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| **Neutral Citation No: [2024] NIKB 97** | *Ref:* **COL12650** |
| | *ICOS No:* **23/024159** |
| *Judgment: approved by the court for handing down (subject to editorial corrections)** | *Delivered:* **25/11/2024** |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**KING'S BENCH DIVISION**

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**IN THE SOLICITOR'S DISCIPLINARY TRIBUNAL FOR NORTHERN IRELAND**

**ARTICLE 53(2) OF THE SOLICITORS' (NORTHERN IRELAND) ORDER 1976**

**IN THE MATTER OF MICHAEL CURRAN, A SOLICITOR**

**AND IN THE MATTER OF A DECISION OF THE SOLICITORS' DISCIPLINARY TRIBUNAL DELIVERED ON 22 FEBRUARY 2023**

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**Mr Michael Egan KC (instructed by Francis Hanna & Co Solicitors) for the Law Society/Appellant**
**Mr Frank O'Donoghue KC led Ms Julie Ellison (instructed by Higgins, Hollywood & Deazley Solicitors) for the Solicitor/Respondent**

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**COLTON J**

*Introduction*

[1] I am obliged to counsel for their helpful written and oral submissions in this matter.

[2] By these proceedings, the Law Society appeals the decision of the Solicitors' Disciplinary Tribunal for Northern Ireland ("SDT") made on 22 February 2023.

[3] The decision relates to a complaint brought by the Law Society against the respondent alleging that he was guilty of professional misconduct in contravention of Regulation 8(1) of the Solicitors' Practice Regulations 1987 as amended, which provide:

> "**Professional Conduct**
>
> 8(1) A solicitor shall at all times carry out his work and conduct his practice to the highest professional standards

> and shall observe in relation thereto any decisions or directions which may be adopted, issued or promulgated by the Council either to the solicitor personally or to the profession at large."

[4] The complaint was based on the examination of three conveyancing files relating to purchases by clients of the respondent. It was alleged that he failed to carry out due diligence in relation to the sources of funds provided for the purchases as required by Regulation 28 of the Money Laundering Regulations 2017: that he failed to maintain appropriate and risk sensitive policies and procedures in accordance with Regulation 19 of the Regulations and failed to ensure documentary evidence of compliance was placed on his files in accordance with Regulation 40.

[5] The Tribunal determined having regard to the circumstances of the case not to make any order under Article 51(1) of the Solicitors' (Northern Ireland) Order 1976 ("the Order"), including as to costs.

[6] It is this decision which is appealed pursuant to Article 53(2) of the Order which provides:

> "(2) An appeal against any other order made by the Tribunal … shall lie to the High Court—
>
> (a) at the instance of the solicitor or the Society or any person directed by the order to make any restitution or satisfaction; …"

[7] There are two preliminary issues raised by this appeal. The first relates to the time limit for lodging an appeal.

[8] Under Article 53(6) of the Order, an appeal "shall be brought within 21 days of the making of the order or refusal appealed against."

[9] This raises the question of when the order was made in this case. The order is dated 22 February 2023.

[10] As I understand it, the panel gave its decision orally on the day of the hearing with findings and reasons to follow.

[11] The written decision which is dated 22 February 2023 was not served on the Law Society/appellant until 16 March 2023.

[12] If the order was made on 22 February 2023, the time limit expired on 15 March 2023 and, thus, the appeal is out of time.

[13] If the order was made on 16 March 2023, then the appeal plainly is within time.

[14] The matter is compounded by the fact that on 24 February 2023 (two days after the hearing), the appellant wrote to the respondent in the following terms:

> "Dear Mr Curran
>
> RE: Independent Solicitors' Disciplinary Tribunal:
> 22 February 2023
>
> Further the above hearing on 26 February 2023, I write to confirm that the Tribunal made no finding against you and no order in respect of costs.
>
> Please note that a copy of the Tribunal's Order will be furnished to you once same is to hand.
>
> This concludes the matter. Please do not hesitate to contact me should you have any further queries."

[15] On the issue of time limits, Mr Egan relied on the decision of Madam Justice McBride in the case of *McAteer v the Solicitors' Disciplinary Tribunal* [2024] NIKB 8. In relying on this decision, he sought to draw a distinction between the notification of the decision and the actual making of the order.

[16] Having read Madam Justice McBride's judgment, with which I fully agree, I am not persuaded that it assists the appellant. Importantly, she was dealing with a different scenario than the one being considered in this case.

[17] The procedure for referring matters to the SDT is set out in Article 46 of the 1976 Order.

[18] Article 46 provides that the first step to be taken by the Tribunal is to decide whether a prima facie case has been shown. If not, it can notify the applicant or complainant and the solicitor and take no further action.

[19] If it decides that a prima facie case has been shown, it shall serve various documents on the solicitor requiring the solicitor to swear an affidavit in answer to the case.

[20] After the expiration of the period specified in such a notice, the Tribunal shall then decide if there is no cause for further enquiry and, if so, under Article 46(4)(a) notify the applicant or a complainant and the solicitor and shall take no further action." [my underlining]

[21] Alternatively, if they decide there is a cause for inquiry they shall hold an inquiry.

[22] Article 46(5) provides that where an applicant or complainant or a solicitor against whom an application or complaint is made has been notified under para 1(a) or para (4)(a), the Tribunal shall, if so required in writing, by the complainant or the solicitor, make a formal order embodying their decision.

[23] This is what happened in the *McAteer* case. The debate before Madam Justice McBride was whether time ran from the notification under 46(4)(a) or the order under 46(5).

[24] Understandably in those circumstances, Madam Justice McBride held that time ran from the making of the order and not the notification. The notification to which she was referring was entirely different from the "notification" sent by the Law Society to the respondent on 24 February 2023, which post-dated the hearing and the order of the tribunal.

[25] Importantly, Madam Justice McBride also rejected a suggestion that Article 53(6) should be read in such a way that the SDT must provide reasons before time runs. As she points out in para [45] of her judgment:

> "Rather it provides that time runs from the date of the order. There is no ambiguity in the words of the statute, and I do not consider it necessary or appropriate to read the words "with reasons" into the statute. Time limits are important to bring finality to litigation and I do not consider that reading the statute in this way impairs a party's article 6 rights. This is because, a complainant can issue an appeal and subsequently obtain reasons as Order 106 rule 13, which sets out rules relating to proceedings relating to solicitors, provides that the court can direct the Tribunal to furnish the court with a written statement of their opinion on the case which is the subject of appeal. The existence of this provision, I find, further indicates that the statute does not require the order to set out reasons because if there is a need to consider reasons that can be dealt with subsequently by the Tribunal being asked to provide a written statement. Accordingly, I am satisfied that the provision should not be interpreted to mean an order with reasons."

[26] I am satisfied that the order in this case was made on 22 February 2023. Both the appellant and the respondent were fully aware of the Tribunal's decision.

[27] The letter from the appellant of 24 February 2023 on the face of it confirms that the matter had been concluded. There is no qualification or caveat. If this is indeed a pro-forma letter, in the event that an order was made upholding a complaint, then in future, a solicitor receiving such a letter should be informed of his/her appeal rights under Article 53 of the order, even if the Law Society considers the matter to be concluded.

***Should I extend time pursuant to Order 3 Rule 5 of the Rules of the Supreme Court?***

[28] The starting point is that time limits should be obeyed. This is particularly so when one is dealing with a professional regulatory body which is responsible for implementing the procedures set out in the relevant statute.

[29] The time limit is deliberately short – 21 days which reflects the need for certainty and finality in these types of proceedings. One is dealing with the reputation of a professional person in a small society like Northern Ireland. The respondent is a solicitor of 47 years in practice with an acknowledged unblemished record.

[30] The background is also important in the context of limitation. The complaint was made in August 2019 and has been hanging over the respondent for five years.

[31] I also look to the potential impact on the parties if I extend time. I repeat the respondent informed the applicant after the hearing when the order was made that the matter was concluded.

[32] It is clear, and I accept, from the affidavit of the respondent that this entire matter and, in particular, the late appeal was and is having a serious impact on him.

[33] In terms of the impact on the Law Society, despite Mr Egan's submissions, which I will develop further below, I do not consider that there is a particular issue of principle involved in this case. There has been no issue with any of the conveyances, the subject matter of the complaint. No member of the public or client of the respondent suffered in any way. The omissions complained of have been addressed by the respondent. The decision of the tribunal turns very much on its own facts. It appears to be generally accepted that this is not a case crying out for censure. Mr Egan, very fairly, suggested that an admonishment would be an adequate penalty should the respondent have been found guilty. Undoubtedly, the obligations imposed by the anti-money laundering regulations are important. They are the subject matter of guidance provided by the Law Society. Their enforcement is important. A further case may well arise which will permit an examination of the obligations.

[34] I look to the reasons for the delay. In this case the solicitors acting for the Law Society only received a written copy of the Tribunal's reasons on 16 March which

was beyond the limitation period. I accept fully that the appellant acted promptly on receipt of the written reasons.

[35] That said, I return to the issuing of the letter of 24 February 2023. The appellant, a professional regulatory body, was aware of the decision and was cognisant of the rules and relevant time limits. No caveat or qualification is expressed. It would have been open to write to the applicant indicating that they intended to appeal the matter and could have reviewed the situation on receipt of reasons. At the very least, they could have indicated that depending on the reasons an appeal was to be considered.

[36] Finally, in this context, I look to the merits of the appeal.

[37] Before doing so, I turn to the second preliminary issue raised in this appeal and that is what was the effect of the order made by the panel?

[38] Article 51 of the Order provides:

> "51.-(1) Where the Tribunal hold an inquiry, they may make an order providing for one or more than one of the following –"

There follows a series of potential orders including:

> "(a) the dismissal of the application or complaint;"

[39] Whilst the provision is undoubtedly drafted in broad terms, I consider that it should be interpreted to mean that the Tribunal must make one of the orders provided for in Article 51.

[40] Turning to the reasoned written decision of the Tribunal, it seems clear to me that, in fact, the Tribunal made an order dismissing the complaint. Thus, under the heading "Tribunal's Comments and Findings", the Tribunal noted the omissions which the respondent acknowledged but indicated they had concluded that these could not allow it to determine that he should be adjudicated guilty of professional misconduct. Accordingly, I determine that the order made by the Tribunal was to dismiss the complaint under Article 51(1)(a).

[41] I turn now to the merits of that decision.

[42] The parties referred me to the judgment of Keegan LCJ in the recent case of *Robert Murtagh and The Law Society of Northern Ireland* [2024] NICA 49, which helpfully sets out the approach that the High Court should take to appeals under the 1976 Order at para [35] where she says:

> "Therefore, the following principle may be distilled from the case law – an appropriate level of respect is to be given to the decision of the Committee but that does not prevent the appellate court, in this context, from engaging with the merits and reaching its own conclusion."

[43] The reference to the "appropriate level of respect" contains within it the well-established recognition this court gives to the expertise of panels such as the SDT.

[44] The decision maker in this disciplinary process is by definition expert in nature. The Tribunal knows and understands how solicitors' practices work. It has a specialist institutional competence. This is particularly important when what is at issue is an exercise of evaluative judgment.

[45] I note that this Tribunal was chaired by the then President of the Tribunal. She is a highly respected, experienced solicitor with extensive experience in the disciplinary field. She sat with two other solicitors and a lay member.

[46] The written decision accurately sets out the alleged breaches of the respondent. It accurately refers to the evidence relied upon by the Law Society in relation to the purchases of the three premises.

[47] It records the submissions of the parties.

[48] The key passages of the written reasons are as follows:

> "The Tribunal indicated it had carefully considered the evidence proffered by the Society in support of its application and that it had taken on board the representations made on behalf of the Society and on behalf of the respondent.
>
> The Tribunal confirmed that it had particular regard to the circumstances underpinning the three matters which give rise to this application. Having done so, the Tribunal considered that in all three instances the respondent had made a satisfactory assessment of the risk in relation to the source of funds given its lengthy relationship with and its knowledge of the three clients concerned and their families. The Tribunal noted the omissions which the respondent acknowledged but indicated they had concluded that these could not allow it to determine that he should be adjudicated guilty of professional misconduct. The Tribunal noted the respondent has had a lengthy exemplary career in the solicitors' profession

> and should be afforded full credit for the fact that he has never before had any involvement with this Tribunal."

[49] Ultimately, the decision as to whether the respondent had conducted his practice "to the highest professional standards" and observed "in relation thereto any decisions or directions which may be adopted, issued or promulgated by the Council either to the solicitor personally or to the profession at large", inevitably involves an evaluative judgment.

[50] The Tribunal was fully sighted of the omissions which were accepted by the respondent. It decided in the particular circumstances of the conveyances in question, that he did not fall short of the standards expected. In my view, this was a decision the tribunal was entitled to make and not one with which I would be minded to interfere.

[51] It may well be that a different Tribunal would have come to a different conclusion.

[52] I do consider there is force in Mr Egan's submission that the Tribunal misinterpreted the effect of Regulation 28(11)(a) in that that provision referred to a business relationship rather than individual transactions which were the subject matter of this investigation.

[53] Ultimately, the Tribunal took the view that in the individual circumstances of the transactions in question he was entitled to evaluate the risk as negligible and, therefore, there had been no breach of Regulation 8.

[54] I, therefore, conclude as follows:

(a) The order in this case was made on 22 February 2023.

(b) This appeal is out of time.

(c) Taking into account all of the matters I have referred to above, I am not persuaded that this is an appropriate case in which to extend the time limit for lodging an appeal.

(d) I have also considered the merits of the appeal which can be a relevant factor in the exercise of the discretion to extend time to appeal. For the reasons set out, I am not persuaded that the merits of the appeal are sufficiently strong to justify an extension of time.

[55] The appeal is therefore dismissed.