Neutral Citation No: [2022] NIKB 12 *Judgment: approved by the court for handing down (subject to editorial corrections) **	*Ref:* **SCO11954** *ICOS No:* **21/066154/01** *Delivered:* **07/10/2022**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY DANIEL McATEER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF DECISIONS OF THE SOLICITORS' DISCIPLINARY TRIBUNAL FOR NORTHERN IRELAND

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The applicant (Mr McAteer) appeared in person
David Dunlop KC and Laura Curran (instructed by Mark Jackson, Solicitor, Secretary to the Solicitors' Disciplinary Tribunal) appeared for the proposed respondent

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SCOFFIELD J

Introduction

[1] By this application the applicant, Mr Daniel McAteer, seeks to challenge the way in which the Solicitors' Disciplinary Tribunal (SDT) ("the Tribunal") dealt with a number of complaints which he had made about three solicitors.

[2] The applicant appeared in person. The Tribunal was represented by Mr Dunlop KC, who appeared with Ms Curran. I am grateful to each of them for the assistance they provided to the court by way of their written and oral submissions.

[3] In my initial case management of these proceedings, I identified that the three solicitors about whom the applicant had complained to the SDT were properly to be considered as interested parties, since the applicant sought the quashing of a decision of the SDT in their favour. I directed that they be put on notice of the proceedings and would be entitled to participate at the leave stage. The applicant was concerned about this course and feared that it might increase the costs and complexity of the proceedings. In the event, Mr Magee of Carson McDowell played a limited role at this stage (other than the submission of brief representations by way

of letter and the provision of some additional documents) and essentially kept a 'watching brief' on his own behalf and on behalf of the other two solicitors concerned.

Factual background to the complaints

[4] The applicant is a chartered accountant and a businessman. He has now been involved in a complex series of litigation over many years in relation to a variety of business dealings. He also describes having been engaged in "comprehensive and extensive litigation" against his former solicitor, Mr Brendan Fox, and Mr Fox's then assistant (Mrs Michaela Diver, previously Miss Brunton).

[5] It is unnecessary for present purposes to set out in any great detail the factual background which has ultimately given rise to the present proceedings. This stretches over many years. What follows below is only the very briefest of summaries of the basic elements of that background.

[6] As noted above, the applicant is an accountant and a businessman. He is also a company director. He set up an accountancy practice which developed into a successful business and he became involved in a number of companies operating in a number of sectors. He says that he enjoyed significant success with these ventures between 1991 and 2002. From 2002 onwards, he has been embroiled in a multiplicity of litigation. Much of this litigation involved former business partners, a company called Roe Developments and a variety of licensed premises. At an early stage, Mr Fox (then of Cleaver Fulton Rankin, Solicitors, but later of A&L Goodbody) acted for Mr McAteer and some of his business associates. Later, he acted for other parties in litigation *against* Mr McAteer. The applicant has averred that he believes that litigation brought against him was part of a campaign to destroy his business and reputation, with those behind the campaign including some of his former business associates, a local accountant and his former solicitor Mr Fox.

[7] In due course, the applicant brought litigation against Mr Fox and Ms Diver (as well as others) claiming a variety of breaches of duty on their part. In those proceedings, Mr Fox was represented by Mr Magee of Carson McDowell, Solicitors, on the instruction of the master policy insurers who provided professional indemnity insurance to Mr Fox. In some of the submissions before this court, Mr McAteer referred to this claim as the "conspiracy case." It was a significant piece of litigation and was heard by Weatherup J over some 28 days or so in circumstances briefly summarised below.

[8] Many of Mr McAteer's current complaints relate to the litigation against Mr Fox and Mr Magee's actions in relation to it, although (particularly in relation to Mr Fox and Ms Diver) they are not entirely so confined. Amongst other things, Mr McAteer contends that Mr Magee abused the proper process of the court, including by obtaining judgment against him and his wife in their absence; wrongly tried to claim costs against him and his wife; gave false information to the Legal

Services Commission (LSC) in order to damage his reputation; breached an obligation of confidence in relation to material disclosed in the course of the litigation; provided false information in relation to discovery; and wrongly continued on with litigation, thereby running up huge legal bills.

[9] There is a longer catalogue of complaints still against Mr Fox and Ms Diver, expressed by the applicant in his Order 53 statement in this way: "intimidation of the applicant and his business partner; false accounting; acting where there was a clear conflict of interest; unlawfully interfering with the Legal Services Commission; interfering with forensic accountants; damaging the applicant's position with his professional body; instigating and continuing with a plethora of vexatious cases; misconduct in conducting cases; conspiring with others against the applicant; taking steps to damage the applicant's interests in the Republic of Ireland; manufacturing cases; drafting a bogus share agreement; entering into prohibited fee arrangements; prolonging litigation; unlawful interference with the SDT; unlawful interference with the Legal Services Commission; conflict of interest; interference with KPMG; misconduct in personally serving a statutory demand; concealment of documents regarding KPMG; concealment of documents regarding the Legal Services Commission; failure to make discovery and inspect documents; running up over £500,000 of legal costs unnecessarily."

[10] These claims of wrongdoing and misconduct have been denied throughout by the three solicitors concerned.

[11] As noted above, much of the contention surrounds what happened in the course of the conspiracy case in September 2012 and thereafter, although the applicant's complaints go wider than that. Around September 2012, the applicant reached a settlement with a variety of other defendants in the claim which he had brought. However, no settlement was able to be reached with Mr Fox at that time, largely because of a disagreement about the legal costs (or how the issue of costs between them might be resolved). Mr McAteer declined an offer to go 'back to back' on costs. He proposed that the trial judge be asked to determine the issue of costs, although without having heard the evidence in the case. Mr Fox did not agree to that and, so, the court went on to hear the evidence over many days in order to determine the case. Mr McAteer says that Mr Fox had wanted to settle the case but, effectively, was not permitted to do so and that his (Mr Fox's) insurers drove the litigation on to teach Mr McAteer lesson.

[12] In any event, in September 2012 the part-heard case was adjourned to permit Mr McAteer to make a complaint to the SDT about Mr Fox. As a result, the applicant complained to the Tribunal about Mr Fox and Ms Diver in October 2012. Mr McAteer says that "as a result of interference in the process by Mr Fox's solicitor, Mr Magee, a decision was issued by the SDT in October 2013 not to investigate the complaints." Mr McAteer applied for judicial review in relation to the SDT's decision in this regard in January 2014 and the Tribunal's decision was quashed by the High Court in June 2014. It seems that there was no order remitting the matter

back to the Tribunal and, therefore, the effect of the court's order was simply that there was no extant adjudication on the matters and that Mr McAteer was free to lodge the same or similar complaints in due course – which he did, in October 2017.

[13] In the meantime, the court went on to hear the evidence in the conspiracy case over a significant period of time. In the end, the applicant as plaintiff was unsuccessful in his claim: see [2015] NIQB 81. However, he was ordered to pay only 10% of Mr Fox's costs on the basis that, had Mr Fox agreed to permit the judge to determine the issue of costs without hearing all of the evidence over many days, considerable time and costs would have been saved. (Initially, Weatherup J fixed a defined amount which Mr McAteer should pay towards the defendant's costs. That approach was successfully appealed (see [2016] NICA 46) and the matter was remitted to the trial judge in order for him to set a percentage contribution). Mr Fox then appealed the decision to require Mr McAteer to pay only 10% towards his costs but did so unsuccessfully: see [2019] NICA 8. Mr McAteer also appealed against the substance of Weatherup J's decision to dismiss his claim. The Court of Appeal (Gillen LJ, Maguire J and McBride J) dismissed that appeal in a judgment given by Gillen LJ in December 2017, with a copy of which I have been furnished but which appears to be unreported.

[14] The reference in Mr McAteer's complaints to the three solicitors running up unnecessary costs relates (at least in large measure) to the costs incurred in the evidential hearings in the conspiracy case after it had not proven possible to resolve the issue of costs between the parties.

The applicant's complaints to the Tribunal and how it dealt with them

[15] What Mr McAteer refers to as his "updated complaints" were submitted to the SDT in relation to Mr Fox and Ms Diver in September 2017. A further complaint against Mr Magee was submitted in October 2017. The nature of those complaints is evident from paras [8]-[9] above.

[16] The applicant accepts that he received a communication from the Tribunal dated 21 December 2017 indicating that it was pursuing only a very limited number of matters arising from his complaints. He says that he asked for reasons in relation to this determination but did not receive them. He further says that he indicated at that stage that he would have to apply for judicial review at the end of the process.

[17] As discussed further below, this is the stage at which the Tribunal made its initial determination as to whether a prima facie case had been shown against the three solicitors concerned. Mr McAteer was given a copy of the letters which were sent to the solicitors (Mr Fox, Ms Diver and Mr Magee). This was on 21 December 2017; and I have also been provided with a copy of Mr McAteer's response to this on 22 December 2017.

[18] The email of 21 December 2017 to the applicant from the Secretary to the Tribunal (Mr Jackson) advised him that only certain parts of his complaints were to proceed to the next stage. Mr Jackson provided to Mr McAteer copies of the correspondence to the three solicitors which explained which parts of the complaints would be taken forward. The Secretary's email also contained the following text:

> "As had already been indicated to you, the Tribunal decided that there was a prima facie case in relation to parts of your complaint and you will note those parts which are to be answered by the Solicitors in question. In relation to the other aspects of your complaints you will see that the Tribunal decided that a prima facie case had not been shown. Accordingly matters are proceeding only in relation to the specific allegations as set out in each of the letters to each Solicitor."

[19] The letters to the solicitors, copies of which were provided to Mr McAteer, likewise informed them that the Panel had decided that a prima facie case had been shown in relation to *part of* the respective complaints only, details of which were provided. They continued:

> "The Panel of the Tribunal which considered the complaint were unanimous in their view that many of the matters raised by Mr McAteer had been considered and adjudicated upon in the decisions of Weatherup J which were included in the papers furnished by Mr McAteer."

[20] In respect of Mr Fox, the Tribunal considered that there was a prima facie case in relation to him writing to an expert witness (within the accountancy firm KPMG) in an inappropriate manner and in so doing attempting to influence the terms on which his opinion was expressed; and failing to engage with the opposing party in the litigation in or around September 2012 when agreement had been reached between the parties on a form of undertaking to resolve the litigation, so that he was responsible either wholly or in part for the prolongation of the legal proceedings resulting in wasted time and costs. In relation to Ms Diver, the Tribunal considered that there was a prima facie case in relation to contact with the expert witness. In relation to Mr Magee, the Tribunal considered that there was a prima facie case in relation to the prolongation of the litigation.

[21] On 22 December 2017, Mr McAteer responded to the Secretary to the Tribunal. He expressed surprise at the course adopted by the Tribunal and, in particular, asked whether issues which had been addressed in the judgment of Weatherup J were to be ignored (and whether the Tribunal had concluded that those issues amounted to professional misconduct). Mr McAteer summarised the issues in respect of which he understood that Weatherup J had made a number of findings of fact, which in his view amounted to misconduct, as follows: failing to provide

discovery; engaging in multiple unnecessary applications; failure to provide documents regarding the LSC; interference with the original SDT process; and the concealment of documents (after sworn discovery affidavits had been submitted to the court). Mr McAteer also relied upon the fact that Weatherup J had expressly declined to be drawn on whether any criticisms, or perceived criticisms, he had made in relation to the actions of the three solicitors, or any of them, amounted (in his view) to professional misconduct. The judge made the point that this was for others to determine. Mr McAteer concluded this email with the following warning:

> "For the avoidance of doubt and in the interests of transparency I should put you on notice that in the event that the SDT has decided that it is going to ignore all the other complaints, I will have no option but to apply for a judicial review of that decision."

[22] Mr Jackson replied on 10 January 2018 indicating that he had forwarded Mr McAteer's email to the Panel which had considered the issue and that he would revert shortly. In the event, it was 15 March 2018 before a substantive reply was provided (which also addressed separate complaints which had by then been raised by Mr McAteer, namely that Mr Magee was predicting the outcome of the SDT, which Mr McAteer took to confirm his suspicion that Carson McDowell had some kind of influence over the Tribunal process, and the contention that he had lost confidence in the SDT process generally and therefore now wished to "refer the matter to a higher authority"). In his response, Mr Jackson emphasised that, as he had previously indicated, the Tribunal had decided that there was a prima facie case in relation to "certain aspects" of Mr McAteer's complaint. Those complaints were ongoing and the respondents to them had asked for, and been granted, an extension of time to file their replying affidavit evidence. He assured Mr McAteer that the Tribunal process was completely independent and that Carson McDowell had no influence over it whatsoever, save that they represented Mr Magee.

[23] From the Tribunal's perspective, having found a prima facie case in relation to limited elements of the complaints, the next step was to require a response from the solicitors concerned. The three solicitors swore affidavits in April, May and June 2018 respectively. There was a very considerable amount of time before these were disclosed to Mr McAteer, which is regrettable to say the least. Part of the delay arose because of an issue about non-disclosure of the affidavits, or redaction of certain parts of them, which, in turn, was raised as a result of ongoing litigation between the various parties to the SDT complaint. In particular, Mr Magee submitted an affidavit in April 2018. This caused a significant amount of contention because, when the affidavit was submitted, Mr Magee requested that certain of its contents remain redacted and not be disclosed to Mr McAteer. This was because, as noted above, the parties were still in the course of contentious litigation in relation to the costs of the conspiracy case (with the second appeal in relation to this only being determined by the Court of Appeal in February 2019). Mr McAteer was and is highly suspicious about the motivation for, and effect of, this request that certain

parts of Mr Magee's affidavit be withheld. I have seen a full copy affidavit, which explains the decision-making within Mr Fox's legal team in relation to the costs issue in the conspiracy case in or around September 2012 (which is central to the complaint that the respondents to the complaint wrongly prolonged the proceedings or ran up costs). It appears to me to enter into territory in respect of which legal professional privilege would normally arise. I can therefore understand why the request was made that the affidavit not be disclosed in its entirety to Mr McAteer at that point; although the effect of this was unfortunate.

[24] The affidavits were, it seems, only received by the Tribunal itself in June 2019, at which stage the Tribunal considered all of the papers in order to ascertain whether it should hold an inquiry. This determination was made in July 2019. By this time, the second costs appeal had concluded before the Court of Appeal. It seems that, in light of the redaction request, the affidavits, when provided in July 2018, were returned by the Tribunal and only re-submitted once the redaction issue was no longer a live concern around a year later.

[25] Having considered the replying affidavits, the Tribunal in July 2019 decided that there was cause for an inquiry in relation to the matters in respect of which it had previously determined there to be a prima facie case. This was communicated by email to Mr McAteer on 31 July 2019. A proposed timeframe for replying affidavits and a listing date in September 2019 was put forward. The solicitors' affidavits in response to the complaint were served on Mr McAteer on 7 August 2019. He was concerned that, with a variety of his other commitments at that time, he would not be able to deal with these adequately in advance of the SDT hearing. The hearing had been scheduled for 11 September and, on 5 September, the Tribunal refused to adjourn the hearing for a significant period of time but, instead, moved the hearing to 20 September to accommodate Mr McAteer. This meant that there was some six weeks between the hearing and when Mr McAteer had been provided with the affidavits from the solicitors.

[26] On 19 September 2019, the eve of the hearing, the Secretary to the Tribunal, upon direction of the President, circulated a summary of the allegations to be determined for ease of reference. This has been described as the President 'crystallising' what was being taken forward, with a document clarifying this provided to the parties to assist with the conduct of the hearing. Additional materials were also provided.

[27] At the hearing on 20 September, Mr McAteer wanted the hearing to be adjourned, particularly because of the issue of Mr Magee's affidavit and certain further enquiries he wished to make as a result of this; and partly because he considered himself to have been bombarded with too much material on the eve of the hearing. He considered the solicitors' affidavits to have made the case for the first time that the decisions in relation to costs which had resulted in the need for the evidential hearings in the conspiracy case were *not* those of Mr Fox but, rather, those of his indemnity insurer (Royal Sun Alliance). Mr McAteer also wanted to be

provided with reasons for the earlier decision on the part of the Tribunal to find a prima facie case in respect of limited parts of the complaint only. The Panel indicated that it would not be giving reasons for that earlier decision. Its position was that Mr McAteer knew in September 2019 what was going forward; and that the first stage determination of whether there was a prima facie case (and in respect of which aspects of the complaint) were no longer for it to consider. (The Panel sitting at that stage was also a different configuration than the Panel which had made the earlier decision in 2017.)

[28] At the hearing on 20 September 2019, Mr McAteer also became aware that the SDT proceedings were recorded. He wished to be provided with a recording of the proceedings and was advised that he could apply for this at a later point. The recording was said to be primarily in order to assist the Law Society with the drawing up of orders and parties were not entitled to it as of right. This was the commencement of a long process of Mr McAteer seeking the audio recordings of the various SDT hearings in relation to his complaints. These were furnished, under the auspices of the present proceedings, in February 2020. I was asked by Mr McAteer to listen to some relevant portions of the recordings, in particular of the hearing on 20 September 2019, and have done so.

[29] In any event, the applicant's application for an adjournment was granted and the hearing was set to recommence on 10 January 2020. In due course, that hearing convened and considered the aspects of the complaint on which a prima facie case had been found. Mr McAteer remained unhappy that the majority of issues raised in his complaints had been 'swept aside' in late 2017 and about the means he had to challenge the case mounted by the respondents in respect of the issues which the SDT was considering. Nonetheless, he presented his case; the respondents presented theirs (through counsel); and the Tribunal reserved their decision for further consideration.

The pre-action correspondence and the Tribunal's decision

[30] By 31 July 2021, the Tribunal had not produced a decision. Mr McAteer had raised this with the Office of the Lord Chief Justice, which in turn directed him to Ms Marion Cree, the Legal Services Oversight Commissioner for Northern Ireland ("the Oversight Commissioner"). On Mr McAteer's case, the Commissioner confirmed that, whilst she was in office, she had no power to act as a result of a failure of the Northern Ireland Assembly to pass legislation enabling her to do so. On this basis, Mr McAteer contends that there is "a regulatory and statutory lacuna in relation to complaints about members of the legal profession."

[31] Also on 31 July 2021, the applicant sent a pre-action protocol letter to the Tribunal, threatening judicial review on the basis of the delay in its provision of a decision. The applicant says that, up until this point, the Tribunal had been 'ignoring him.' In submissions on its behalf, the Tribunal has indicated that the volume of documentation to be considered by it prior to reaching its decision, along

with the administrative difficulties caused by the coronavirus pandemic and associated restrictions, resulted in delay in the issuing of written decision. Indeed, this is reflected in the text of the decision itself, which additionally offers an apology for the delay in its production.

[32] The Tribunal responded to the applicant on 16 August 2021 by providing a decision. This was the date which had been given for a response by the Tribunal in the applicant's pre-action correspondence. Notwithstanding this, the applicant still seeks a remedy in respect of the delay in providing decision. He also seeks relief quashing the decision.

[33] The Tribunal decision addressed some authorities dealing with the meaning of professional misconduct but determined that no precise definition was available which assisted in the particular circumstances of the case. It commented that there had been voluminous documentation provided, much of which it considered irrelevant to the limited issues with which it had to deal. It made the following general observations at paras 13-14 of its decision:

> "The Tribunal made it clear that the only issues with which the Tribunal could deal are those set out. The Tribunal is unable to deal with numerous other matters which may exist between the parties. The factual scenario in the battle between the parties has been well aired in previous hearings before the Courts. It is not the function of this Tribunal to revisit any of that. There is a flavour in the Affidavits which have been presented by all of the parties of an animosity between the parties but this Tribunal is charged with deciding on whether there was professional misconduct.
>
> In litigation there might often be what is described as "an edge" between the parties but that does not necessarily translate into professional misconduct."

[34] The Tribunal went on to consider the two aspects of the complaints mentioned at para [20] above. It referred to a number of judgments in the litigation between the parties, both at first instance and in the Court of Appeal, in which these issues had been addressed. Although Weatherup J had characterised some of the respondents' behaviour as "unwise", and considered the course of the litigation in relation to his rulings on costs, there had been no reference made to the Law Society in respect of what was considered to be professional misconduct. In relation to the alleged interference with the KPMG report, the Tribunal considered that there was no evidence to indicate that the opinion expressed was other than that of the expert who was involved. In relation to the alleged prolongation of the litigation, the Tribunal found that there was no evidence of any of the lawyers acting without authority and, indeed, considered that throughout they were acting on the

instructions of the professional indemnity insurers for Mr Fox, who was the client. The Tribunal observed that the "rough-and-tumble of litigation" cannot easily be translated into professional misconduct.

[35] Accordingly, the Tribunal did not find the complaint of misconduct made out and dismissed all of the allegations and complaints against the solicitors with which it was at that stage dealing.

Summary of the parties' positions in these proceedings

[36] The applicant contends that the decision issued by the Tribunal on 16 August 2021 failed to deal with a wide variety of matters about which he had complained. He also characterises the decision which was issued as "a cynical attempt" to try to comply with his requests in his pre-action correspondence that a proper decision be issued.

[37] In the applicant's pleaded case in his Order 53 statement, he describes the decisions presently under challenge as follows:

> "(i) A decision by the SDT to limit the scope of its investigations in relation to the complaints made by the applicant regarding Mr Fox, Mrs Diver and Mr Magee; and
>
> (ii) The failure by the SDT to issue a timely decision and bring finality to the matter despite the fact that the hearing took place in September 2019."

[38] The applicant contends that a number of judgments in his various pieces of litigation were prima facie evidence of professional misconduct on the part of the solicitors. His pleaded grounds of judicial review are illegality (including a failure to apply a proper definition of misconduct); the leaving out of account of material considerations (and, in particular, what he considered to be evidence of misconduct in relation to the wide variety of complaints he had made); procedural unfairness (particularly in relation to the delay throughout the SDT process and in the late service upon him of the solicitors' replying affidavits); irrationality; improper motive, bad faith and/or bias; breach of a variety of provisions of the Solicitors (Northern Ireland) Order 1976; breach of a substantive legitimate expectation that he would be afforded an effective remedy; and breach of a variety of his Convention rights.

[39] Mr Dunlop on behalf of the Tribunal submitted that none of the applicant's grounds of judicial review surmounted the leave threshold of being arguable grounds with a realistic prospect of success. In addition, he also raised a number of procedural issues which were contended to be knock-out blows in respect of the applicant's application for leave, focusing his submissions principally on the issues

of delay and alternative remedy. He drew particular attention to the fact that the applicant's pre-action correspondence was directed towards the question of delay in the Tribunal's provision of its ruling and sought a decision from the Tribunal, which had then been provided. The proposed respondent invited the court on a variety of these bases to refuse the applicant leave to apply for judicial review.

Relevant statutory provisions

[40] The functions of the SDT are provided for the in the Solicitors (Northern Ireland) Order 1976 ("the 1976 Order"). The applicant's complaints were dealt with under Article 44(1)(e) of the 1976 Order, that is to say that they were complaints by a person other than the Law Society of Northern Ireland that the solicitors concerned had been guilty of professional misconduct or of other conduct tending to bring the solicitors' profession into disrepute.

[41] The procedure in respect of complaints against a solicitor under Article 44(1)(e) is governed by Article 46. There are essentially three stages. First, the Tribunal must decide whether a prima facie case has been shown. If it decides that a prima facie case has *not* been shown, it must notify the applicant or complainant and the solicitor concerned "and take no further action": see Article 46(1)(a). If it decides that a prima facie case *has* been shown, then it must serve on the solicitor concerned a copy of the complaint, along with a copy of the affidavit grounding it and copies of (or at least a list of) the relevant documents and, importantly, a notice requiring the solicitor to send the Tribunal within a specified period an affidavit in answer to the complaint, together with any documents upon which he or she relies: see Article 46(1)(b).

[42] The first-stage determination of whether or not there is a prima facie case against a solicitor or solicitors about whom complaint has been made is therefore an important part of the statutory regime and one which will inevitably shape the further action (if any) taken by the Tribunal. Since the Tribunal must "take no further action" if a prima facie case is not established, it is incumbent on complainants to ensure that the evidence in support of their complaint is fully and clearly set out when the complaint is made.

[43] It is clear from the provisions of the 1976 Order that, where the Tribunal has decided that a prima facie case has not been shown, the complainant (or applicant, as the case may be) must be notified of this. Upon such notification, the complainant (or the solicitor) may require the Tribunal in writing to make a formal order embodying their decision: see Article 46(5).

[44] Assuming that a prima facie case has been shown, the solicitor concerned is then required to provide an affidavit in answer. The Tribunal's second-stage consideration arises once that affidavit (if any) has been provided. It must consider the issues again with the benefit of the solicitor's response and once any relevant documents relied upon by the solicitor have been furnished: see Article 46(4). If the

Tribunal decides that there is no cause for further inquiry, it shall so notify the applicant or complainant and the solicitor and shall take no further action. If it decides that there is cause for inquiry, the Tribunal shall then hold an inquiry. The inquiry (in this case, the hearing on 10 January 2020) is the third stage, when the Tribunal's substantive consideration of the matter will occur, provided the complaint (or some aspect of it) has made it through the first and second stages.

[45] A disappointed complainant who wishes to challenge a decision of the Tribunal has a right of appeal (with leave) to the High Court. That appeal right relates to any order made by the Tribunal, except an order made under Article 51(3) (which is not relevant for present purposes). There is an appeal right in Article 53(1) of the 1976 Order which does not apply in this case (since it relates to an application to the Tribunal, rather than a complaint). In the present case, the relevant provision is Article 53(2), which provides as follows:

> "An appeal against any other order made by the Tribunal (except an order under Article 51(3)) 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;
>
> (b) by leave of the High Court, at the instance of any other person appearing to the High Court to be affected by the order."

[46] By virtue of Article 53(6), an appeal under Article 53 shall be brought within 21 days from the date of the making of the order or refusal appealed against.

The challenge to the SDT decision on scope

[47] A key aspect of the applicant's challenge – perhaps his main point of complaint – is the Tribunal's failure to deal with the full gamut of his complaints against the three solicitors concerned, or at least much more than the limited aspects of those complaints addressed in the Tribunal's final determination. The applicant contends that the Tribunal failed to apply a proper definition of "misconduct"; and also that the Tribunal failed to deal at all with a number of issues which were (on his case) prima facie evidence of misconduct on the part of the solicitors about whom complaint was made. He submits that this was in breach of the Tribunal's duty to the public and also to the legal profession (it being part of the Tribunal's function to uphold the reputation of the profession). He also contends that the Tribunal framed the contest in a way which meant that it was "unwinnable" for him, in looking only at the issues of whether the solicitors had wrongly prolonged litigation and interfered with KPMG.

[48] Part of the applicant's claim is that the Tribunal left material considerations out of account. The long list of matters Mr McAteer contends were left out of account is described as "the evidence of misconduct" of the three solicitors committing certain acts which would or may amount to misconduct, those acts really representing a list of the various findings which Mr McAteer hoped the Tribunal would make (as set out at paras [8]-[9] above). Mr McAteer further contends that the SDT's decision to limit what it was looking at was *Wednesbury* irrational.

[49] The respondent contends that the applicant's case in this regard has not met the threshold of arguability. This is primarily on the basis that the assessment of an expert tribunal such as the SDT should be accorded significant respect (see, for example, *Department for Work and Pensions v Information Commissioner* [2016] EWCA Civ 758, *per* Lloyd Jones LJ, at para [34]). Mr Dunlop submitted that the phrase "professional misconduct" is not one which is capable of universal definition; and that the Tribunal's approach to this displayed no error of law. He relied on the observations of Lord Justice Clark in *Mallon v General Medical Council* (2007) Scot CSIH 17 at para [18], which is cited by the Tribunal in its decision, in the following terms:

> "In view of the infinite varieties of professional misconduct and the infinite range of circumstances in which it can occur it is better in our opinion not to pursue a definitional chimera. The decision in every case as to whether the misconduct is serious has to be made by the Panel in the exercise of its own skilled judgment on the facts and circumstances and in light of the evidence…"

[50] The position is perhaps complicated further still where, as here, the allegations of misconduct arise largely in respect of the conduct of adversarial litigation where the complainant was the opposing party (rather than, by way of contrast, a complaint by a client against their own solicitor): Jay J referred to complaints in an analogous situation as arising in "unusual circumstances" and of a "heterodox nature" in *Shaw & Turnbull v Logue* [2014] EWHC 5 (Admin), in an appeal from the SDT in England & Wales.

[51] The applicant's pleaded case has not made it easy for me to determine whether or not there is indeed an arguable case that certain aspects of his complaint were wrongly ruled out at the preliminary determination stage. That is because there is considerable force in the respondent's submission that the pleading of the material considerations said to have been left out of account is really just a list of highly contentious allegations made by Mr McAteer. There is no proper basis for me to conclude that the members of the Tribunal did not carefully consider the evidence provided to it by Mr McAteer when they first considered his complaints. The reasoning they provided, such as it was (see paras [18]-[19] above), was limited. However, it seems clear that they took their lead from the judicial consideration of

the matters which Mr McAteer had raised, insofar as those matters had already been considered by the courts.

[52] Weatherup J had referred to some conduct on the part of Mr Fox and Ms Diver as having been "unwise"; but went no further. (Indeed, in one instance, he made clear that the unwise conduct did not constitute a breach of Mr Fox's duty as a solicitor: see para [30] of Weatherup J's judgment). Insofar as many of the applicant's complaints overlapped with factual allegations which had been addressed in the conspiracy case, Weatherup J had concluded that these did not amount to conspiracy or breach of contract. He was not satisfied that Mr Fox was "responsible for a raft of unnecessary litigation" against Mr McAteer. Nor was he satisfied that Mr McAteer had made out his case against Mr Fox, which included claims of breach of contract (incorporating duties as a solicitor to avoid a conflict of interest and any breach of confidentiality) and more general claims that Mr Fox had misused his professional relationship against Mr McAteer. It is clear that Weatherup J had before him allegations of the institution of unwarranted legal proceedings and improper disclosure of various types of information designed to harm Mr McAteer, including in respect of interactions with the LSC and the applicant's own professional body. The extent of the matters before Weatherup J are summarised in paras [8]-[11] of his judgment; and his rejection of the plaintiff's case is set out at paras [60]-[61]. The Court of Appeal, in the substantive appeal against Weatherup J's judgment, did not disagree with it in any material respect.

[53] In its initial assessment of the complaints, the SDT was entitled to take into account the judicial findings relating to many of the matters of which the applicant still complained, Weatherup J having heard detailed evidence in relation to these issues over many days. Indeed, Mr McAteer himself relied upon this judgment as, in his view, representing evidence of misconduct. I have not been persuaded that the applicant enjoys a realistic prospect of success in displacing the Tribunal's initial judgment (that many aspects of his complaints did not amount to a prima facie case of professional misconduct) on the basis that that is irrational, bearing in mind the respect which is due to their judgment as a specialist regulatory tribunal. I need not reach any concluded view on that matter, however, for the following reasons.

[54] Leaving aside the merits of this aspect of Mr McAteer's challenge, it is abundantly clear that this is really a complaint about the determination made at the *first* stage of the Tribunal's decision-making in late 2017. In my judgment, this aspect of the applicant's proposed application for judicial review cannot be permitted to proceed at this stage. There are two issues which operate as a bar to the grant of leave. First, I accept the proposed respondent's submission that the applicant could, and should, have appealed this decision back in 2017. Second, even if the availability of a statutory appeal was not a bar to the grant of leave, this aspect of the applicant's challenge is irredeemably out of time.

[55] As discussed above, a complainant has the right of appeal (with leave) to the High Court against a wide variety of decisions and determinations of the Tribunal.

That would include a decision to rule out a complaint, or part of complaint, as not raising a prima facie case. Where a statutory appeal is available by way of alternative remedy, this will generally act as a bar to the grant of leave to apply for judicial review. This doctrine was considered recently in *Re Alpha Resource Management Ltd's Application* at both first instance and on appeal: see [2021] NIQB 122 and [2022] NICA 27. As the Lady Chief Justice noted in para [20](iii) of her judgment:

> "The general principle is that an individual should normally use alternative remedies where these are available rather than judicial review. The courts take the view that save in the most exceptional circumstances, the judicial review jurisdiction will not be exercised where other remedies were available and have not been used."

[56] Where, as in this case, the challenge is to the substantive decision-making of the Tribunal in not permitting certain aspects of the complaint to go forward, this is classically a case where an appeal on the merits is appropriate. I see no reason why, exceptionally, the applicant should be permitted instead to pursue this issue by way of judicial review.

[57] The judicial review time limit is three months from when the grounds of challenge "first arose": see RCJ Order 53, rule 4(1). The proposed respondent therefore contends that the challenge to the Tribunal's preliminary decision-making on which aspects of Mr McAteer's complaints should be taken forward was over 3½ years out of time when these proceedings were commenced in late August 2021. The grounds on which Mr McAteer relies were as evident back in 2017 as they are now. No good reason for extending time has been shown in this case. A variety of parties, including the Tribunal and the solicitors concerned, have been proceeding on the basis for some years now that there was no prima facie case in relation to a wide range of the matters which were the subject of Mr McAteer's complaints. Even assuming that there is an arguable case that that determination was irrational, the time for challenging it has long since passed. A putative applicant for judicial review cannot prospectively extend time merely by warning the proposed respondent that they reserve the right to (or will) challenge a preliminary decision at some later time of their own choosing, well after the grounds for the application have first arisen.

[58] A challenge at the point of the Tribunal's first-stage decision-making could not be said to have been premature since, as I have explained above, it is the preliminary determination which shapes the Tribunal's proceedings and the evidence which it will gather. Moreover, there was no prospect of this decision being reconsidered in the course of the Tribunal's procedure itself since Article 46(1)(a) provides that, where the Tribunal has decided that a prima facie case has not been shown, it "shall… take no further action." It is therefore imperative that a

challenge in relation to that issue is mounted immediately after the first-stage determination is made.

[59] Mr McAteer told the court that he thought he could not challenge the Tribunal's decision until the end of the whole process (although he says that, at the relevant time, he put the Tribunal on notice that he would wish to challenge its decision in this regard). However, the applicant's email to the Tribunal of 22 December 2017 (referred to at para [21] above) expressly threatens to judicially review the Tribunal's preliminary decision. Mr McAteer told me that his intention was to do so at the very end of the Tribunal procedure; but his email does not make this clear. Indeed, there were a number of other points at which Mr McAteer raised the prospect of challenging the Tribunal's preliminary decision well in advance of the issue of these proceedings.

[60] The Court of Appeal in England and Wales gave some consideration to the distinction between cases where it is appropriate to await a final decision and those in respect of which a challenge must be made to an earlier preliminary decision in *R (Nash) v Barnet LBC* [2013] EWCA Civ 1004. The decision of Underhill LJ at first instance was quoted with approval, including the following passage:

> "But if the earlier and later decisions are distinct, each addressing what are substantially different stages in the process, then it is necessary to decide which decision is in truth being challenged; if it is the earlier, then the making of the second decision does not set time running afresh."

[61] In light of the discussion above, the first stage decision making under Article 46(1)(a) is obviously a distinct part of the process which will not be revisited. The Tribunal's final determination on the limited aspects of the applicant's complaint in respect of which a prima facie case had been found in late 2017 does not start time running afresh.

[62] Had the applicant been in any doubt about the limited basis upon which the Tribunal was proceeding – which I cannot accept to be the case in light of the content of the exchanges in December 2017 – that would have been resolved when he was provided with the summary of complaints which were to be decided on 19 September 2019. At the very latest, therefore, in September 2019 there was a clear and unambiguous definition of the issues which the Tribunal were taking forward and Mr McAteer was further told that the Tribunal would not be revisiting or providing further reasons for the preliminary determination taken several years before. A challenge to this aspect of the Tribunal's process, either by way of judicial review or appeal, was also not made at that stage.

[63] Mr McAteer did, however, email the Secretary and President of the Tribunal on 20 March 2020. He was at this stage raising concerns about not having been provided with the recording of the hearing. However, he also said that it was

"becoming clear that the Tribunal has no intention of dealing with the large number of complaints that I have made and has (probably reluctantly) decided only to deal with one complaint." He referred to his right of appeal under Article 53(2)(b) of the 1976 Order but said that "in the present case there hasn't been a formal order not to investigate the matters complained of"; that it occurred to him that he may need such an order so that he could lodge the appropriate application for leave to appeal; and that he would therefore be grateful if a formal order could be issued "confirming that you have taken the decision not to investigate the following complaints" which were then listed. Mr McAteer concluded this email by saying that this matter had been raised and was a live issue in the context of other High Court litigation in which he was involved, so that he was therefore seeking a prompt reply; and that, in the event that he did not hear back from the Tribunal, he would "conclude that the position is as I have put it, and that the order is made and I shall proceed accordingly."

[64] I have not been provided with the response, if any, to Mr McAteer's email of 20 March 2020. By that stage, not only had the SDT's full hearing been held but, as Mr McAteer was aware, a different constitution of the Panel was dealing with his case than had considered the matter when his complaints were first made. (I was informed that a number of those who were involved in the preliminary decision making in late 2017 had by this time retired.) The Panel which dealt with the inquiry hearing had already indicated clearly that it was only addressing the limited aspects of his complaints which were identified in late 2017 as raising a prima facie case and reiterated this in advance of the intended hearing in September 2019. What is clear from this correspondence, however, is that the applicant had identified that he had a right of appeal which could be used to challenge the Tribunal's decision to inquire only into a limited range of issues in respect of which it had found a prima facie case to have been shown. The applicant was also threatening to seek leave to appeal from High Court whether or not a formal order was issued by the Tribunal. He did not do so. Had he done so, it was open to the High Court, pursuant to RCJ Order 106, rule 13 to direct the provision of a statement from the Tribunal.

[65] Mr McAteer has also said that, because of the failure on the part of the Tribunal to provide reasons for its decision as to which parts of the complaints were to be taken forward, he felt there was 'nothing to appeal.' I do not accept that as a proper basis for permitting this aspect of his challenge to proceed. Assuming both that there was an obligation to give reasons for a conclusion that a prima facie case had not been shown and that the information provided in the correspondence of 21 December 2017 did not provide adequate reasons, that could itself have been a basis for an appeal. In any event, it was no impediment to an appeal, in the course of which the High Court could have looked at the substance of the matter afresh. As noted at para [63] above, Mr McAteer was also later threatening to proceed to appeal in the absence of any further information being provided by the Tribunal. That option was open to him at all stages.

[66] Somewhat curiously in my view, as well as seeking an order of certiorari quashing the Tribunal's decision to restrict the scope of its investigations in relation to the conduct complained about, the applicant's Order 53 statement also claims an order "prohibiting the SDT from any further involvement in relation to the complaints that have not yet been properly investigated." It seems therefore that the applicant wishes to establish that the Tribunal *should have* looked at further issues within his complaints but that he would not wish them to do so now even if he were successful in this aspect of his challenge. In my view, this stance would be a further reason to refuse leave on this issue, since it would result in no practical benefit to the applicant.

The delay in providing the decision

[67] At the conclusion of the hearing in January 2020, the Tribunal indicated that, in light of the significant volume of documentation and the submissions which had been made, it would not be in a position to deliver a decision on that date. Rather, the Tribunal intended to confer, reach a decision, and then communicate that in writing as soon as possible. It took some 19 months for this to occur. Mr McAteer promotes his case on the basis of the delay rendering the entire process "impotent" or "useless" and of no effect. I do not accept that that follows. The substance of the Tribunal's decision is a separate matter from the length of time taken for the decision to be promulgated.

[68] It is not possible for me at this stage of these proceedings, without having received any detailed evidence from the Tribunal on the factors which gave rise to the delay in it issuing its judgement, to form any clear view as to whether that delay might be justifiable in some way. The Tribunal has raised the question of the disruption to its work caused by the Covid-19 pandemic. On its own, I cannot see how that could have significantly impacted the preparation of the written decision. There can of course also be a range of other legitimate reasons why a decision might not be provided as quickly as litigants or the Tribunal itself may wish. Nonetheless, on the basis of the evidence before the court presently, there is clearly an arguable case that the Tribunal acted in a procedurally unfair way by virtue of the delay in providing a decision.

[69] Mr McAteer drew attention to the fact that, in the *Shaw & Turnbull* case referred to above, Jay J considered a delay of over 10 weeks as being too long between the Tribunal's delivery of its oral ruling and the delivery of its written ruling. However, in that case, the tribunal was able to give an oral ruling and, it seems, later produced a written ruling which was "not significantly more fulsome than the SDT's decision announced orally." I do not consider the present case to be on all fours with the *Shaw & Turnbull* case. Nonetheless, I have no doubt in concluding that this aspect of the applicant's complaint meets the threshold for the grant of leave on the merits. The key question is whether this element of the challenge is now academic and would serve no useful purpose.

[70] It looks obvious that the applicant is correct in his suspicion that it was his pre-action correspondence which prompted the issue of its substantive decision by the Tribunal in this case – but that is essentially what the applicant was asking the Tribunal to do. In the section of the pre-action correspondence where an intending applicant must set out the details of the action which they expect the respondent to take, Mr McAteer said, "To bring this long-standing matter to an end." The Tribunal subsequently issued its decision, in which it noted that its deliberations coincided with the outbreak of the coronavirus pandemic and the subsequent restrictions and that there was therefore a delay in issuing a written decision, and in which it further apologised for this delay.

[71] I see no benefit in granting leave on this issue given that the Tribunal has now issued its decision. This is what the applicant was seeking in his pre-action correspondence which foreshadowed this application. The focus of his complaint now is really on the substance of the Tribunal's decision. Even if the applicant's case was to be successful on the delay issue, there is no relief which could usefully be granted. All that the applicant might hope for is a declaration; but the Tribunal has already apologised for the regrettable delay in its decision being issued.

[72] Although the court has a discretion to proceed to hear a public law dispute where the issue has become academic as between the parties, this discretion is to be exercised with caution. The paradigm case where a court may be persuaded to do so is where a discrete issue of statutory construction arises, which does not involve detailed consideration of the facts, and the contested issue of interpretation would benefit from clarification because it is likely to arise in the significant number of further cases. The present application bears few if any of these features. Mr McAteer presents it as a case where the court is required to provide a definition of the phrase "professional misconduct" in Article 44 of the 1976 Order. However, every case will turn on its own particular facts and, as noted above in the reference to the Scottish case (at para [49]), the search for an all-encompassing definition of this phrase is likely to be a chimera. In truth, the applicant's real concern is not clarification of the law but to reopen the substance of the Tribunal's determinations at the first and third stages of its decision-making.

The challenge to the substance of the August 2021 decision

[73] In parts of his submissions, the applicant also appeared to challenge the Tribunal's conclusion in its decision of 16 August 2021 that there was no misconduct, given the weight of the evidence which he submits supported his complaint. This is primarily an irrationality challenge. The respondent has drawn attention to the fact that the substantive findings in the order of the Tribunal on 16 August 2021 are not listed in section 3 of the applicant's Order 53 statement as a decision under challenge (see para [37] above). There is, however, a claim for relief in the form of an order of certiorari in respect of that decision. On the other hand, the applicant's preliminary written submission noted that this application was "not intended to address the merits or lack of merits of the complaint themselves" but

was rather concerned with the conduct of the process and the absence of oversight by the Oversight Commissioner.

[74] The proposed respondent again says that this aspect of the applicant's case is unarguable. The Tribunal had before it voluminous affidavits filed by each of the parties. It also had the benefit of both oral and written submissions made by the applicant and by senior counsel for the solicitors in question. It is a specialist tribunal in this field. For my part, I consider there to be significant force in the proposed respondent's submissions that the applicant's irrationality claim has no realistic prospect of success. Indeed, his claim that the Tribunal's substantive findings were irrational is somewhat at odds with his earlier submission to the Tribunal that the only issues which the Tribunal was proposing to consider were "unwinnable" for him. He has not discharged the evidential burden of showing that material considerations were left out of account; nor do I consider his claim of bias and bad faith to have any evidential foundation. In light of the length of time between the provision of the solicitors' responding affidavits to him in August 2019 and the Tribunal's ultimate substantive hearing in January 2020, I do not consider his procedural unfairness complaint to have a realistic prospect of success either.

[75] However, if and insofar as the applicant is now seeking to challenge the substantive conclusions of the Tribunal, this again is an area where he plainly has or had an alternative remedy by way of appeal under Article 53 of the 1976 Order. In fact, in his preliminary submission filed in response to the court's initial case management directions order, Mr McAteer said that he could see that an appeal to the High Court "might be more appropriate" in relation to the findings of the SDT that there was no misconduct. He indicated that he would issue an application for leave to the High Court and issue a notice of appeal. (I am unaware if he has done so: no such application has come before me.) Alternatively, Mr McAteer asked that the court give leave so that the notice of appeal could be lodged. However, such an application should be made in the proper manner in accordance Part II of RCJ Order 55 and RCJ Order 106. In the course of submissions, the applicant again accepted that he may have a remedy by way of appeal in relation to that part of his complaint which the Tribunal did determine.

[76] I accordingly decline to grant leave in relation to this aspect of the applicant's claim on the basis that he has an acknowledged alternative remedy.

The "lacuna" in regulation

[77] In his submissions, Mr McAteer laid some emphasis on what he considered to be a lacuna in the regulation of legal professionals at the moment in light of the fact that the Oversight Commissioner is presently unable to fully fulfil her intended functions. The Commissioner's post was established by the Legal Complaints and Regulation Act (Northern Ireland) 2016. The Act has, however, not been commenced. The intention behind the 2016 Act was to move away from a system where legal professionals self-regulate to one where lay people lead the process.

Mr McAteer contends that, as a result of the Commissioner not presently having full powers, there is no effective remedy against misconduct by solicitors in circumstances where the Law Society and/or the SDT failed to act properly or at all. Ms Cree appears to occupy her position as Commissioner in something of a shadow role for the moment; and also continues as the Lay Observer under Article 42 of the 1976 Order.

[78] In my assessment, this issue has been significantly over-played by the applicant, perhaps on the basis of a misunderstanding of what the Oversight Commissioner's role will be. It is a strategic role, with the Commissioner not having operational responsibilities in terms of specific complaints (see para 7 of the Explanatory Notes to the 2016 Act). When the 2016 Act is commenced, there will be a new Solicitors Complaints Committee. However, this is to provide a remedy to complainants in respect of *services provided to them* by the respondent solicitor: see sections 31(1) and 33(1) and (3) of the 2016 Act (unless the Department later expands the conditions of eligibility for complaint to the Committee by way of order). The 2016 Act does not generally affect the role of the Solicitors' Disciplinary Tribunal (other than by altering its composition in terms of professional and lay representation: see section 47). Ms Cree explained in a number of communications to the applicant that her role as Oversight Commissioner was restricted to determining whether a *service* complaint has been handled fairly and that it was only those issues on which she could comment. Her role could also only commence once Mr McAteer had exhausted the Law Society Client Complaints Process (which was, in any event, not apposite to most if not all of his complaints against the solicitors concerned, since they were not complaints which arose from their provision of services to Mr McAteer as client). Ms Cree explained clearly that she has no legal powers to investigate conduct issues, nor did she have an oversight or intervention role with regards to the SDT.

[79] For these reasons, the absence of the Commissioner exercising her full role is, in my view, something of a red herring in this case. It is, moreover, not a matter which is before the court, otherwise than by way of contextual background. There is no challenge to the failure on the part of the Department of Finance to commence the 2016 Act under section 55; and it is difficult to see on what basis such a challenge could be mounted. The current system of regulation in respect of solicitors as far as Mr McAteer's case is concerned is essentially the same as existed in advance of the 2016 Act. The existing system of regulation was found by the Legal Services Review Group, whose recommendations gave rise to the 2016 Act, to have "worked reasonably well" (see para 6 of the Explanatory Notes to the Act). Perhaps most importantly, the applicant's complaint about the absence of a further layer of oversight in relation to the SDT also completely ignores the availability of an appeal from the Tribunal to the High Court, discussed above.

The application for a protective costs order

[80] The applicant initially made an application for a protective costs order (PCO) in relation to these proceedings. He subsequently indicated that he only wished to pursue this if leave to apply for judicial review was granted. (He was concerned about the disclosure of information relating to his financial means, which must inevitably form part of the information considered by the court in such an application, being disclosed to the interested parties in the case.) Since I am not granting leave in relation to the application, this does not fall to be determined.

[81] The basic approach the court will adopt in relation to the assessment of such an application still remains fundamentally that set out in *R (Corner House Research) v Secretary of State for Trade and Industry* [2005] EWCA Civ 192, although some refinement of this approach is evident in later authorities and each case will turn on its own facts. It seemed to me that Mr McAteer would face a very considerable uphill struggle to persuade the court that this was an appropriate case for the grant of a PCO. Even though the subject matter of his complaint is of very considerable significance to him, it does not appear to me that the case raises issues of general public importance. Recognising this, Mr McAteer relied upon the present position of the Legal Services Oversight Commissioner in order to seek to generate a public interest issue in the proceedings. However, as indicated above, I do not consider that issue to be directly engaged by the applicant's case or in his pleadings. The applicant plainly has private interest in the outcome of the case and, indeed, that is the dominant interest in the proceedings. However, as I have made clear, I need reach no definitive view in relation to this aspect of the proceedings in light of my conclusion that leave to apply for judicial review should not be granted.

Conclusion

[82] Viewed in the round, I think it is fair to say that Mr McAteer was not particularly well served by the SDT process which is at issue in these proceedings. The preliminary decision as to which elements of the complaint would be taken forward was made promptly, although with limited reasoning provided. Thereafter, the onus was on Mr McAteer to move promptly if he wished to challenge that early determination which would inevitably govern and shape the remainder of the Tribunal's proceedings upon his complaints. The remainder of the process should not have taken as long, although it is clear that the ongoing litigation between the parties contributed to a significant degree to the delay in a hearing being convened, given its effect on the disclosure of the solicitors' responding affidavits. As the Tribunal has accepted, the further delay between the hearing in January 2020 and the Tribunal's decision being given was regrettable.

[83] Nonetheless, for the detailed reasons given above I refuse leave to apply for judicial review. This is principally on the basis that the Tribunal's decision-making in late 2017 should have been challenged by way of appeal and, in any event, should have been challenged at that time, years before these proceedings were

eventually commenced. The complaint about delay in the Tribunal issuing its determination is now academic. Any complaint on the substance of the Tribunal's decision on the aspects of the complaints which it considered should also have been pursued by way of appeal.

[84] I recognise that Mr McAteer is likely to be disappointed with this result and, in particular, with my decision that it is not now open to him to seek to challenge the Tribunal's decision of late 2017 about which aspects of his complaints it would consider. However, public law places a premium on the principles of finality and legal certainty, particularly where third party interests are involved, requiring such decisions to be challenged promptly. For this reason, even if the matter were properly before me on an appeal under Article 53 of the 1976 Order, I would not consider it appropriate to grant leave to appeal at this point in relation to the scope of the Tribunal's consideration.

[85] I therefore dismiss the applicant's application for leave to apply for judicial review.

[86] I will hear the parties on the issue of costs but, provisionally, take the view that there is no reason to depart from the court's usual practice in the circumstances of this case, namely that, in light of the fact that leave is being refused, there should be no order as to costs between the applicant and proposed respondent; and that the interested parties, insofar as they have incurred them, should bear their own costs.