Neutral Citation No: [2022] NICA 11 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **McC11779** *ICOS No:* **19/108970** **EX Tempore** *Delivered:* **02/03/2022**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

SURESH DEMAN

Appellant

v

QUEEN'S UNIVERSITY, BELFAST

Respondent

Representation
Appellant: did not appear and was not represented
Respondent: Mr Barry Mulqueen, of counsel, instructed by Pinsent Mason solicitors

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Before: McCloskey LJ, McFarland J and Rooney J

McCLOSKEY LJ (delivering the judgment of the court, *ex Tempore)*

[1] Having considered Mr Mulqueen's application, our unanimous ruling is as follows. The court has had the opportunity to confer in advance because in light of the developments in recent days and, more particularly, the electronic communication from Dr Deman yesterday, we were able to foresee as a matter of high probability what the state of affairs would be this morning, namely that only one party, the respondent, via solicitor and counsel, with a representative of the Respondent, has attended the hearing by a combination of physical and remote attendance while the appellant is neither physically nor remotely in attendance, nor is any person on his behalf physically or remotely in attendance.

[2] This has given rise to an application on behalf of the respondent that the appeal be dismissed. Standing back, the options which the court has identified in conferring in advance of this morning's listing were and remain the following, in no particular hierarchical order we emphasise. First, in anticipation of the application that has now been made an order dismissing the appeal on its merits. Second, to proceed with the hearing of the appeal in the appellant's absence. That, in effect, does not differ very much from option 1 except that under option 2 the court could,

of course, chose to raise a series of questions with counsel for the respondent and invite submissions on particular issues.

[3] The third option identified is to accede to the application made in writing on behalf of the appellant, whether it has been stated expressly or only impliedly or a mixture of both, namely in substance to adjourn the hearing of the appeal. If that course were taken it would take one of two forms, namely an adjournment *sine die* or an adjournment to a new fixed concrete hearing date. The fourth option which the court has identified is that of taking no course of a final nature today, rather proceeding to the alternative of determining the appeal finally on paper: that would entail proceeding no further today but moving to the preparation and promulgation of a final judgment.

[4] In accordance with procedural fairness requirements, the latter option has already been canvassed with both parties some considerable time ago and both parties accepted the court's offer to make representations upon it. On behalf of the appellant it was opposed. On behalf of the respondent it was accepted. The court will now reconsider that course and if we determine to decide the appeal on paper we will notify the parties and, subject to any further intervening events, we would then finalise our judgment and promulgate it. The court will first give both parties the opportunity to make further representations in writing, as our order will make clear.

[5] In identifying that final option as a continuing live and viable one we have reflected further and carefully on the governing legal principles which are rooted in common law procedural fairness to both parties. If we were to form the view that this course would not be procedurally unfair to the appellant this would follow from having regard in particular to a series of factors: inexhaustively and in no particular order, the entirety of the history; the nature of the appeal; the absence of any live *viva voce* evidence with the result that there would be no examination-in-chief or cross-examination; no fact finding function to be carried out by the court; the nature of the issues raised by the appeal; and, finally, the voluminous nature of the written submissions which we have received from the appellant, addressing every issue exhaustively. The court would also weigh the well settled common law principle that no litigant has an absolute right to an oral hearing (see De Smith's Judicial Review, 8th ed, para 7-065). Harmoniously with this principle there is ample precedent for the paper determination of appeals in this court in carefully selected cases.

[6] If we should opt for the paper determination course it would be only on the basis of an anterior conclusion that to do so would be compatible with the appellant's common law right to a fair hearing and, if and insofar as article 6 of the Human Rights Convention applies, which is not entirely clear (the court having given this discrete issue some consideration) any additional rights thereunder, in furtherance this court's duty as a public authority under section 6 of the Human Rights Act 1998.

[7] Costs are reserved and there shall be liberty to apply in the usual way.