

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2019 No. 822 J.R.]**

**BETWEEN**

**SIMON O'DONOGHUE**

**APPLICANT**

**AND**

**LAOIS COUNTY COUNCIL**

**RESPONDENT**

**JUDGMENT of Mr. Justice Barr delivered on the 31st day of July, 2020**

**Introduction**

1. The applicant in these proceedings is seeking judicial review of the respondent's decision to impound a horse belonging to him. He seeks the return of his horse and challenges the right of the respondent to demand payment of certain costs and fees by him, before they will return the horse to him.
2. The reliefs sought by the applicant are set out in the statement of grounds dated 18th November, 2019, as follows:-
  - i) Interim relief pursuant to Order 84, rule 20(7) prohibiting the respondent from taking any further steps to dispose of, or destroy, the horse seized from the applicant on the 30th October, 2019 pending trial of the action in the High Court;
  - ii) Order of *mandamus* compelling the respondent to return the horse to the applicant;
  - iii) A Declaration by way of judicial review that the respondent's intention to dispose of the horse, which was communicated to the applicant's solicitor on the 15th November, 2019, was unlawful and/or made outside of the respondent's jurisdiction;
  - iv) A Declaration by way of judicial review that the respondent's request to pay the sum of €1,200.00 was not properly made;
  - v) A Declaration by way of an application for judicial review that the actions of the respondent in impounding the applicant's horse is unreasonable having regard to all of the circumstance of the case and is unsustainable in law;
  - vi) A Declaration by way of application for judicial review that the First Named Respondent acted *ultra vires* in making by-laws, namely, Laois County Council By-Laws made under the Control of Horses Act 1996 on the 25th June 2012, in so far as the said by-laws contain no provision whereby the applicant can challenge the amount requested by the respondent and/or any right of appeal to an independent tribunal;
  - vii) Liberty to file further affidavits;

- viii) If necessary, liberty to serve such other parties as this Honourable Court may so direct;
  - ix) Further or other Orders as this Court may deem necessary;
  - x) Costs.
3. As a brief synopsis of the background giving rise to these proceedings, the following factual matrix has been set out in the affidavit of Ms. Emer McDermott, solicitor for the applicant, dated 18th November, 2019: Mr. Simon O'Donoghue, the applicant in these proceedings, is the owner of a horse by the name of "*Braveheart*". On 30th October, 2019, while out trotting on his sulky with this horse, on the Ballyfin Road, Portlaoise, the applicant was involved in a road traffic accident with an unknown vehicle. As a result of this accident, the applicant fell from the sulky and became unconscious. This resulted in the said horse no longer being under his control. The applicant was taken to Tullamore General Hospital by ambulance. It later transpired that members of an Garda Síochána contacted Laois County Council, the respondent in these proceedings, with a view to impounding the horse following the accident.
4. On 2nd November, 2019 the applicant contacted the respondent with a view to retrieving his horse, but he was informed over the phone that he must first pay fees in the sum of €1,200.00 before the horse could be returned to him.
5. On 11th November, 2019, the applicant's solicitor sent an email to the respondent seeking detailed particulars as to the circumstances of the detention of the horse. The applicant received no response. The email stated as follows:-

*"Dear Sir/Madam,*

*We act for Mr. Simon O'Donoghue. Please find attached assigned authority from Mr. O'Donoghue.*

*Mr. O'Donoghue has I believe been in contact with you in this regard.*

*I would be grateful if you could provide further detailed particulars as to the circumstances as to the detention of Mr. O'Donoghue's horse.*

*In the event that you propose to dispose of Mr. O'Donoghue's horse, we respectfully request that you stay any such disposal to allow representations to be made on Mr. O'Donoghue's behalf, pursuant to, Section 3 of the European Human Rights Act 2003; Article 40 of the Irish Constitution and Article 6 European Convention on Human Rights.*

*Yours faithfully,*

*Michael Byrne*

6. On 15th November, 2019, the applicant's solicitor sent another email to the respondent, indicating that they believed that the seizure of the horse was unlawful and called for its immediate release. This email further stipulated that if the horse was not released by 22nd November, 2019, the applicant would initiate legal proceedings.
7. An email was received by the applicant shortly thereafter on 15th November, 2019. It contained a link to the relevant bye-laws and stipulated that the respondent would be arranging to have the horse disposed of, should the appropriate payment not be made. This email stated as follows:-

*"Michael,*

*Below is a link is to the Control of Horses Bye Laws adopted by Laois County Council in June 2012 and it is under these Bye Laws that the horse was seized. We will arrange for the disposal of the horse after close of our cash office on Monday 18th November 2019 (i.e. 3:30 pm) if the appropriate fee to reclaim the horse is not made.*

*<https://www.laois.ie/wp-content/uploads/ByeLaws.pdf>*

*Yours sincerely,*

*Louise McEvoy"*

8. The applicant then initiated legal proceedings. Leave to apply by way of an application for judicial review, in the terms as set out in the Statement of Grounds above, was granted by Hyland J. by order dated 19th December, 2019.

### **Applicant's Submissions**

9. The applicant averred that the respondent acted unlawfully and in excess of it's jurisdiction by refusing to return the horse. It is further averred that the respondent acted unlawfully and unfairly in impounding the horse, and in demanding payment for the return of the horse following a road traffic accident, which occurred due to no fault on the part of the applicant.
10. It was stated that the fee demanded by the respondent was claimed unlawfully and/or in excess of it's jurisdiction. It was further stated that the proposed disposal of the horse, which was communicated to the applicant's solicitor on 15th November, 2019, was unlawful and/or made in excess of the respondent's jurisdiction.
11. The applicant swore an affidavit dated 25th November, 2015, where it was stated that he was the owner of the horse named "*Braveheart*", which was impounded by the respondent. He stated that he had purchased the horse approximately 12 months before the date of seizure for €3000.00.
12. In his affidavit, the applicant set out various other events that occurred prior the accident that took place on 30th October, 2019. On 17th September, 2019, the applicant had left the horse in a gated field located near the industrial estate in Portlaoise, County Laois.

The following day, the applicant discovered that the horse had gone missing and he reported this to the gardaí. On 19th September, 2019, the applicant was contacted by Laois County Council, who had found the horse, and they informed the applicant that he had to pay a sum of €1040.00 in order to get the horse back. The applicant subsequently paid this sum and the horse was returned to him.

13. The horse was impounded for a second time following the accident that occurred on the Ballyfin Road, on 30th October, 2019, as outlined above. It is averred in the applicant's affidavit that on 2nd November, 2019, he contacted the respondent to find out if his horse was in their possession and he spoke to Ms. Natasha Moriarty. He was informed that the horse was impounded and because this was the second incident that year, the horse was to be put down. The applicant informed Ms. Moriarty that he was involved in a car accident and that it was not his fault. Ms. Moriarty stated that in order to get the horse back, he would have to pay a fee of €1,200.00. The applicant indicated that he could not afford that.
14. It was stated in the applicant's affidavit that his solicitors began contacting the respondent on 11th November, 2019. The correspondent has been set out above.
15. The applicant averred in his affidavit that the horse was kept in a stable located at 7 Old Knockmay Road, Portlaoise, County Laois, and that the horse was properly looked after. It was further averred that the respondent has been aware of the address where the horse had been kept since the first impounding in September 2019.
16. The applicant stated that he believed the respondent acted unlawfully in seizing the horse and had acted in excess of their jurisdiction. He further averred that the respondent acted unlawfully in refusing the return of the horse and for demanding a fee for its return.

#### **Respondent's Submissions**

17. As set out in the Statement of Opposition dated 22nd January, 2020, the respondent opposed the respondent's application for the various reliefs on the following grounds: it was averred that relief should be refused as the applicant had failed to exhaust an alternative remedy, namely an appeal of the respondent's decision. The respondent averred that it was *intra vires* for them to impound the horse and that the impounding of the horse was reasonable in law. It was stated that it was *intra vires* the respondent to dispose of, or destroy, a horse not claimed within specified periods pursuant to the Control of Horses Act, 1996. The respondent averred that the decision to dispose of the horse, as communicated by email dated 15th November, 2019, was *intra vires* the respondent. Further, the respondent stated that it was *intra vires* for them to levy reasonable fees in respect of the process of having to seize and impound a horse and, therefore, the request for payment of €1,200.00 was also *intra vires*. Finally, the respondent averred that it had acted *intra vires* when making bye-laws to provide for the care and welfare of horses in its area.
18. The respondent contended that pursuant to s. 8 of the Control of Horses Act, 1996 (hereinafter referred to as "*the Act of 1996*") and ss. 10 and 11 Laois County Council

Control of Horses Bye-Laws, dated 25th June, 2012, it was *intra vires* for them to dispose of, or destroy, a horse not claimed within specified time periods. Therefore, it was *intra vires* the respondent to arrange for the disposal of the horse, as communicated by email to the applicant on the 15th November, 2019.

19. The respondent averred that pursuant to ss. 33 and 39 of the Act of 1996 and bye-laws 8 (a) – (c), it was *intra vires* the respondent to levy reasonable fees in respect of the process of seizing and impounding a horse and, therefore, the request for payment was *intra vires*. It was further averred that according to ss. 37 and 39 of the Act of 1996 and the Bye-Laws, the impounding of the horse was *intra vires* and was reasonable in law. It was denied that the respondent acted unlawfully and/or in excess of its jurisdiction in refusing to return the said horse to the applicant.
20. Ms. Louise McEvoy, an acting Administrative Officer in the offices of Laois County Council, swore a replying affidavit dated 22nd January, 2020. She described how the respondent had been informed by an Garda Síochána that a collision had occurred on 30th October, 2019 on the Ballyfin Road, Portlaoise and that the applicant had been taken away from the scene by ambulance. She stated that she has been informed that the applicant was travelling in the dark on a public road, with no high visibility clothing and the weather conditions were poor.
21. She was informed that the applicant's horse had travelled approximately 2 kilometres away from the locus of the accident, where it was seized and subsequently impounded by gardaí, on the basis that it had caused damage to a number of vehicles in a housing estate.
22. The horse was treated for injuries arising out of the collision, which cost €250. It was further assessed for a second time by a veterinary surgeon on 5th November, 2019, to confirm that it was fit to travel, should the horse be released back to the applicant.
23. Ms. McEvoy stated that the appropriate notice pertaining to the seizure of the horse was displayed at the pound and at the respondent's offices, in accordance with the Bye-Laws. She was of the opinion that this constituted adequate notice in accordance with the Control of Horses Act, 1996 and the Bye-Laws made thereunder.
24. Ms. McEvoy stated that the horse had previously been seized on 17th September, 2019. On this particular occasion, Ms. McEvoy had met with the applicant's mother, Ms. Tilda O'Donoghue, and she had explained the procedure and costs for the return of the horse. The horse was released on payment of €1,040 by Ms. O'Donoghue.
25. Ms. McEvoy confirmed that it was the same horse that was impounded on 30th October, 2019, by reference on the microchip number.
26. Ms. McEvoy stated that the applicant was advised on 4th November, 2019 by Ms. Natasha Moriarty, the Tenant Liaison Officer in Laois County Council, of the breakdown of costs that would be required to be paid prior to the release of the horse. On the same date, the

applicant was advised that the decision of the respondent to impound the horse was subject to appeal and the applicant was advised as to the procedure for pursuing such an appeal.

27. Ms. Natasha Moriarty swore an affidavit dated 23rd January, 2020. She stated that she had received an email on 31st October, 2019, indicating that applicant's horse had been impounded by gardaí stationed at Portlaoise Garda Station. She made enquiries with a colleague to establish whether the horse had been impounded on any other previous occasions.
28. Ms. Moriarty received a response on 4th November, 2019, indicating that the same horse had been impounded on a previous date, on 17th September, 2019. On that occasion it was claimed by a Ms. Tilda O'Donoghue, who had indicated that she was the owner of the horse.
29. Ms. Moriarty stated that she contacted Ms. O'Donoghue on 4th November, 2019 and advised her of the situation and invited her to call into Laois County Council offices to discuss the matter. Later that day, two men presented at the respondent's offices, identifying themselves as Mr. Wayne O'Donoghue and Mr. Simon O'Donoghue, sons of the above mentioned Ms. Tilda O'Donoghue. Ms. Moriarty presented them with a photograph of the horse in question, and they confirmed visually that it was their horse. They did not have a passport in respect of the horse.
30. Ms. Moriarty presented them with the Bye-Laws and explained the procedures with regard to the control of horses in the area. It was explained that the costs of impounding the horse would have to be discharged before the horse could be released. She explained the costs owing, which included veterinary fees, transport and the upkeep of the horse by third party contractors. The breakdown of the costs were as follows:-

€450.00	zure
€80.00	veterinary fee
€170.00	additional vet fee for treatment of an injury
€120.00	bed and breakfast
€450.00	returning/transport of horse back to horse owner

24. Ms. Moriarty stated that this was all written information for the owner of the horse to take to the Cash Office of the respondent local authority for payment, however they were not willing to accept this. She further stated that having been treated for injuries, the horse would have to be checked by the vet again to establish if it was fit to travel.
25. Ms. Moriarty brought it to their attention that the Bye-Laws stipulated that if a horse was impounded twice in a twelve month period, it would not be returned to the owner.

26. Mr. Wayne O'Donoghue and Mr. Simon O'Donoghue stated that no fees would be paid, as the applicant was not at fault for the accident. Ms. Moriarty understood this to mean that it was not the applicant's fault that the horse broke loose and, therefore, he should not be liable for the Council's costs. Ms. Moriarty stated in her affidavit how she endeavoured to explain that the circumstances of the collision were a matter for an Garda Síochána, who were investigating the matter. Ms. Moriarty reiterated that the respondent's fees had to be discharged and that third party contractors, such as the veterinary surgeon, had to be paid.
27. Ms. Moriarty explained that in the normal course of events the horse would be disposed of after 5 days, if not claimed. She advised that this decision could be appealed in writing, by the O'Donoghues themselves, or through their solicitor. No appeal was received from the O'Donoghues.
28. Ms. Moriarty was cross-examined by counsel for the applicant at the hearing of this application. She stated that it was never the intention of the respondent to destroy the horse and that the respondent was eager to return the horse to the applicant, however, the fees owed had to be discharged.
29. It was submitted by counsel for the respondent that a level of deference should be afforded to the respondent local authority in managing its affairs and in the exercise of a reserved function in the promulgation of bye-laws by elected representatives. Counsel relied on the following statement of Simons J. in *McDonagh v. Galway County Council* [2019] IEHC 304:-

*"The making of the bye-laws is a reserved function of the elected members and is subject to extensive public consultation under section 13 of the Control of Horses Act, 1996. Thus, the setting of the fees has a democratic imprimatur."*
30. Counsel submitted that the power to dispose of, or destroy, a horse must be exercised proportionately and that in the present case, it had been. This was the second time the horse had been apprehended. Notwithstanding that this occurrence permitted the respondent to immediately dispose of the horse, the respondent had indicated to the applicant that it would keep the horse to allow the respondent to collect it. It was submitted that this represented a reasonable and restrained exercise of the applicant's recognised discretion to dispose of animals not claimed under the 1996 Act.
31. It was further submitted that it was the respondent's intention to dispose of the horse, as communicated by email on the 15th November, 2019, and that "dispose" did not mean destroy, as was clear from the legislation.
32. Counsel stated that no query had been made in respect of the amount owing until the leave application was made. The respondent's solicitor wrote to the applicant on 19th November, 2019 setting out the powers of the respondent and indicating that the fees owed had been set out in an itemised bill presented to the applicant. It was submitted that this assertion had never been contradicted.

33. Counsel submitted that there was no basis in law to support the proposition that the legislation must contain a provision whereby someone in the position of the applicant can challenge the amount charged, or must have a right of appeal to an independent tribunal. Further to this, the respondent had established a review mechanism whereby an unsatisfied horse owner may appeal in writing to a manager within the council, as was set out by Ms. Moriarty in her affidavit. That appeal process was never pursued by the applicant.
34. Counsel stated that prior to the leave application being heard, a letter dated 29th November, 2019 was sent to the applicant setting out the basis of the respondent's powers. It was indicated in this letter that notwithstanding the various entitlements of the respondent, the horse would be released upon payment of the expenses originally levied, being €1,200.00, It was further indicated that accommodation fees of €20 per night would be borne by the respondent in the interest of resolving the matter. It was also indicated that the respondent would take responsibility for its own legal costs. No response was received to this letter.
35. It was contended by the respondent that a *mens rea* requirement cannot be read into the Control of Horses Act, 1996, as was sought by the applicant. The applicant had submitted that because it was not his fault that the horse got loose following the accident, he should not be liable for the costs of capturing and impounding it. It was submitted by the respondent that there was no basis for reading in such a requirement. Counsel relied on the statement of Hedigan J. in *Burke v. South County Dublin County Council* [2013] IEHC 185, where a similar argument had been made, but was firmly dismissed as follows:-

*"Accepting that he was not at fault however does not mean that he was not obliged to pay the costs of rounding up the horses and stabling them. The local authority was not at fault either for the horses being loose on the public roads within their jurisdiction. It was however under a duty to ensure that the horses were speedily rounded up and removed to safety. The presence of such large animals loose on the road is, it hardly needs pointing out, a grave danger to the public. Obviating that danger as quickly as possible is a heavy duty upon the local authority.*

*One might readily sympathise with an owner whose horses were either stolen or released or strayed deliberately by persons unknown. However, that does not mean that the tax payer should have to bear the cost of rounding up the loose horses. The applicant was the owner and had the enjoyment of the use of the horses. The tax payer did not. On a merits based argument therefore the applicant must lose on this point. It is upon him that the cost of rounding up and stabling must fall."*

#### **The Law**

36. Certain sections of the Control of Horses Act, 1996 were opened to the court. The Act aims to provide for the control of horses and to make provision for the licensing of horses in urban and other areas where horses cause a danger to persons or property or cause a nuisance.



37. Under s. 2 of the Act of 1996, the term to “dispose of” includes to sell or give away or have destroyed. Under the same provision, “stray horse” means a horse apparently wandering at large, lost or abandoned or unaccompanied (whether tethered or untethered) by any person apparently in charge of it in a public place, or on any premises without the owner’s or occupier’s consent.

38. The power of seizure and detention of horses is contained in s. 37 of the Act of 1996, as follows:-

*“37.—(1) An authorised person or a member of the Garda Síochána may seize and detain any horse that the person or member has reason to suspect is—*

*(a) a stray horse, or*

*(b) causing a nuisance, or*

*(c) not under adequate control, or*

*(d) posing a danger to persons or property, or*

*(e) posing a threat to the health and welfare of persons or other animals, or*

*(f) being kept in a control area, without a horse licence in respect of it entitling the horse to be kept in that area, or*

*(g) not identifiable or capable of identification as may be required by section 28 , or*

*(h) in or being kept or ridden or driven in an area contrary to any bye-laws made under section 47 .*

*(2) An authorised person or a member of the Garda Síochána may seize and detain a horse in relation to which a requirement has been made under section 33 and the person or member has reasonable cause to suspect that the necessary veterinary attention has not been or is not likely to be obtained.*

*(3) A horse seized under this section may be detained in a pound anywhere or in such other place as may be specified by the local authority in whose functional area the horse was seized or by the Superintendent, as the case may be.*

*(4) A person who without lawful authority removes a horse while it is being detained under this section shall be guilty of an offence.”*

39. The period of detention and disposal of horses detained under s. 37, is provided for in s. 39 of the Act of 1996, as follows:-

- "39.—(1) Subject to section 41 , whenever a horse has been detained under section 37 , the local authority in whose functional area the horse is detained or the Superintendent, as the case may be, may—*
- (a) continue to detain the horse for use in evidence in any criminal proceedings, for such period from the seizure or detention as is reasonable, or, if proceedings are commenced in which the horse is required for use in evidence, until the conclusion of the proceedings, or*
  - (b) where it is intended to make an application under section 8 for the forfeiture of the horse, continue to detain the horse until the conclusion of the proceedings, or*
  - (c) where that horse has previously been detained on two or more occasions within a period of 12 months, deal with it in accordance with section 40 , or*
  - (d) in any other case, deal with the horse in accordance with any bye-laws made under subsection (2).*
- (2) Bye-laws may be made by a local authority for all or any of the following matters in relation to horses detained within its functional area under section 37 —*
- (a) the notices to be given or displayed in connection with the detaining of such horses,*
  - (b) the fees to be paid by the owner or keeper of such horses including fees in respect of their keep, any veterinary services and any transportation,*
  - (c) the provision of veterinary services for such horses,*
  - (d) the disposal pursuant to a direction of the local authority in whose functional area a horse is detained or of the Superintendent, as the case may be, of a horse where the owner or keeper is unknown or cannot be found and the time after which such disposal shall take place,*
  - (e) the disposal pursuant to a direction of the local authority in whose functional area a horse is detained or of the Superintendent, as the case may be, of a horse where the owner or keeper is known and can be readily found, and where the owner or keeper, on request of the local authority, Superintendent or person in charge of a pound or place where a horse is detained within such time as may be specified in the bye-laws—*
    - (i) fails to pay any fees specified in bye-laws made under this subsection, or*
    - (ii) fails to produce, where appropriate, a horse licence for the time being in force in respect of the horse granted by that local authority or*

- another relevant local authority if the horse is kept in a control area declared by that authority or another authority, or*
- (iii) fails to remove the horse,*
  - (f) the disposal pursuant to a direction of the local authority in whose functional area a horse is detained or of the Superintendent, as the case may be, where the release of a horse is refused under subsection (5), and the time after which such disposal shall take place,*
  - (g) such other matters as it considers relevant.*
- (3) A local authority may recover as a simple contract debt in any court of competent jurisdiction from any person by whom it is payable any amount due and owing to it under this section.*

*[...]”*

40. The power to dispose of a horse that has been detained on two or more occasions is contained in s. 40 of the Act of 1996, as follows:-

*“40.—(1) A horse which has been detained under section 37 and which has previously been detained on two or more occasions within a period of 12 months under that section may be disposed of as the local authority in whose functional area the horse has been detained or the Superintendent, as the case may be, sees fit where that authority or Superintendent is of the opinion that—*

- (a) the owner or keeper of the horse is not exercising adequate control over the horse so as to prevent it straying, causing a nuisance, or posing a danger to persons or property, or*
- (b) such horse is likely to be in a public place whilst not—*
  - (i) under adequate control, or*
  - (ii) identifiable or capable of identification as may be required by section 28 .*

*[...]”*

41. It is contended that the respondent local authority is empowered to make its own bye-laws pursuant to s. 46 of the Act of 1996, to provide for the care and welfare of horses in its area. The relevant provision states as follows:-

*“46.—(1) A local authority may make bye-laws for the control and welfare of horses in the whole or part of its functional area.*

- (2) Without prejudice to the generality of subsection (1), bye-laws made under this section may—*

- (a) *specify the manner in which a horse is to be kept under control by a person having charge or control of it in a public place (including a market or fair) or other place so as to prevent injury or nuisance to persons or damage to property,*
  - (b) *specify the manner and conditions in which a horse is to be kept (including the stabling, feeding and watering of the horse) in any place (including a market or fair),*
  - (c) *specify the measures to be taken by the owner or keeper of a horse to prevent a nuisance being caused to persons occupying any premises adjacent to or in the vicinity of the place where the horse is usually kept.*
- (3) *A person who fails to comply with any bye-law made under this section shall be guilty of an offence."*

42. The Act of 1996 permits individual local authorities to make bye-laws, which the respondent duly promulgated in 2012. The relevant Bye-Laws of the respondent, Laois County Council Control of Horses Bye-Laws, 2012, were opened to the court. Under bye-laws 8 (a) – (b) thereof, the costs associated with the detention of a horse is provided for as follows:-

- "(a) The cost of collecting and transporting it on foot or by vehicle from the place where it was found to the place where it is detained the owner will be subject to pay the full cost incurred by Laois County Council.*
- (b) The cost of providing it with care and sustenance during the period it is detained the owner will be subject to pay the full cost incurred by Laois County Council. The cost will be based on a full day and or part of costing.*
- (c) Where it has been provided with veterinary attention the cost of such attention the owner will be subject to pay the full costs per visit by a registered Veterinary Surgeon.*
- (d) Cover all cost incurred by Laois County Council in the process of the horse/s being impounded.*

43. According to bye-law 10 (i) release of the horse may be obtained on payment of the fees due. Should the fees not be paid within three days of same being requested, the respondent reserved the right to dispose of the horse. The bye-laws provide as follows:-

*"Where the owner or keeper of a horse detained under the Act is known and can be readily found, the Council or the Superintendent shall notify him or her of its detention and that its release may be obtained on payment of the fees due and payable in respect of its detention and that in the event of such fees not being paid within three days of payment of them being requested, the Council or the Superintendent may dispose of the horse."*

44. Bye-law 10 (iv) further permits the immediate disposal of a horse, where it has had to be seized more than once in a twelve month period. Section 11 of the Act mandates that after five days, the horse is to be disposed of.
45. Bye-law 12 provides that all costs associated with the seizure, maintenance, microchipping, passporting and subsequent reclaiming of the horse shall be borne by the owner on claiming the said horse.
46. A number of Irish cases were opened to the court and relied upon by the respondent, as alluded to above. The case of *Burke v. South Dublin County Council* [2013] IEHC 185 concerned a horse that had been detained by South Dublin County Council and subsequently destroyed. One of the core issues in that case was whether the respondent local authority was entitled to detain the horse until such time as the fees requested had been paid by the applicant. The High Court *per* Hedigan J. engaged in a balancing exercise with the responsibility of local authorities to round up stray or dangerous animals on one hand, and the property rights of citizens on the other. It was stated as follows:-

*"It goes without saying that the duty of the local authority to round up stray horses is a vitally important one. The danger posed to the public by the presence on the roads of stray animal is very real. In the case of larger animals such as horses, that danger may be of serious injury or even death. The local authorities have responsibility for this unsought task and the Court is well aware of the problems posed thereby. However, in rounding up and where necessary disposing of animals such as horses, the local authority is engaging in an activity that may impact on the property rights of citizens. Thus, by statute and bye laws the law has provided for a certain process in order to assist the local authority whilst engaged in this procedure. It is a relatively simple but vitally important process. It is designed to balance any conflict that may arise between the rights of the public to safety on the highway with the property rights of horse owners. It is essential that this process is carefully followed in each case. This is not difficult and where done properly obviates substantial difficulties that might otherwise arise. This simple process provided by law was almost entirely ignored in this case. The direct consequence is the needless trail of confusion that inevitably followed.*

47. The learned judge concluded that the respondent local authority had acted *ultra vires* in the detention and subsequent disposing of the horse, and that the respondent was not entitled to insist on the payment of the requested fees.
48. The decision in *Burke* was relied on by Simons J. in *McDonagh v. Galway County Council* [2019] IEHC 304, which was also opened to this court. In that case, the respondent local authority was held to have acted precipitously in arranging for the horse to be destroyed. The learned judge held that there was no evidence before the court to demonstrate that the respondent was authorised under the bye-laws to recover the amount stipulated, and, in particular, the bye-laws did not authorise the charging of fees in respect of "administration". It was further held that it was disproportionate to destroy the horse in circumstances where there was an ongoing dispute as to whether the applicant had

established proof of ownership. It was finally held that the respondent should have considered the option of disposing of the horse by way of sale rather than destruction.

49. The learned judge took particular issue with the sum not being properly requested by the local authority. At paragraph 49 he stated:-

*"In order for such an extraordinary entitlement to be lawful, it is essential that the manner in which the amount demanded is to be calculated is objective and transparent. This is achieved by the requirement under section 39(2)(b) of the Control of Horses Act 1996 that the fees to be paid by the owner or keeper of such horses (including fees in respect of their keep, any veterinary services and any transportation) be specified in the Bye-Laws. The making of the Bye-Laws is a reserved function of the elected members and is subject to extensive public consultation under section 13 of the Control of Horses Act 1996. Thus, the setting of the fees has a democratic imprimatur."*

50. Regarding the issue of the sum demanded in exchange for the horse, the judge concluded that the respondent local authority must vouch the costs they maintained had been incurred, i.e. evidence should be provided which substantiated the claim that it had incurred this level of costs. He concluded at paragraph 54:-

*"In the present case, there is no evidence before the court that the sum requested is in accordance with the fees specified in the Bye-Laws. The Local Authority has failed to provide evidence either to the Applicant during the course of the exchange of correspondence in March and April 2018, or to this court, that the sum requested does, in fact, represent the 'actual costs'."*

51. The learned judge concluded that to challenge the legality of the initial seizure and detention of the horse was unfounded, as he was satisfied that the criteria for the detention of the horse under the Act of 1996 were met. It was held, however, that the respondent local authority had failed to provide evidence that the sum requested to release the horse represented the "actual cost". Furthermore, there was no reference in the legislation or in the Bye-Laws in that case to an "administration" cost. Thus, it was concluded that the respondent local authority acted disproportionately in proceeding to destroy the horse.

### **Conclusions**

52. Having regard to the submissions of counsel, the salient legislation and the case law, the following conclusions can be reached: the court is satisfied that in the circumstances averred by Ms. McEvoy in her affidavit, the respondent local authority was empowered to capture and detain the horse pursuant to s. 37 of the Act of 1996. Further, the respondent local authority had an entitlement to dispose of the horse immediately, should it so elect, pursuant to ss. 39 and 40 of the Act, as the horse had been previously detained on two occasions within a period of 12 months.

53. The court is satisfied that according to s. 39 (2) of the Act of 1996, the respondent local authority was empowered to make Bye-Laws for various matters in relation to horses detained within its area. The Bye-Laws provided that fees were to be paid by the owner or keeper of a horse detained under the Act. These fees can include fees in respect of their keep, any veterinary services and any transportation.
54. Turning to the particular provisions of the Bye-Laws promulgated by the respondent, bye-law 8 (a) – (b) provide that the fees which may be demanded, include the cost of collecting and transporting the horse, the cost of providing it with care and sustenance, the cost of veterinary attention and all costs incurred by the respondent. Bye-law 10 (i) provides that if the costs are not discharged, the respondent reserves the right to dispose of the horse. This court is of the opinion that the respondent local authority was entitled to levy the charges as set out in the affidavit of Ms. Moriarty, set out above. It is also noteworthy that neither the applicant, nor the applicant's solicitor ever asked for the fees that were levied to be vouched. I am satisfied that the charges levied are in accordance with the Bye-Laws and represent the "*actual costs*" incurred by the respondent, and that the respondent acted *intra vires* in exercising these powers.
55. It was submitted that the applicant was not at fault for the accident that had occurred on the road, and therefore he should not be penalised by having to pay the fees incurred for the impounding of the horse. The court finds that this point is unfounded. The respondent local authority has a responsibility to keep their administrative area safe from the dangers of stray animals. While it is unfortunate that as a result of an accident, which the applicant maintains was not his fault, resulted in his horse being impounded, that is a matter for the gardaí. If the applicant was not at fault for the accident and if he can bring an action against a defendant, or against the MIBI, he can include the cost of retrieving the horse as part of his claim.
56. This court does not believe it is appropriate to read a *mens rea* requirement into the Act of 1996. This court is inclined to adopt the same reasoning Hedigan J. in the Burke case, where it was held that just because the applicant horse owner was not at fault, does not mean that he was not obliged to pay the costs incurred. I concur with the finding of Hedigan J. that the respondent local authority was also not at fault for the horse being loose on the public roads within their jurisdiction. There is, however, a duty on the respondent local authority to ensure that the public are kept safe from a roaming horse.
57. This court finds that the respondent gave the applicant reasonable time to raise the money owed, rather than disposing of the horse immediately. Having seized the horse on the 30th October, 2019, it is evident that the respondent ascertained who the owner was and engaged with him. Following this engagement, the respondent gave the applicant a final opportunity to discharge the fees owed and to claim the horse, indicating that on 15th November, 2019 it would dispose of the horse, if it was not claimed by close of business on 18th November, 2019. The court finds that this was wholly reasonable.
58. This court is satisfied that it was not the intention of the respondent to destroy the horse. Rather, the respondent was eager to return the horse to the applicant. However, it was

made clear that the costs incurred must be discharged in order to release the animal. I find that this was a reasonable request.

59. It is evident from the affidavit sworn by Ms. Moriarty that the decisions of the respondent could be appealed and that the details of the appeals process had been explained to the applicant and were available on the respondent's website. All decisions of the respondent in this case were appealable; however, no appeal was ever lodged by the applicant, nor did he query the various items of costs that had been outlined to him. He simply stated that he could not afford to pay the fees demanded. The court is satisfied that the items of costs demanded, were those provided for in the Act and in the bye-laws.
  
60. It is fair to say that the detention of an animal, the property of a private citizen, is a draconian measure, but this court is satisfied that it is a necessary measure to be carried out by a local authority in line with the relevant legislation. Further, this court is satisfied that at all times the respondent dealt fairly and respectfully with the applicant, who is entitled to the safe return of the horse, upon the discharge of the fees duly levied by the respondent. Based on the conclusions outlined herein, this court is satisfied that it was reasonable and lawful for the respondent to impound the horse and, furthermore, it was *intra vires* the respondent to demand the fees levied by them. The court therefore refuses the reliefs sought by the applicant.