APPROVED **[2021] IEHC 101**

THE HIGH COURT

2018 No. 124 COS

IN THE MATTER OF INDEPENDENT NEWS AND MEDIA PLC

AND IN THE MATTER OF SECTION 748 OF THE COMPANIES ACT 2014

AND IN THE MATTER OF AN APPLICATION

BETWEEN

LESLIE BUCKLEY

MOVING PARTY

AND

RICHARD FLECK
SEAN GILLANE

RESPONDENTS TO THE APPLICATION

JUDGMENT of Mr. Justice Garrett Simons delivered on 15 February 2021

INTRODUCTION

1. The High Court (Kelly P.) appointed two inspectors to investigate and report upon the affairs of Independent News and Media plc ("***the Company***"). The inspectors were appointed pursuant to section 748 of the Companies Act 2014 by order dated September 2018.

2. This judgment is delivered in respect of an application to revoke that appointment ("***the revocation application***"). The application is brought by Mr. Leslie Buckley.

Mr. Buckley was formerly a director, chairman and executive chairman of the Company. Mr. Buckley retired as director and chairman on 1 March 2018.

3. The grounds for the application to revoke the appointment of the inspectors centre on the content of a number of draft statements which have been circulated by the inspectors to interested parties. It is alleged that the draft statements contain numerous errors, and that there is an "evident trend", "persistent and dominant pattern" and "consistent pattern" whereby evidence received by the inspectors has been misstated and misrepresented in a manner which unfairly bolsters the strength of the allegations against Mr. Buckley and diminishes the evidence in support of his position (written legal submissions, §3, §19 and §98). Significantly, Mr. Buckley stops short of making an allegation of predetermination.

4. In response, the inspectors have submitted that the revocation application is irreconcilable with what they describe as a "settled and robust" line of judgments on the proper scope of objective bias. The inspectors invite this court to dismiss the revocation application *in limine*.

5. For the reasons which follow, I am satisfied that the inspectors' objection to the revocation application is correct.

PROCEDURAL HISTORY

6. The circumstances giving rise to the decision to appoint inspectors to investigate and report upon the affairs of the Company are set out in detail in the reported judgment of the former President of the High Court (Kelly P.), *Director of Corporate Enforcement v. Independent News and Media plc* [2018] IEHC 488; [2019] 2 I.R. 363. It is unnecessary to repeat that detail here. It is sufficient for the purposes of the revocation application to note that a number of the matters under investigation concern allegations made

against Mr. Buckley by a former chief executive officer of the Company, Mr. Robert Pitt. Mr. Buckley refutes these allegations and challenges the credibility of Mr. Pitt.

7. Mr. Buckley has co-operated fully with the inspectors, and has attended for a number of interviews with the inspectors and has also provided documentation to them. Mr. Buckley has acknowledged that the inspectors have observed fair procedures in their dealings with him. Mr Buckley has averred that the inspectors, in their interviews with him, have been courteous, considerate and respectful, and that he raises no complaint whatsoever about the manner in which the inspectors have engaged with him personally.

8. It is apparent from the papers opened to this court on the revocation application that, in order to prepare a meaningful report on the affairs of the Company, it will be necessary for the inspectors to attempt to resolve, insofar as they can, the very significant factual disputes between Mr. Buckley and Mr. Pitt.

9. The inspectors wrote to Mr. Buckley on 15 November 2019, and explained that they proposed to circulate to the parties a series of statements, in narrative form, in relation to the core issues in the terms of reference. The letter then stated as follows.

> "The purpose of these statements is to set out facts about which there appears to be no real dispute and the essence of the evidence that we have received on the events on which we were appointed to report.
>
> We will invite all parties to comment on these statements and identify any area in which it is suggested we are in error or have not appropriately summarised the evidence to date.
>
> Some witnesses will also receive a schedule setting out a number of factual matters on which we seek clarification."

10. The letter goes on to outline other procedural steps. The letter records the "provisional view" of the inspectors that cross-examination would not be a productive procedure.

> "At this point we remain of the provisional view that inter partes hearings involving cross-examination would not be a productive procedure or an efficient use of time because:

- as will be apparent we have, and will continue, to put all the accounts to witnesses on matters of concern to us and give an opportunity to witnesses to deal with those issues;

- we are open to parties identifying to us any evidential issues which it is felt should be pursued which have not been focused on.

We remain open to any submission that this proposed procedure is inappropriate."

11. (The position since adopted by the inspectors, in response to submissions from the interested parties, is that cross-examination will be allowed. See letter of 5 February 2020).

12. Five draft statements were sent to Mr. Buckley (and other interested parties) on various dates in December 2019 and February 2020. It is the content of – and omissions from – these draft statements which are said to give rise to a reasonable apprehension of bias.

13. Each of the draft statements contains the following caveat.

> "1. This document summarises the evidence – documentary and in interviews – that the Inspectors have received to date.
>
> 2. It is provided to give interested parties the opportunity to supplement or amend our understanding of the facts. Interested parties are, therefore, invited to review the attached draft factual statement and to suggest (i) any amendments to the draft or (ii) provide supplemental documents or information.
>
> 3. There are some facts, printed in red, on which we would welcome the assistance of interested parties.
>
> 4. We should emphasise that in preparing this draft statement, we have reached no conclusions in relation to any disputed or contradictory evidence. Nor have we reached any conclusions in relation to the matters referred to us by the High Court."

14. The inspectors subsequently indicated, by correspondence dated 12 February 2020, that they intend to circulate revised draft statements after they have considered the comments received and after the completion of oral evidence (including cross-examination).

15. Mr. Buckley, through his solicitors, made a very detailed submission (running to in excess of one hundred pages) in respect of the draft statements on 6 March 2020.

16. Mr. Buckley's solicitors subsequently called upon the inspectors to recuse themselves, and ultimately issued a motion on 22 April 2020 seeking orders directing the recusal of the inspectors and/or the revocation of their appointment.

17. The hearing of the revocation application was delayed as a result of restrictions on court sittings imposed as part of the public health measures in response to the coronavirus pandemic. The application was ultimately heard by me over a number of days in October and December 2020.

DISCUSSION

18. Mr. Buckley's application is framed exclusively in terms of objective bias. His counsel has been careful to emphasise that no allegation of actual bias is being made. Nor is it being alleged that there could be a reasonable apprehension that the inspectors have predetermined matters. Rather, the entire case turns on the inferences which it is said that the notional reasonable observer would draw from the existence of errors in the draft statements.

19. The argument runs broadly as follows. The distillation of thousands of pages of documents and transcripts into the draft statements must, it is said, have entailed the evaluation, consideration and assessment of this evidence. The draft statements, therefore, offer an important insight into the inspectors' mindset. Mr. Buckley concedes that errors are likely to occur – even bound to occur – in the draft statements, given the volume of evidence at a relatively early stage of the inspection process, and given the very purpose of the draft statements. It will be recalled that one of the inspectors' stated

objectives in preparing the draft statements had been to give interested parties the opportunity to supplement or amend the inspectors' understanding of the facts.

20. Mr. Buckley nevertheless attaches great significance to what he characterises as "errors" in the presentation of the evidence. It is alleged that there is a consistent pattern in the draft statements of misstating and misrepresenting the evidence in a manner adverse to him. This is said to be so pronounced that a reasonable and fair-minded objective observer could not avoid having a reasonable apprehension that it was the outcome of an intellectual process which had been infected, even unconsciously, by a particular form of bias, namely, an attitude of ill will toward Mr. Buckley or goodwill toward his accusers.

21. It is at this point that the argument runs into difficulties. There is a well-established line of case law to the effect that bias may not be inferred from a pattern of erroneous decisions. The leading cases include *Orange Ltd v. Director of Telecoms (No. 2)* [2000] IESC 22; [2000] 4 I.R. 159; *O'Callaghan v. Mahon* [2007] IESC 17; [2008] 2 I.R. 514; and *Spin Communications Ltd v. Independent Radio and Television Commission* [2001] IESC 12; [2001] 4 I.R. 411.

22. The position has been put as follows by Fennelly J. in *O'Callaghan* (at paragraph 551 of the reported judgment).

> "The principles to be applied to the determination of this appeal are thus, well established:-
>
> (a) objective bias is established, if a reasonable and fair minded objective observer, who is not unduly sensitive, but who is in possession of all the relevant facts, reasonably apprehends that there is a risk that the decision maker will not be fair and impartial;
>
> (b) the apprehensions of the actual affected party are not relevant;
>
> (c) objective bias may not be inferred from legal or other errors made within the decision making process; it is necessary to show the existence of something external to that process;
>
> (d) objective bias may be established by showing that the decision maker has made statements which, if applied to the case at issue, would

> effectively decide it or which show prejudice, hostility or dislike towards one party or his witnesses."

23. Examples of factors *external* to the decision-making process which could ground a reasonable apprehension of bias include the following: (i) the decision-maker might have a financial or proprietary interest in the outcome; (ii) the decision-maker might be related to one of the parties by family, social or business ties; or (iii) the decision-maker may have, on a previous occasion, expressed their opinion on the very issues in dispute (such as in *Dublin Wellwoman Centre Ltd v. Ireland* [1995] 1 I.L.R.M. 408).

24. Counsel for Mr. Buckley has sought to distinguish *O'Callaghan* from the present case on the basis that the present case is not what he describes as a "process case". *O'Callaghan* is characterised as a case where the objecting party had invited the court to infer bias from a series of procedural errors. The submission is summarised as follows at Day 7, page 37 of the transcript.

> "This case is different. It's not a process case. It comes back to what's unique about this case. What's unique about this case is the inspectors have set out in detail their summary of what they see as relevant evidence and in doing that they have included material and they have excluded material, and those decisions are the fruit of that intellectual process engaged in by the inspectors themselves. And their decision to include material in relation to Mr. Pitt that is helpful and to exclude material that is unhelpful to him or helpful to Mr. Buckley and vice versa, that's much more directly connected to the issue of bias, in terms of a reasonable apprehension. I mean, at all times I want to make clear and if I ever forget to say it the court will understand that I'm not making a case of actual bias."

25. With respect, there is no principled basis for distinguishing *O'Callaghan* from the present case. Rather, as explained below, the grounds advanced in each case were broadly similar. If and insofar as *O'Callaghan* can be characterised as a "process case", then so too can the present case. In each instance, the court had been invited to infer bias from an earlier error in the process, and at a time prior to a final decision having been reached.

(This is in contrast to *Orange Ltd*, where the legal challenge had been to the final outcome of the competition to award the relevant licence).

26. In *O'Callaghan*, the decision-maker had been found (in a first set of judicial review proceedings) to have erred in failing to circulate material in its possession which was relevant to the credibility of a key witness (a Mr. Gilmartin). This material was, directly or indirectly, inconsistent with the single statement of Mr. Gilmartin which had actually been circulated to the other parties. The Supreme Court held that the material should have been circulated, as it was relevant and necessary for the purpose of carrying out a worthwhile cross-examination of that witness.

27. This failure on the part of the tribunal of inquiry to circulate the material was subsequently relied upon in a second set of judicial review proceedings in support of an allegation of objective bias. The essence of the argument is summarised as follows at paragraph 518 of the reported judgment in *O'Callaghan*.

> "[…] The applicants claim that these decisions meant that the tribunal was determining that the undisclosed material was either not relevant to the matters being inquired into or that it was not inconsistent with the evidence of Mr. Gilmartin and, in either event, that an independent and unbiased onlooker in possession of all the facts would reasonably apprehend that the tribunal thereby had determined that Mr. Gilmartin was a credible witness and that the first applicant was not. Thus, the case of objective bias was established."

28. As appears, the argument being advanced in *O'Callaghan* was not dissimilar to that made in the present case. In each instance, the allegation had been that the manner in which the decision-maker had determined the relevance of, and then presented, evidence at an early stage of the process gave rise to an inference of objective bias. If anything, the allegation in *O'Callaghan* had been more pronounced, in that it amounted to saying that relevant evidence had actually been withheld from the other parties. In the present case, the allegation centres exclusively on how the voluminous evidence has been summarised in the draft statements. Counsel for Mr. Buckley very properly acknowledged that there

was no allegation that evidence had been withheld from his side. The draft statements had been accompanied by relevant extracts from the transcripts of the evidence heard by the inspectors.

29. Given the broad similarities between the two cases, the rationale underpinning the majority judgments in *O'Callaghan*, namely that objective bias may not be inferred from legal or other errors made within the decision-making process, is equally applicable to the present case. In each instance, the party alleging objective bias was unable to point to any factor *external* to the decision-making process which might ground a reasonable apprehension of bias. Mr. Buckley has not articulated any plausible reason as to why the two inspectors might have an attitude of ill will towards him. Instead, an attempt is made to rely upon errors which had occurred at an early stage of the process, prior to the decision-maker reaching a final determination. This is impermissible for the reasons explained by Fennelly J. in *O'Callaghan* (which, in turn, are derived from *Orange Ltd*).

30. Notwithstanding the judgments in *Orange Ltd* and *O'Callaghan*, counsel for Mr. Buckley sought to suggest that there is no "hard and fast" rule to the effect that it is necessary to identify bias before the hearing and not in the course of the hearing. The judgment in *A.P. v. Judge McDonagh* [2009] IEHC 316 is cited as authority for the proposition that conduct during the course of the hearing may be taken into account.

31. With respect, the type of bias at issue in *A.P.* is very different from that alleged in the present case. Specifically, the allegation in *A.P.* had been that the decision-maker (on the facts, a Circuit Court judge hearing family law proceedings) had made comments which indicated that he would order a particular division of assets notwithstanding that the affected party had yet to be heard. Clarke J. (then sitting in the High Court) explained that bias can take on a number of forms and that *different considerations* apply where

what is alleged is prejudgment or a rush to judgment. See, in particular, paragraphs [7.3] to [7.4] of the judgment as follows.

> "However, bias can take on a number of forms. What I am concerned with in this case is pre-judgment. To the extent that pre-judgment can be properly regarded as a form or bias, it seems to me that it is, nonetheless, in a somewhat different category. Most cases of bias involve an allegation that by reason of some factor external to the adjudicative process, the adjudicator might be perceived to be biased in favour of one party or the other. Thus there may be a relationship or connection between the adjudicator and one of the parties, or some common interest between the adjudicator and such party. Likewise, it might suggested that the adjudicator did not come to the hearing with an impartial mind, whether because of a connection of the type which I have described or by reason of some animus which the adjudicator might bear towards one of the parties, or in relation to the issue which the adjudicator was being called on to determine.
>
> However, it seems to me that there is another form of pre-judgment which arises where the adjudicator indicates that the adjudicator has reached a conclusion on a question in controversy between the parties, at a time prior to it being proper for such adjudicator to reach such a decision (indeed it might well be more accurate to describe such a situation as premature judgment rather than pre-judgment). It can hardly be said that a reasonable and objective and well informed person would be any the less concerned that a party to proceedings was not going to get a fair adjudication if, at an early stage of the hearing, comments were made by the adjudicator which made it clear that the adjudicator had reached a decision on some important point in the case at a time when no reasonable adjudicator could have, while complying with the principles of natural justice, reached such a conclusion."

32. The judgment in *A.P.* is entirely consistent with *O'Callaghan*, and does not herald a change in the case law. Indeed, the "prejudgment" species of bias is expressly addressed by Fennelly J. in his judgment in *O'Callaghan*. See paragraph 532 of the reported judgment as follows.

> "In considering whether prejudgment giving rise to a reasonable apprehension of objective bias has been established in the present case, two lines of authorities need to be considered. The first concerns the question of whether bias can be inferred from a pattern of decisions. The second concerns the quality or extent of prejudicial statements required to satisfy the test for prejudgment."

33. Having completed his consideration of both lines of case law, Fennelly J. summarised the principle in respect of prejudgment as follows (in the passage already cited above at paragraph 22).

> "[…] objective bias may be established by showing that the decision maker has made statements which, if applied to the case at issue, would effectively decide it or which show prejudice, hostility or dislike towards one party or his witnesses."

34. Crucially, Fennelly J. went on then to reject the argument that predetermination could be *inferred* from a detailed examination of the decisions and related behaviour of the tribunal. It is instructive to set out the relevant passages from the judgment in full. See paragraphs 553 to 556 of the reported judgment in *O'Callaghan* as follows.

> "The tribunal has made no determination in terms on this credibility issue. The applicants do not point to any statement of the tribunal to the effect that it believes Mr. Gilmartin. They ask the court to infer such a determination from the decisions of the tribunal not to disclose documents. The tribunal has repeatedly and consistently stated from its very beginning that it does not make any findings of fact until all the evidence has been heard. It has constantly repeated this prior to and during the course of these proceedings. It is, of course, clear on the authorities that this is not a decisive consideration. The applicants go further. They say that it is irrelevant. There have undoubtedly been findings of objective bias even in cases, such as *Dublin Wellwoman Centre Ltd. v. Ireland* [1995] I.L.R.M. 408, where the judge or tribunal has insistently proclaimed his, her or its impartiality. That does not mean, however, that the stated position of the tribunal is irrelevant. Denham J. took careful note of the declared position of the High Court Judge in that case. If the hypothetical independent observer is deemed to know all the relevant facts, that must be one of them. The statements of the tribunal cannot simply be ignored. They must carry some weight in the balance. That is especially so, where, as here, the applicants do not allege that the tribunal has made an explicit determination of the issue in contention and the tribunal repeatedly asserts that it has not done so.
>
> The applicants accept that, on the authority of *Orange Ltd. v. Director of Telecoms (No. 2)* [2000] 4 I.R. 159, they cannot ask the court to infer bias from a series or pattern of erroneous decisions. Nonetheless, in their written submissions, already quoted, they criticise the trial judge for his failure to step back and look 'at the pattern of behaviour of the tribunal which … loomed over the whole horizon'. Although they relied on the Australian decision in *R. v. Watson, ex parte Armstrong* (1976) 50 C.L.R. 248, where the

> judge had expressly ruled in advance that he would not accept the uncorroborated evidence of either party, they can point to no corresponding statement on the part of the tribunal.
>
> Finally, and most essentially, they ask the court to infer from a detailed examination of the decisions and related behaviour of the tribunal that it has predetermined or prejudged the issue of credibility. If that exercise is different from the one condemned by this court in *Orange Ltd. v. Director of Telecoms (No. 2)* [2000] 4 I.R. 159, I have to confess that the distinction is too fine from me. The applicants not only ask the court to look at the pattern of behaviour of the tribunal, but they have engaged, at the hearing in this court, in the most minute examination of individual pieces of evidence. The objective being to establish that the tribunal has determined the credibility of Mr. Gilmartin, they necessarily engaged in a fine and detailed comparison of individual statements of Mr. Gilmartin with earlier statements and sometimes omissions to make statements.
>
> I have remarked, earlier in this judgment, on the problems posed by this exercise. I suggested during the hearing that it involved the court in conducting a 'mini-tribunal'. For that very reason, I find the exercise fundamentally objectionable. It is the court that is invited to engage in prejudgment. I do not propose to embark on such an exercise. […]"

35. As appears, even in those cases where the form of bias alleged is predetermination, it is not permissible to infer predetermination from a pattern of errors. Something more is required. Fennelly J., having discussed the quality or extent of prejudicial statements required to satisfy the test for prejudgment, indicated that something quite outside the bounds of proper judicial behaviour is required to establish objective bias based on judicial statements. The subsequent judgment in *A.P.* provides an example of such behaviour.

36. Finally, and at the risk of belabouring the point, it should be reiterated that, in contrast to the position adopted by the party alleging objective bias in *O'Callaghan*, Mr. Buckley stops short of alleging that there has been any prejudgment of the issues. It is expressly stated in the written legal submissions filed on his behalf that it is <u>not</u> contended that the inspectors' conduct suggests that they have predetermined the case against Mr. Buckley, in the sense of reaching a fixed conclusion as to their findings. This concession is well

made in circumstances where the inspectors had invited submissions on the draft statements, and have since indicated an intention to issue revised versions of the draft statements which will correct many of the errors complained of.

37. Instead, the revocation application is predicated on the argument that the court should draw inferences from the errors made. This argument is simply untenable given the judgments in *Orange Ltd*, *O'Callaghan* and *Spin Communications Ltd*.

INAPPROPRIATE FOR COURT TO PARSE DRAFT STATEMENTS

38. It follows as a corollary of the principle that objective bias may not be inferred from legal or other errors made within the decision-making process that the High Court should not embark upon a detailed examination of the draft statements. Yet, this is precisely the exercise which Mr. Buckley invites this court to undertake. Much of the time at the hearing before me was expended on analysing and parsing the content of the draft statements.

39. Counsel on behalf of Mr. Buckley did seek to limit the scope of the exercise somewhat by confining his criticisms to those parts of the draft statements which related to the specific issues which had informed the former President of the High Court's decision to appoint the inspectors in September 2018. Counsel appeared to accept, however, that the logic of Mr. Buckley's case is that this court would, in principle, be entitled to examine all and any aspects of the draft statements. (Day 7, pages 28 to 30 of the transcript).

40. Put otherwise, the logical conclusion of Mr. Buckley's argument is that the High Court would be entitled to carry out a root and branch examination of the inspectors' work to date, including examining literally thousands of pages of transcript evidence.

41. Counsel cited the judgment of Denham J. (as she then was) in *O'Callaghan* as authority for the proposition that the High Court should examine the draft statements. Counsel

acknowledged that Fennelly J., in the very same case, had described the exercise of the court engaging upon a detailed examination of the decisions and related behaviour of the tribunal of inquiry as "fundamentally objectionable". Counsel insisted, however, that the judgment of Denham J. should be regarded as the majority judgment. This was said to be so on the basis that the concurrence of Geoghegan and Finnegan JJ. should be discounted in circumstances where they had concurred with *both* the judgments of Denham and Fennelly JJ. Instead the judgment of Denham J. should be taken together with the *dissenting* judgment of Hardiman J. so as to give a two-to-one majority.

42. With respect, this method of identifying the *ratio decidendi* is incorrect. One cannot simply discount the concurrence of Geoghegan and Finnegan JJ. Nor is it appropriate to splice together the dissenting judgment of Hardiman J. and that of Denham J. to produce a majority of two. Whereas it is correct to say that both of those judgments had engaged in a detailed examination of the tribunal of inquiry's decision-making, the purpose of, and outcome of, that exercise had been very different in each instance. Hardiman J., in his dissenting judgment, had carried out the exercise in the context of his finding that the errors identified in the first set of judicial review proceedings were *incapable of being cured* in circumstances where the tribunal of inquiry had been found, in the first set of judicial review proceedings, to have failed to observe and protect Mr. O'Callaghan's rights to fair procedures and to natural and constitutional justice. By contrast, Denham J. regarded the earlier errors as having been remedied.

43. On a proper reading of the judgments in *O'Callaghan*, the judgments of Denham and Fennelly JJ. are the majority judgments. If and insofar as those two judgments differ on the question of whether it is appropriate for a court to examine the detail of decision-making, then the issue remains "open" at Supreme Court level. I respectfully adopt the approach of Fennelly J. for the reasons which I will outline below.

44. Before turning to that task, however, it should be observed that whereas Denham J. did, indeed, examine the earlier decisions of the tribunal of inquiry, her judgment expresses significant reservations. See, for example, paragraphs 218 and 219 of the reported judgment in *O'Callaghan* as follows.

> "While denying, finally, that it was asking the court to infer bias from a pattern of erroneous decisions, in fact the applicants have brought the court through a microscopic analysis of decisions. This, at first appearance, is asking the court to step into the shoes of the tribunal, to evoke an appeals process. Such is not the role of the court in judicial review. I would dismiss this aspect of the appeal insofar as it in fact sought a microscopic analysis of individual decisions of the tribunal.
>
> It was, in light of the serious nature of the claims made by the applicants, because of the form which the case took in the High Court, and this court, because of the highly nuanced submissions presented that I have addressed the specific examples submitted."

45. The approach adopted by Fennelly J. is set out, in particular, at paragraphs 552 to 563 of the reported judgment. As appears, there are two strands to the principle that a court should not embark upon a detailed examination. The first is that bias cannot be inferred from a series or pattern of erroneous decisions. It follows, therefore, that there is no practical purpose to the court examining such decisions. Secondly, there is a risk that the court would usurp the role of the decision-maker by reaching conclusions on the very issues which fall for determination by the decision-maker.

46. These principles apply with even greater force to the present case. The inspectorate process is still at a relatively early stage: it is envisaged that there will be further oral evidence, including cross-examination of witnesses by interested parties. Against this background, not only would it be contrary to the principle that bias cannot be inferred from a series or pattern of erroneous decisions to embark on a detailed examination of the draft statements, it would result in this court descending into the arena and assessing the very issues which the inspectors were appointed to inquire into. This usurpation of

the role of the inspectors would be all the more striking given that it was the High Court itself which had appointed them to carry out their inquiry.

47. It should be explained that whereas many of the items which are alleged by Mr. Buckley to represent errors can immediately be recognised as such, other items are more nuanced. In some instances, for example, the complaint is that a one or two sentence summary of evidence in the draft statements fails to properly reflect the much longer transcript of that evidence. In order to adjudicate on this complaint, it would be necessary for the court to review the transcripts and to determine how that evidence should be interpreted and then summarised. This would involve the court trespassing upon the inspectors' role.

48. In other instances, the court is asked to condemn the witness statements as erroneous in that they fail to highlight what Mr. Buckley's side characterise as the making of previous inconsistent statements by Mr. Pitt. This would necessitate the court embarking upon a consideration of issues of credibility. Not only would this court be "second guessing" the inspectors on the question of whether it is appropriate to include material which goes to credibility in the draft statements, this court would also have to consider whether there are discrepancies in the manner in which Mr. Pitt has articulated his complaints at various times. Again, this would involve the court trespassing upon the inspectors' role.

CONCLUSION

49. The case law establishes a robust set of rules which ensure not only that decision-making is actually independent and impartial, but also that there can be no reasonable apprehension of bias. The Supreme Court has consistently rejected the argument that it is necessary to extend the existing rules so as to allow objective bias to be *inferred* from legal or other errors made within the decision-making process. Such an extension has been condemned as unnecessary and contrary to principle. Yet, Mr. Buckley's entire

case is predicated on this court analysing and parsing the content of the draft statements, with a view to inferring bias from errors said to have been made by the inspectors. Mr. Buckley's application to revoke the appointment of the inspectors must be refused as it is irreconcilable with the case law of the Supreme Court.

50. It should be reiterated that Mr. Buckley's case has been advanced on a very specific basis. There is no allegation of predetermination. It is expressly stated in the written legal submissions filed on behalf of Mr. Buckley that it is not contended that the inspectors' conduct suggests that they have predetermined the case against him, in the sense of reaching a fixed conclusion as to their findings. This concession is well made in circumstances where the inspectors had invited submissions on the draft statements, and have since indicated an intention to issue revised versions of the draft statements which will correct many of the errors complained of. One of the stated objectives in preparing the draft statements had been to give interested parties the opportunity to supplement or amend the inspectors' understanding of the facts.

51. Insofar as the issue of the costs of these proceedings is concerned, the attention of the parties is drawn to the notice published on 24 March 2020 in respect of the delivery of judgments electronically, as follows.

> "The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."

52. The default position under Part 11 of the Legal Services Regulation Act 2015 is that legal costs follow the event, i.e. the successful party is entitled to recover their legal costs as

against the unsuccessful party. If the default position were to obtain, then the inspectors, having successfully resisted the application to revoke their appointment, would be entitled to their costs as against Mr. Buckley (such costs to be assessed by the Chief Legal Costs Adjudicator in default of agreement). If any of the parties wishes to contend for a *different* form of order, then written submissions should be filed within two weeks of the date of this judgment, i.e. by 1 March 2021. Such submissions are not to exceed a word count of 3,000 words.