Neutral Citation No: [2018] NICA 27 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **STE 10598** *Delivered: 5 March 2018*

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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PAUL MURPHY

Appellant

-v-

CRIMINAL INJURIES COMPENSATION APPEALS PANEL

Respondent

_____

Before: Stephens LJ and Treacy LJ

_____

STEPHENS LJ (giving the judgment of the court)

Introduction

[1] This is an appeal brought by Paul Murphy ("the appellant") from an order made and a judgment given by Sir Paul Girvan on 6 September 2017 in which he refused the appellant leave to apply for judicial review of a decision of the Criminal Injuries Compensation Appeals Panel ("the Panel") refusing the appellant compensation in respect of injuries alleged to have been sustained by him by reason of assaults which occurred as long ago as 3 and 4 April 2009. The issue for consideration by the Panel was not whether the appellant had been assaulted but whether the cases met the threshold for compensation.

[2] The appellant appears in person and Mr McAteer appears on behalf of the Panel, which is the proposed respondent. We note that the appellant was reminded of his ability to have a McKenzie Friend and he has chosen not to be assisted in that way.

[3] We give this ex tempore judgment and direct that it should be transcribed.

Time limits for an appeal

[4} It is submitted on behalf of the proposed respondents that this appeal is out of time, it being an appeal against an interlocutory order. The sequence is that the appellant being dissatisfied with the decision of Sir Paul Girvan dated 6 September 2017 lodged a Notice of Appeal on 12 October 2017. The order of Sir Paul Girvan was an interlocutory order and so the time for appealing was 21 days from the date the order was filed. The order was filed on 10 September 2017 and accordingly the Notice of Appeal should have been, but was not, served on the proposed respondents on or before 3 October 2017.

[5] We consider that the appeal has been brought out of time by a period of 9 days. That being so we have an obligation to consider the matters set out by this court in Davis v Northern Ireland Carriers [1979] NI 19 in considering whether to extend time.

[6] The appellant's explanation for the appeal being out of time is that as a personal litigant he thought that he had a six-week period to bring the appeal on the basis that the order of the court dated 6 September 2017 was a final order rather than an interlocutory order. The appellant asks for and we give him a degree of latitude; for which see Boylan-Toomey v Boylan-Toomey [2008] NIFam 15 at paragraph [14]. We consider that the question as to whether this was an interlocutory order or a final order is of some legal complexity and one which a litigant in person may not have appreciated. We take at face value the appellant's explanation. In our view it would be appropriate to extend the time for the appeal to be lodged. We do not dismiss this appeal on the basis that the Notice of Appeal was not served on the Panel within the 21 day period set out in the Rules of the Court of Judicature (Northern Ireland) 1980.

Delay in proceeding with the application for judicial review

[7] We have dealt with the legal principles in relation to delay in another case which we have heard today involving the appellant. The other case was Murphy v The Institution of Chartered Engineers [STE10595]. There is an obligation on an applicant in public law proceedings to bring an application promptly and within 3 months from the date of the decision. It is a necessary corollary of that requirement that there is a corresponding obligation on the applicant to proceed with the application with expedition. The reason is that public law applications have effects on other parties and there should be a degree of finality. This application was brought within the 3 month period, though only by a few days. The learned trial judge, Sir Paul Girvan, considered the question of delay in proceeding with this application for judicial review at paragraphs [11]-[12] of his judgment. He considered that "the application in any event could not succeed because of the delay by the applicant in prosecuting the application." He concluded that "the delay in this case is sufficiently lengthy, grave and unwarranted to lead to the conclusion that leave would have to be refused on that ground alone." Such delay is now advanced

before us by the proposed respondent as a reason why this appeal should be dismissed.

[8] The first question is what is the period of delay? The application for leave to apply for judicial review was lodged on 4 May 2012, almost 6 years ago.

[9] By letter dated 14 May 2012 from the Courts and Tribunal Service the appellant was instructed to "please serve the relevant papers on the proposed respondents immediately upon receipt of this letter and advise them of the date and time of the hearing." The hearing which was being referred to was the hearing of an application for leave which was listed for 28 May 2012. The appellant did not serve the papers on the proposed respondent and did not inform them of the date and time of the leave hearing then listed for 28 May 2012.

[10] The application for leave was listed on 28 May 2012 but it was taken out of the list because the appellant stated that he was waiting on written reasons from the Panel. The note is that reasons to be filed with the office upon receipt and then the application should be relisted for leave. We consider that if the appellant was having difficulty obtaining documents from the Panel he should have come before the court.

[11] There was no activity from 28 May 2012 until 15 March 2017.

[12] The appellant purports to explain that delay on the basis that he was awaiting written reasons from the Panel. By letter dated 12 June 2012 written reasons were sent to the appellant but he asserts that he did not receive that letter until 2017 after this application was reactivated as a result of a review of outstanding applications by the court office. We have concerns about the accuracy of that explanation but even if the letter of 12 June 2012 was not received until 2017 we do not consider that any delay in providing the written reasons or any failure to provide written reasons is a proper and reasonable explanation for the delay on the part of the appellant for 4½ years from 2012 to 2017. Quite simply he could have made an application to the court and at any stage he could have sent more letters to the panel asking for their reason. He failed to do either of these.

[13] In 2017 the court office undertook a review of all the outstanding judicial review applications and as a result of that review this case was brought to the attention of the judicial review judge.

[14] The first occasion on which the proposed respondents knew of this application was on 10 April 2017, some half a decade after it had been commenced. The reason they came to know about it was not because of any activity on the part of the appellant but as a result of the review undertaken by the court office of all outstanding judicial review applications.

[15] We consider that there was inordinate and inexcusable delay over a period of some 4½ years on the part of the appellant in proceeding with the application for leave.

[16] We have considered whether any adverse impact has been brought about by this inordinate and inexcusable delay. If these judicial review proceedings were successful and if the matter had to go back to the Panel for a further hearing we consider that there would be enormous prejudice caused by the appellant's delay. The issues in relation to the application for compensation included the exact nature of the injuries that were inflicted on the appellant in the assaults. For instance a witness would have to be asked as to whether or not in April 2009 they did or did not look at the appellant's tooth after the alleged assault and if so in precisely what circumstances. The witness would be asked whether Brian Murphy was or was not present. The witness would be asked how far the cars were parked apart. That issue arises because the appellant contends that the final position of the cars is crucial. The witness would be asked whether she spoke to the appellant's young son, a witness who was then 8 or 9 years old and must now be nearly approaching 20. We consider that an impossible task would be imposed on the witnesses in this case. We consider that the order of Sir Paul Girvan refusing to grant leave should be upheld on the basis of the appellant's inordinate and inexcusable delay in proceeding with the application for judicial review. We dismiss the appeal on that ground.

Grounds of appeal

[17] The Notice of Appeal in this case is much the same as the Notices of Appeal in the other cases which we have heard and determined today. The first ground of appeal alleges one word, 'bias.' Another ground of appeal is "continuing unfair prejudice/discrimination by the courts in against the appellant acting in person while ignoring the merit, significance and public interest of their respective applications" (sic). There is absolutely no evidence whatsoever of any bias by Sir Paul Girvan, rather there was the most careful consideration of the issues in the case and a careful exposition of those issues. We will not repeat but we incorporate into this judgment all the comments we have made about those grounds of appeal in the two previous judgments that we have given today and we make it clear that we dismiss all those grounds of appeal.

[18] It is a feature of this appeal, as it has been a feature of the other appeals which we have heard and determined today, that the appellant has not challenged the essential propositions made by the learned judge. The judge stated that

> "[6] The reality is that the Panel accepted that criminal assaults had occurred in substance. If the applicant is to succeed in his judicial review challenge, it must be on the basis that the Panel acted irrationally or in a procedurally unfair way in rejecting the applicant's claims to compensation arising out of the physical consequences of the

assaults which the applicant had established on the evidence to the satisfaction of the Panel.

[7] Tribunals of fact such as the Panel are entitled to weigh up evidence and reach conclusions of fact on their assessment of the evidence. In judicial review applications the court is not an appellate court. It does not reassess the evidence before the primary decision maker. The tribunal of fact has a wide ambit of discretion in arriving at its conclusions provided it directs itself correctly in the law and acts rationally and in a procedurally fair way.

[8] Having carefully read the reasoning of the Panel, I can detect nothing that raises an arguable case that the Panel misdirected itself in law, misconceived its role and function, approached the evidence in a procedurally flawed way or arrived at a conclusion so outwith the range of rational decision making that a court would strike down as unreasonable the decision to conclude that the evidence did not establish, on a balance of probabilities that the applicant suffered compensatable injuries."

[19] We also have considered the written reasons of the Panel and we have also gone through with care the various submissions made by the respondents at paragraphs 17 to 21 of their Skeleton Argument dated 1 March 2018. We have also considered the reasons given at paragraphs 22 to 24 of that Skeleton Argument. We can see nothing incorrect in those submissions and we incorporate all of them into this judgment.

[20] For those reasons we consider that the learned judge was entirely correct to come to the view that there was no arguable case that the decision of the Panel was Wednesbury unreasonable and that no arguable challenge has been out in this respect.

Conclusion

[21] We dismiss the appeal on the basis that there was inordinate delay and inexcusable delay, in the prosecution of these proceedings.

[22] We also dismiss the appeal having given consideration to the merits of the appeal.

[23] We uphold the judgment of the lower court.