 15 the Court of Session considered the equivalent of Article 68.1 in relation to the Sheep Annual Premium Scheme (SAP). Under a contract of agistment the owner of sheep arranged grazing rights with the agister, who may move sheep to new grazing as required. It was a breach of the SAP to move the sheep without advance notice and the owner would be liable to penalty. The agister moved the sheep without notice to the owner, who was therefore in breach of the SAP and a penalty was imposed. The Court found that the owner could not rely on the no fault exception to the imposition of the penalty. Responsibility for compliance with the Scheme was that of the owner. By delegating responsibility for the care of his livestock he could not delegate responsibility under the SAP. Similarly, responsibility for the submission of an application for SFP is that of the applicant and he was obliged to satisfy himself that the

contents of the claim form corresponded with his intentions before he signed the form.

[44] There are no grounds for concluding that the fourth applicant was not at fault. His application for judicial review will be dismissed.

Summary.

[45] Accordingly I reject the applicants' grounds based on obvious error under Article 19, partial withdrawal of the application under Article 22, prior notice by the applicants under Article 68.2 and the submission of factually correct information under Article 68.1.

I uphold the first and second applicants' grounds in relation to the no fault argument under Article 68.1 and refer their appeals back to the independent Panel for reconsideration of the no fault issue and to make further recommendations.

I dismiss the applications for judicial review by the third and fourth applicants.