THE HIGH COURT.

[2022] IEHC 422

2021 No. 830 SS

IN THE MATTER OF SECTION 52 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961

IN THE MATTER OF THE PUBLIC DANCE HALLS ACT 1935 AS AMENDED

IN THE MATTER OF AN APPLICATION BY NEVILLE HOTELS UNLIMITED COMPANY FOR A PUBLIC DANCING LICENCE PURSUANT TO THE PUBLIC DANCE HALLS ACT 1935 AS AMENDED.

Judgment of Mr Justice Dignam delivered on the 20th day of June 2022.

Introduction and Background

1. This matter comes before the High Court by way of a consultative case stated from Judge Kennedy in the District Court in accordance with section 52 of the Courts (Supplemental Provisions) Act 1961. The opinion of the High Court is sought concerning two questions of law arising in an application by Neville Hotels Unlimited Company for a public dancing licence in respect of the Druids Glen Hotel and Golf Resort, Newmountkennedy, County Wicklow pursuant to the Public Dance Halls Act 1935, as amended ("the 1935 Act").

2. The District Judge's findings of fact and his inferences and conclusions from those findings are set out in full below but it may be helpful at this stage to set out in summary form the factual background to the application.

3. The Applicant company ("the Applicant") is a company within the Neville Group of companies ("the Group"). The Group is involved in the business, construction and hotel sectors. The Applicant carries on the Group's business in the hotel sector. It operates four hotels, including Druids Glen Hotel and Golf Resort, Wicklow. The hotel business includes the hosting of weddings and provision of function spaces in the hotels. That end of the business (which naturally involves public dancing) accounts for 14.47% of the Group's income stream from the four hotels. Up to the 30th of April 2020 the Group maintained public liability insurance for their non-building and non-construction public liability risks, including those arising from the hotel business. The Group decided to self-insure from the 1st of May 2020 onwards in respect of all non-building and non-construction related public liability risks of the Group including the hotel-related activities. The reason given for this decision is that for the period between January 2017 and April 2020 the excess on its policy was such that it had paid out all claims from its own resources and it was in effect therefore self-insuring in any event. It was paying for insurance but also satisfying claims out of its own resources. The Applicant's position (as reflected in the evidence set out in the Case Stated) is that the Applicant has sufficient liquidity, assets and reserves to fully and effectively self-insure against any and all public liability risks and claims likely to arise from any dancing taking place at the hotels held by the Applicant pursuant to a public dancing licence granted by the District Court.

4. Against that background the Applicant applied to the District Court for a public dancing licence and that application came before Judge Kennedy on the 11th of December 2020. Evidence was given by the Applicant's managing director and its accountant and auditor as to the above matters, including the claims history, the premia and excesses on the insurance policy, and the Group's financial situation.

5. It was submitted by the Applicant that: (i) the provisions of the 1935 Act did not require proof that an applicant had or intended to put in place a policy of public liability insurance; (ii) such a policy was not a condition precedent to the granting of

a public dancing licence under the Act; (iii) while it may be usual practice to make the grant of a public dancing licence conditional upon such an insurance policy being in place, such a condition was neither necessary or appropriate on this application because the Applicant had sufficient liquid assets to meet the costs of any public liability claims; and (iv) it is open to the District Court to impose such conditions as it considers appropriate with a view to ensuring that assets are available to meet the cost of any public liability claims arising out of dancing on the premises.

6. An Garda Síochána submitted to the District Court that it is the normal practice that an applicant for a public dancing licence has adequate public liability insurance with an authorised third-party insurance provider and that the licensee shall furnish details of and proof of payment for the renewal premium to the court clerk at least seven days before each annual licensing District Court.

Public Dance Halls Act, 1935 (as amended)

7. Section 2 of the 1935 Act (as amended by section 6 of the Licensing (Combating Drug Abuse) Act 1997 provides:

"2.— (1) Subject to the provisions of this Act, any person may apply to the Justice of the District Court exercising jurisdiction in any licensing area for a licence (in this Act referred to as a public dancing licence) to use a particular place, whether licensed or not licensed for the sale of intoxicating liquor, situate in such licensing area for public dancing, and such Justice may, if he so thinks proper, grant such licence to such person.

(2) In considering an application under this section for a public dancing licence, a Justice of the District Court shall, in addition to any other matter which may appear to him to be relevant, have regard to the following matters, that is to say: —

(a) the character and the financial and other circumstances of the applicant for such licence;

(b) the suitability of the place to which such application relates;

(c) the facilities for public dancing existing in the neighbourhood of such place at the time of such application;

(d) the accommodation for the parking of vehicles in the neighbourhood of such place;

(e) the probable age of the persons who would be likely to make use of such place for public dancing;

(f) whether the situation of such place is or is not such as to render difficult the supervision by the Garda Síochána of the management of and proceedings in such place;

(g) the hours during which the applicant proposes that public dancing should be permitted in such place.

(3) On the hearing of an application under this section for a public dancing licence, any member of the Garda Síochána and any person who appears to the Justice hearing such application to be interested therein may appear and be heard in opposition to such application and may adduce evidence in support of such opposition.

(4) Every application under this Act for a public dancing licence (except an application for a public dancing licence in respect of a place for which no such licence is in existence at the time of such application and an application for a public dancing licence for a defined period not exceeding one month and an application which is authorised by this Act to be made at any time) shall be made at an annual licensing district court and at no other time."

8. Section 4 of the 1935 Act (as amended by section 7 of the 1997 Act) provides:

"A Justice of the District Court granting a public dancing licence may-

(a) Insert therein such conditions and restrictions as he shall think proper, and

(b) In particular (without prejudice to the generality of the foregoing power)-

(i) May insert in such licence conditions limiting the days on which and the hours during which the place to which such licences related may be used for public dancing, and

(ii) Shall, where the judge considers it appropriate to do so, insert a condition that the person to whom the licence is being granted shall make all reasonable arrangements to ensure that persons entering or making use of the place are not in possession of any controlled drug and that the place is not used for the sale, supply or distribution of any controlled drug".

District Court Questions

9. It is against that factual and legal background that Judge Kennedy asked two questions of this Court:

(a) As a matter of law, must an applicant for a public dancing licence pursuant to the Public Dance Halls Act 1935 as amended have public liability insurance against the public liability risk arising from or associated with dancing taking place on the premises the subject of the application before a public dancing licence may be granted pursuant to the Public Dance Halls Act 1935 as amended?

(b) Am I entitled as a matter of law to grant a public dancing licence pursuant to section 2 of the Public Dance Hall Act 1935 as amended without making the grant of such a licence subject to the condition that the Applicant put in place and maintain a policy of public liability insurance in respect of the premises the subject of the application?

10. The State Respondents expressed some concern as to the vagueness of the phrase "*as a matter of law"* in the two questions.

11. I understand the first question to be directed towards whether there is a statutory requirement or precondition in the 1935 Act that an applicant for a public dancing licence must have appropriate public liability insurance before a licence can be granted.

12. I understand the second question to be directed towards whether the District Court has the power or discretion, or is entitled under the 1935 Act, to grant a public dancing licence without imposing a condition under section 4 of the 1935 Act that the applicant put in place and maintain appropriate public liability insurance.

13. A consideration of these questions, particularly the second question, will naturally involve a consideration of the converse also: whether a District Judge has the power or discretion or is entitled to impose a condition that an applicant put in place and maintain public liability insurance.

District Court's findings of fact and inferences and conclusions from these findings' fact

14. Judge Kennedy, having set out the introduction and background and evidence given at the hearing, states at paragraph 22 of the case stated:

> *"22. I accept the evidence given by Mr. Neville [the Managing Director] and Mr. Doyle [the accountant and auditor] to the Court. I make the following findings of fact on the basis of the evidence given by Mr. Neville and Mr. Doyle to the Court, and I draw the following inferences and conclusions from these findings of fact:*
>
> *(a) The Applicant Company is a company within the Neville Group of companies. The Neville Group is involved in the business and construction sector and the Neville Group is also involved in the hotel sector. The Applicant Company was formed for the purposes of carrying on the Neville Group's business in the*

hotel sector. The Neville Group owns and operates the following four hotels, which are held in the name of the Applicant Company:

(i) The River Court Hotel, Kilkenny, County Kilkenny;

(ii) The Tower Hotel, Waterford;

(iii) The Druids Glen Hotel and Golf Resort, Newtownmountkennedy, County Wicklow (the hotel premises to which the present application by the Applicant Company relates);

(iv) The Royal Marine Hotel, Dun Laoghaire, County Dublin.

(b) The hosting and provision of wedding and function space in the hotels owned by the Neville Group and held by the Applicant Company, which would of their nature involve public dancing, are an essential part of the Neville Group's hotel undertaking and offering to the public and of the Neville Group's income stream from its hotel. Weddings and functions which, of their nature, would involve public dancing constitute approximately 14.47% of the overall income stream of the Neville Group's income stream from its four hotels.

(c) The Neville Group of companies (including the Applicant Company) maintained public liability insurance in respect of its non-building and non-construction related public liability risks, including dancing, with the Probitas Syndicate with Lloyds until 30th April 2020.

(d) The Board of Directors of the Neville Group took a decision that the Neville Group of companies, including the Applicant Company, would self-insure against all non-building and non-construction related public liability risks of the Neville Group of companies, including the Neville Group's hotel related activities, with effect from 1st May 2020 and into the future. The Neville Group's public liability insurance for non-building and non-construction related risks activities with the Probitas Syndicate with Lloyds expired on 30th April 2020. The ceiling of the Neville Group's public liability insurance for non-building and non-construction

related risks activities with the Probitas Syndicate with Lloyds before it expired on 30th April 2020 was €6.5 million.

(e) With effect from 1st May 2020, the Neville Group of companies, including the Applicant Company, self-insures in respect of non-building and non-construction related public liability risks, including its hotel related activities. With effect from 1st May 2020, the Applicant Company self-insures all public liability risks arising from or connected with all hotel related activities carried out in the Druids Glen Hotel and Golf Resort and the other hotels held by the Applicant Company, including hotel accommodation; hotel restaurants; hotel spas; golfing; and dancing and non-dancing functions taking place at the four hotels held by the Applicant Company.

(f) For the period between 17th January 2017 and 30th April 2020, the Applicant Company had, in effect, already been fully self-insuring against the public liability risks arising from or connected with all hotel related activities carried on in the Druids Glen Hotel and Golf Resort and the other hotels held by the Applicant Company. This is by reason of the fact that the amount(s) paid out on foot of public liability claims made against the Applicant Company arising out of its hotel related activities – including public liability claims arising out of dancing taking place at the hotels held by the Applicant Company – for the period between 17th January 2017 and 30th April 2020 fell within the excesses applicable to the Applicant Company's public liability insurance cover.

(g) The Applicant Company has sufficient liquidity, assets and reserves to fully and effectively self-insure against any and all public liability risks and claims likely to arise from dancing taking place at the Druids Glen Hotel and Golf Resort pursuant to a public dancing licence granted by the Court pursuant to the Public Dance Halls Act 1935 and 1997."

The Parties' Positions

15. There is in fact little between the parties as to the questions posed by the District Court. Both parties agree that on a correct interpretation of the 1935 Act (i) there is no statutory requirement for an applicant for a public dancing licence to have public liability insurance against the public liability risk arising from dancing on the

premises and (ii) the District Court is entitled as a matter of law to grant a public dancing licence without making the grant of such a licence subject to a condition that the licensee have a public liability insurance policy against the risk arising from dancing on the premises. Both parties also agree, however, that the District Court is entitled to require to be satisfied that a licensee will be able to satisfy public liability claims against it arising from dancing on the premises either through an adequate and appropriate public liability insurance policy or through having sufficient means to satisfy possible claims and that in many cases this may involve the imposition of a condition that the licensee must have a public liability insurance policy but that will depend on the facts of each case. While the parties largely agree as to the substance of the answers, they do have a different emphasis and the State Respondents urge me to answer the questions in a particular way.

16. In summary, the Applicant's position is that on the proper interpretation of the 1935 Act, as amended, there is no statutory requirement for an applicant to have a public liability insurance policy as a condition precedent to the granting of a public dancing licence. The Applicant accepts that a District Judge is entitled to have regard to whether or not an applicant has public liability insurance and may in an appropriate case impose a condition on the licence that the licensee have such insurance but that the legislation does not provide for the automatic imposition of a public liability insurance pre-condition in all cases. The District Judge in deciding a particular case must have regard to the particular facts, including matters such as what type of dancing will be involved, the applicant's resources, and any unpaid judgments there may be against the applicant. As it was put in paragraph 4.14 and 4.15 of the Applicant's submissions:

"…The District Court does have a discretion under Section 4 with regard to the attachment of conditions to the grant of a licence. That discretion must be exercised judicially. In a case where, on the evidence before the Court, the District Judge has a well-founded concern that an Applicant might not be in a position to meet the cost of public liability claims from its own resources, the imposition of a condition requiring public liability insurance on the premises would involve a proper exercise of the Court's discretion. This is not such a case given the finding of the

District Court that the Applicant had "sufficient liquidity, assets and resources to fully and effectively self-insure any and all public liability risks and claims likely to arise" in respect of the subject premises.

4.15…In necessary and appropriate cases, the power of the District Court under s.4 of the Public Dance Halls Act 1935 as amended to impose conditions upon the grant of a public dancing licence would include a power to impose a condition that the applicant must have appropriate insurance cover against the public liability risk arising from or associated with dancing taking place on the premises the subject of the application."

17. The Applicant submitted that while the District Court has a discretion to refuse or grant a licence and/or to impose a condition in relation to public liability insurance, it must not have a fixed policy of always requiring such a policy before granting a licence or of always imposing a condition that the licensee have such insurance as to do so would amount to a fettering of the court's discretion.

18. The State Respondents note that there is a difference between a mandatory statutory obligation to have public liability insurance and the District Court having the power to, in an appropriate case, refuse an application in the absence of public liability insurance or to impose a condition that the applicant have such insurance. They accept that public liability insurance is not a statutory requirement but also submit that a District Judge has the power to have regard to the public liability insurance position of a particular applicant and to impose a condition on the licence that the applicant/licensee would have such insurance. They also emphasised the likelihood that it would only be in exceptional cases that the District Court would or could be satisfied to grant a licence to an applicant without appropriate insurance or without imposing a condition that the licensee would have such insurance. They submitted that where the Applicant has accepted that a District Judge may impose a requirement that an applicant have public liability insurance, any answer given by this Court to the questions posed should reflect this in order to avoid a perception that an applicant for a public dancing licence does not need public liability insurance.

The State Respondents placed particular emphasis on the risk and tragic reality of the serious public safety concerns attaching to public dance halls in underlining the importance of public liability insurance for persons attending dances.

Statutory Interpretation

19. As the answers to the questions posed by the District Judge are to be found in the correct interpretation of the relevant sections of the 1935 Act, as amended, it may be helpful to refer briefly to the principles of statutory interpretation. Given my conclusions below and, more particularly, the fact that there was little dispute between the parties as to the correct approach to construction or as to the correct interpretation of the relevant sections, I do not propose to embark on an in-depth consideration of the principles as it is not necessary to do so.

20. The objective of statutory interpretation is to discern the intention of the Oireachtas. That intention is primarily to be found in the text of the statute in question (Dodd, Statutory Interpretation in Ireland (Tottel, 2008) at para. 2.05). Different rules of interpretation are available to the court to assist in the interpretation process but the starting point, and, indeed, the overarching approach is the literal approach i.e. giving the words their ordinary and natural meaning in context, and it is only in limited circumstances, including when there is an ambiguity or where the ordinary and natural meaning of the words gives rise to an absurdity, that the court should apply the other approaches to construction.

21. *In Crilly v T & J Farrington [2001] 3 IR 251* at 295 Murray J stated:

> *"The phrase 'intent of the legislature' is, on a casual view, ambiguous because it does not expressly convey whether it is the subjective intent or the objective intent of the legislature which is to be ascertained. Manifestly, however, what the courts in this country have always sought to ascertain is the objective intent or will of the legislature. This is evident for example from the rule of construction according to which when the meaning of the statute is clear and definite and open to one interpretation only in the context of the statute as a whole, that is the meaning to*

be attributed to it. There has never been any question of examining the statute further in the light of external aids so as to ascertain whether parliament had an intent which it failed to adequately express, at variance with that to be clearly found in the statute."

22. Dodd stated in Statutory Interpretation in Ireland (para. 5.12):

"Starting from the point that the text of the enactment is the pre-eminent indicator of the legislature's intention, two principal rules follow: the ordinary (or literal) meaning rule and the plain meaning rule. The former rule provides that words and phrases should be given their ordinary and natural meaning. The latter rule provides that where that meaning results in a provision being entirely plain and unambiguous, then the interpreter's job is at an end, and effect must be given to that plain meaning. These rules are long-standing and have been emphasised much in recent years."

23. *In McGrath v McDermott [1988] IR 258* at 276, Finlay CJ stated*:*

"The function of the courts in interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it…"

24. The primacy of the literal approach is reflected in section 5 of the Interpretation Act 2005.

Interpretation of the Relevant Sections

Entitlement to have regard to insurance position and to impose conditions

25. As noted above, both parties are of the view that a District Judge, in considering an application for a public dancing licence, may have regard to whether or not the

applicant has an adequate and appropriate public liability insurance policy and in an appropriate case, if granting a licence, is entitled to impose a condition that the licensee will have such insurance in place.

26. In my view, they were correct to accept that as being the correct interpretation of the Act. It seems to me for the reasons set out below that a District Judge is entitled and indeed obliged to have regard to whether an applicant/licensee would be able to compensate an individual for injuries caused by the licensee's default and, if they consider it appropriate, to impose conditions to that end. It is as part of that broader consideration that the District Judge is entitled to have regard to whether or not the applicant has appropriate public liability insurance.

27. That the District Court is entitled to consider whether an applicant would be able to compensate an individual for injuries caused by its default and to impose appropriate conditions is clear from the ordinary and natural meaning of the words of section 2 and section 4 of the Act in their statutory context.

28. Section 2(2) requires the District Court to have regard to, inter alia, "*the financial and other circumstances of the applicant*". I am satisfied that on their ordinary and natural meaning the words "the financial and other circumstances of the applicant" include an applicant's financial ability to compensate an individual for injuries caused by the applicant/licensee.

29. That being the case, it seems to me that the District Court is not only entitled but is also obliged under section 2(2) to have regard to the applicant's ability to do so. As the District Court is obliged to have regard to the applicant's "financial circumstances" and the ordinary and natural meaning of those words includes the applicant's financial ability to compensate injured parties, then the mandatory consideration of "financial circumstances" provided for by section 2(2) must include

a consideration of whether the applicant would be able to satisfy possible claims brought against it.

30. Even if I am incorrect in that and the meaning of "*financial circumstances"* does not directly encompass an applicant's ability to compensate individuals who might be injured due to the licensee's default, it seems to me that it is a matter which a District Judge may consider in the exercise of its discretion under section 2(2). It is obvious from the ordinary and natural meaning of the words that the plain intention of the Oireachtas was to confer a broad discretion on the District Judge, both in relation to whether or not to grant a licence and in relation to the imposition of conditions. Section 2(2) provides that *"In considering an application under this section for a public dancing licence, a Justice of the District Court shall, in addition to any other matter which may appear to him to be relevant, have regard to the following matters…"* [emphasis added]. Section 4 provides that "*A Justice of the District Court granting a public dancing licence may – (a) Insert therein such conditions and restrictions as he shall think proper…"* [emphasis added]. The scope of the District Court's discretion under section 2(2) has already been decided by the Supreme Court in Application of Michael Quinn (1974) IR 19 where the Court considered section 2(2) of the Act. Henchy J held:

> *"In the present case, not alone is the District Court (or, on appeal, the Circuit Court judge) entitled to have regard to "any other matter which may appear to him to be relevant" but he is bound to do so; and the generality of the expression "any other matter which may appear to him to be relevant" is not in any way narrowed by the fact that he is required to have regard "in addition" to the specific matters set out in paragraphs (a) to (g). So long as the discretion is exercised in good faith, the decision as to what considerations are relevant would appear to be unchallengeable subject to two qualifications. First, the District Justice (or the Circuit Court judge) may not take into consideration a matter which would put his decision ultra vires the Act and, secondly, he may not exercise his discretion in such a way as to infringe a constitutionally guaranteed right. The former is necessary because, wide though the legislature has framed the discretion of the court, it cannot have intended that it be exercised so as to exceed the ambit of the*

Act as delineated by the long title and a reading of the Act as a whole. The latter arises because the Act, having been enacted before the coming into operation of the present Constitution, is carried over only to the extent that it is not inconsistent with the Constitution: see Article 50. Apart from these two necessary limitations, a decision to have regard to any particular matter on the ground that it is relevant, if made in good faith, cannot be challenged".

31. This case obviously pre-dated the amendment of the 1935 Act by the 1997 Act, but the reasoning and conclusion of the Supreme Court in relation to the scope of the discretion is not affected by the amendment. The case also involved a different point, ie. whether the District Court could consider under section 2(2) misconduct by people on their way to a dance hall (but not in or at the dance hall) which adversely impacted on bus services and the travelling public and on the local population in the general vicinity of the dance hall. As Henchy J put it "While such misconduct does not, in the main, take place in the immediate proximity of the hall and is outside the control of the applicant, the particular dances in the hall would seem to be the occasion, if not the focal point, of the misconduct." The fact that the concern was a different concern to the issue in this case does not impact on the interpretation of the section.

32. Thus, the Supreme Court has held that the District Court has a very wide discretion as to the matters which the District Court may consider in determining an application for a public dancing licence, limited only in the manner set out by Henchy J. Given the breadth of that discretion it is difficult to see how an applicant's ability to satisfy valid claims which might be brought against it could not fall within the matters which a District Judge can properly consider.

33. Furthermore, the Supreme Court reached its conclusion as to the scope of the District Court's discretion under section 2(2) by rejecting the argument on behalf of the applicant in that case that the ejusdem generis rule meant that the words "any other matter which may appear to him to be relevant" in section 2(2) must be read restrictively so as to confine the scope of those words to matters allied to or within

the same classification as the specific matters set out in paragraphs (a) to (g). The court did so on the basis of the rule that where "a discretion is given in general words followed by particular instances; the generality of the discretion is in no way cut down by the particular instances." However, Henchy J also went on to hold that even if the discretion was to be restricted by reference to the specific matters in section 2(2) it was still sufficiently broad to allow the District Court to refuse the licence in that case. He said:

> *"I would also reach the conclusion that regard may be had to the questioned matters even if I accepted the submission that the words "any other matter which may appear to him to be relevant" should be held to be coloured by the specific matters enumerated in paragraphs (a) to (g). One of the specific matters which must be taken into account is stated in paragraph (b) to be "the suitability of the place to which such application relates." If the matters in question do not directly arise for consideration under those words, I fail to see why they would not be admissible for consideration under the heading of "any other matter" when the latter words are construed associatively with the matter set out in paragraph (b). Indeed, the wording of the question framed by the Circuit Court judge would suggest that the only reason he had to doubt the relevance of the misconduct in question was because it could not be controlled by the applicant and was not attributable to any act or default on his part."*

34. Similarly, in this case, even if the District Court's general discretion under the heading of "*any other matter"* were required to be coloured by or read associatively with the specific matters enumerated in paragraphs (a) to (g) I am satisfied that the Applicant's financial ability to satisfy such claims would be a proper matter for consideration. There can be absolutely no doubt from the words of section 2 that a District Judge is entitled and, indeed, is obliged to have regard to the safety of the premises for public dancing. This flows from the specific matters which the judge is expressly required to consider under section 2(2) and from the entire structure and purpose of the Act. The requirement under section 2(2) to have regard to specific matters such as the character of the applicant, the suitability of the place to which the application relates, the probable age of the persons who will be using the premises

and whether its situation may be such as to render difficult the supervision by the Gardaí of the management of and proceedings in such place (paragraphs (a), (b), (e) and (f) respectively) is at least in part directed towards ensuring the safety of the public on the relevant premises. Furthermore, the purpose of the Act is stated in the long title as being to make provision for *the "licensing, control and supervision of places used for public dancing, and to make provision for other matters connected with the matters aforesaid"*. "*Control and supervision"* of a place used for public dancing can only be understood as including its safety for that purpose.

35. It seems to me, to, in turn, be beyond doubt that part of a court's consideration of the safety of the premises must be an appreciation that unfortunately accidents can and do occur and therefore must include a consideration of whether, if an accident does occur through the fault of the licensee, the injured party has a meaningful opportunity to recover compensation in respect of that injury, if necessary by way of an award of damages. Such an award is how our legal system seeks to restore an individual to the position he or she was in before suffering the injury – insofar as money can ever do so. If a licensee does not have the financial ability to satisfy a claim or an award, then an individual who suffers an injury on a licensed premises due to a default on the part of the licensee would not have a meaningful opportunity to recover damages in respect of the injury. Thus, it seems to me that a District Court, when considering safety issues in respect of the grant by that court of a licence must be entitled to consider the position that an individual may be in if he is injured through the default on the part of the licence-holder.

36. Thus, whether on the basis of the interpretation of the words "financial circumstances" or on the basis of an interpretation of the plain meaning of the discretion which is conferred on the District Court, the court may (and, as discussed above, on the basis of the straightforward interpretation of the words *"financial circumstances",* is obliged) to have regard to the applicant's ability to and arrangements to be able to compensate individuals for injuries caused by the applicant. Indeed, it is difficult to conceive how the District Court would be exercising its general discretion under the words *"any other matter which may appear to him to be relevant"* correctly if it did not have regard to these matters.

37. This consideration of the applicant's ability will, of course, depend on the facts of each case and the evidence presented to the District Court. Without intending to limit the function or discretion of the District Court in any way it would seem likely that the types of arrangements that might be presented to the District Court as evidence of an applicant's ability to satisfy possible claims will be public liability insurance policies with independent insurance companies, formal self-insurance arrangements by the applicant or that the applicant has sufficient assets and liquidity to meet possible claims. It is perhaps unsafe to speculate but it seems extremely likely that very few applicants would be able to satisfy the court that they have sufficient resources to self-insure or to otherwise satisfy any possible claims against them from their own resources solely given the spread of risks from minor to very serious injuries and, indeed, given the potential for several, perhaps serious, injuries from the same incident. However, that is a matter for the District Court on the facts of any particular case having very carefully considered the evidence. I note that the District Judge records that the Applicant's intention in this case is to self-insure. It is unclear whether what is proposed is that the Applicant will operate a formal self-insurance arrangement or simply that it will satisfy claims from its own resources as they arise. That does not go to the legal issues which have to be determined but, in light of my conclusions, may be an important question in individual cases. It is a matter for the District Court dealing with an application to assess the evidence and to decide whether it is satisfied with the applicant's financial circumstances, including its proposals to self-insure or to satisfy claims out of its own assets/resources.

38. The reasoning above must also attach to the power of the District Court under section 4 to insert conditions on the licence and it seems to me that the Court has the power to attach conditions to ensure that an applicant will be able to discharge valid claims which might be brought against it arising from incidents during the currency of the licence. That includes a power, where the court is not satisfied that the applicant would otherwise be able to satisfy such claims, to impose a condition that the applicant/licensee has an appropriate public liability insurance policy.

Requirement for Public Liability Insurance

39. However, as noted by the parties, a finding that the Act entitles (or even obliges) the District Court to have regard to an applicant's financial ability to satisfy possible claims, including whether they hold public liability insurance, is different to saying that there is a statutory requirement that an applicant must have a public liability insurance policy before a licence may issue or that the Act confers a power on the District Court to in all cases require an applicant to hold such a policy or to impose a condition to that effect in every case. In my view there is no such requirement or power provided for in the Act.

40. The relevant sections, section 2 and section 4, are set out in full above and are discussed in the preceding paragraph, as is the approach to statutory interpretation. Neither of these sections include express reference to public liability insurance. Section 2 does not contain any requirement that an applicant must have public liability insurance before a licence can issue.

41. Section 4 is equally clear in its terms. It empowers the District Court to insert conditions and restrictions on the grant of public dancing licences but does not oblige the Court to do so. Indeed, the only two conditions which are expressly referred to in section 4 are (i) in relation to the days on which and days during which the place may be used for public dancing and (ii) in relation to arrangements to prevent drugs being brought into the premises or sold, supplied or distributed on the premises. The imposition of even these two conditions are stated in discretionary terms.

42. Thus, on the plain, ordinary and natural meaning of the words of the Act there is no provision imposing a pre-condition in respect of public liability insurance on the grant of a licence or conferring a power on the District Court to, in all cases, insert a condition or restriction and there is no basis for looking beyond the ordinary and natural meaning of the words. The absence from the 1935 Act of any words requiring insurance means that the Act does not contain such a statutory requirement. Indeed, were it intended that there would be a requirement for a public liability insurance policy one would expect the statutory provisions either to set a minimum required

level of cover or to provide for a mechanism (by regulations, for example) for the setting of a minimum level. Once the words of the statute are clear and unambiguous and do not give rise to an absurdity the Court should not look any further; but even if regard is had to the purpose of the Act (as, for example, set out in the long title), the language can not be interpreted as including something (a mandatory term in relation to insurance) which is not stated in the sections.

43. Any decision as to the desirability of mandatory insurance in all cases is a policy decision for the Oireachtas and is one which it is has made in other contexts; for example, the Road Traffic Acts. Instead, the 1935 Act has left a broad discretion and power in the District Court to grant a licence, having had regard to the specific matters set out in section 2 (discussed above) and having considered whether to impose conditions under section 4. These include the financial circumstances of the applicant which in turn includes the applicant's financial ability to satisfy possible claims against it.

44. Where I have concluded that the Act does not require that an applicant for a public dancing licence must hold public liability insurance (because it may be able to satisfy the District Court that it would otherwise be able to compensate individuals who might suffer injury) and that the District Court has the power in an appropriate case either to impose or not to impose a condition that an applicant must hold such a policy (having heard evidence as to the financial circumstances of the applicant) I must answer the District Judge's questions as follows:

*(*a) As a matter of law, must an applicant for a public dancing licence pursuant to the Public Dance Halls Act 1935 as amended have public liability insurance against the public liability risk arising from or associated with dancing taking place on the premises the subject of the application before a public dancing licence may be granted pursuant to the Public Dance Halls Act 1935 as amended? – No

(b) Am I entitled as a matter of law to grant a public dancing licence pursuant to section 2 of the Public Dance Hall Act 1935 as amended without making the grant of such licence subject to the condition that the Applicant put in place and maintain a policy of public liability insurance in respect of the premises the subject of the application? - Yes

45. The State Respondents agree that the answers should be No and Yes respectively, but they urge me to state the answers as follows:

(a) No, but a District Justice may as a matter of law impose such a liability insurance condition before a public dancing licence may be granted pursuant to the Public Dance Hall Act 1935 as amended, when exercising his or her discretion under Section 2(2) and Section 4 of the Public Dance Hall Act 1935 as amended and any divergence from this would be an exception.

(b) Yes, but a District Justice is entitled as a matter of law to impose a public liability insurance requirement before a public dancing licence may be granted pursuant to the Public Dance Hall Act 1935 as amended, when exercising his or her discretion under Section 2(2) and Section 4 and the absence of such a PL requirement would be an exception.

46. I do not think that I should do so for the following reasons. The District Court has asked me two discrete questions which lend themselves to Yes/No answers and I think it more appropriate in the circumstances that I provide Yes/No answers. The State Respondents urge me to add two ingredients to the answers: an express statement that as a matter of law the District Court is *entitled "to impose a public liability insurance requirement*"; and an "*exceptionality*" rider that divergence from the holding of a public liability insurance policy would be an exception. In relation to the first of these, in setting out my reasons for my conclusions I deal with the undoubted entitlement (and obligation) of a District Judge dealing with an

application for a public dancing licence to have regard to an applicant's financial ability to compensate individuals who might be injured and to refuse an application if not satisfied of the applicant's ability to do so or to impose a condition to ensure that the applicant will be able to do so, including, where appropriate, a condition that the applicant/licensee take out and maintain an adequate and appropriate insurance policy. In relation to the "*riders*" urged on me by the Respondents (for very understandable reasons), the addition of them would, I fear, while very likely reflecting the reality for the vast majority of applications for public dancing licences, come too close to this Court involving itself in the merits of individual cases or in instructing the District Court in how it should assess the evidence in individual cases. The assessment of each case is a matter for the District Court.

47. I therefore answer the questions in the manner set out at paragraph 44 above.