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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 24/027465/A01

Delivered: 13/10/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

Between:

THE OFFICIAL SOLICITOR AS CONTROLLER AD
INTERIM FOR MARGARET OLIVE RYAN (A PATIENT)

Plaintiff (Respondent)

-and-

BRENDAN LAPPIN

Defendant (Appellant)

The appellant, Mr Lappin, appeared in person
Terry Ringland (instructed by the Official Solicitor's Office) for the respondent

SCOFFIELD J

Introduction

[1] This case involves an appeal from a county court order dated 27 March 2025 made by Deputy County Court Judge Harmer sitting in Armagh. The order was made on foot of an equity civil bill seeking a range of relief but, in particular, an injunction restraining the defendants from continuing trespass to a property (32 Glen Macha, Armagh) and evicting any persons residing at the said premises (in particular, the second defendant) under any unauthorized tenancy agreement provided by the first defendant. The order was made after hearing counsel for the plaintiff and the two defendants, Mr Brendan Lappin and Mr Ivane Keida, who appeared as litigants in person. The nature of the order appealed from was that the defendants provide vacant possession of the property to the plaintiff. The defendants were also ordered to pay the plaintiff's costs. Mr Lappin, the first defendant, now seeks to appeal against that order.

[2] The plaintiff (the respondent to the appeal) is the Official Solicitor for Northern Ireland. She acts as controller for the appellant's aunt, Ms Olive Ryan; and

the background to the proceedings relates to Ms Ryan's house, in which Mr Lappin had installed some tenants without the Official Solicitor's consent. In this application, made by way of summons dated 17 September 2025, the respondent submits that the appellant's notice of appeal should be struck out. The basis for the application is that the appeal was initiated out of time. The application is grounded upon an affidavit of Ms Stephanie Fox, a solicitor within the Official Solicitor's Office (OSO).

[3] Mr Ringland appeared for the respondent (the moving party in this application); and Mr Lappin appeared in person. I am grateful to each of them for their submissions.

Relevant statutory provisions and rules

[4] The appellant's right of appeal arises under Article 60 of the County Courts (Northern Ireland) Order 1980 which provides at Article 60(1) as follows:

"Any party dissatisfied with any decree of a county court made in the exercise of the jurisdiction conferred by Part III may appeal from that decree to the High Court."

[5] By virtue of Article 66(2), without prejudice to other rule-making powers which may be applicable, rules of court may be made providing for the lodgment of appeals under Article 60, including the manner in which and the persons upon whom notice of appeal is to be served, and other matters incidental to such an appeal. The relevant rules are found within the Rules of the Court of Judicature (Northern Ireland) 1980 (RCJ).

[6] RCJ Order 55 makes provisions for appeals to the High Court otherwise than by way of case stated. It is this Order which governs normal appeals from the county court to the High Court by way of re-hearing. Those are dealt with in Part I of Order 55. In particular, Order 55, rule 3 provides as follows:

"The appellant must, within the period of 21 days mentioned in rule 2(1), serve a copy of the notice of appeal on all parties to the proceedings in the court below who are directly affected by the appeal and, subject to rule 4, it shall not be necessary to serve the notice on parties not so affected."

[7] Form 37 in Appendix A to the RCJ sets out the form of a notice of appeal where an appeal is made to the High Court from the county court. It includes the following endorsement to be completed: "Served a true copy of the notice of appeal on the solicitor for the respondent [*or on the respondent*] (here set out particulars of service)."

[8] Further provision as to the lodgement and entry of appeals is contained in RCJ Order 55, rule 2. The appellant must lodge two copies of the notice of appeal (in Form No 37) in the Central Office “within a period of 21 days commencing on the date on which the decree was pronounced in the county court.” One of the two copies of the notice of appeal must be duly stamped and endorsed with particulars of service: see rule 2(2). Once the notice of appeal has been lodged with the court office in that way, the appeal is entered for hearing: see rule 2(3).

[9] When entered for hearing, a copy of the notice of appeal is to be sent to the chief clerk of the relevant county court by the relevant High Court official in order for the chief clerk to complete a form (Form 37A) for return to the High Court. That form includes some basic details about the case in the county court, such as the parties’ names, the cause of action, the place and date of the county court sittings, the order appealed from, the witnesses examined below, and solicitors’ and counsel’s names. When returned to the High Court, it is to be accompanied by a certified copy of the original decree which is appealed against. I understand that this process may have fallen into disuse to a significant degree now that court staff in the High Court can simply access copies of the relevant records from the county court through the Integrated Court Operations System (ICOS) case management system.

[10] When the appellant lodges his appeal with the High Court under Order 55, rule 2, a fee is payable. This is set out in the Court of Judicature Fees Order (Northern Ireland) 1996 (“the Fees Order”), as amended by *inter alia* the Court of Judicature Fees (Amendment) Order (Northern Ireland) 2023 (SR 2023/169). On filing a notice of appeal to the High Court, a fee of £310.00 is payable (as from 1 October 2024), receipt of which is to be endorsed on the filed notice: see para 14 of section 1 of the Schedule. This fee is payable unless the litigant is exempt from payment of the court fee under Article 9 of the Fees Order or successfully applies for the fee to be reduced or remitted as a result of undue hardship under Article 4(2) of that Order.

[11] The appellant must then, not later than 14 days after lodging the notice of appeal, lodge in the appropriate office one appeal book (unless the Master has directed a different number) containing the notice of appeal, a copy of the civil bill or other originating process, the legal aid certificate (if any), and any other documents which may be relevant to the appeal: see RCJ Order 55, rule 6A.

[12] The respondent’s application is brought under Order 55, rule 11, which provides as follows:

“Where an appellant fails to comply with any of the provisions of this Part any other party may apply to the judge to have the appeal struck out.”

Factual background as to steps in the appeal

[13] The respondent's application is based upon the appeal not having been initiated in time. There is some dispute as to how and when the appeal was initiated, the detail of which is set out below.

[14] There is no dispute that the decree under appeal was pronounced on 27 March 2025.

[15] All versions of the notice of appeal are dated 25 April 2025 on their face. This appears in typed font, consistent with the rest of the text, indicating that it was inserted by the drafter of the notice. I am satisfied that the notice of appeal was produced on or before that date. The question of what the appellant then did with it is more vexed.

[16] The copy of the notice of appeal in the appeal bundle which is included in the court file is stamped received by the OSO on 28 April 2025. I am satisfied that it was received, or opened, by the OSO on that date.

[17] The appeal bundle which has been provided to the court was prepared and submitted by the OSO, under cover of correspondence dated 22 September 2025. That correspondence noted that the appellant may not have compiled or filed a book of appeal (in breach of the requirements of Order 55, rule 6A). The Official Solicitor therefore provided one in order to assist the court. However, the correspondence also noted that the OSO had "not been served with the Notice of Appeal." The correspondence therefore suggested that the court office would wish to insert a copy of that document in the bundles.

[18] It was not immediately clear to me how one could reconcile the statement in the correspondence of 22 September 2025 (that the OSO had not been served with the notice of appeal) with the fact that there is a copy in the book of appeal bearing an OSO stamp indicating that it was received by that office on 28 April 2025. However, that has been clarified in the course of Mr Ringland's submissions. The OSO's position is that a *stamped* copy of the notice of appeal (that is, sealed by the court office with a date stamp showing its receipt by that office) should have been served on the Official Solicitor but never was. I return to this below. So, the unstamped copy of the notice of appeal served on the OSO on 28 April 2025 was included in the appeal bundle which it prepared; but the respondent's suggestion was that the court should itself include the stamped notice of appeal in the bundle.

[19] The copy of the served notice of appeal in the bundle is addressed, at its foot, to the Principal Clerk, Appeals and Lists Office, Central Office at the Royal Courts of Justice. This address is in typed font and is taken from the pro forma in Appendix A to the RCJ. However, that address has been scored out and replaced, in handwritten script, in order to address the notice of appeal instead to Jonathan Killen, Controller

Ad Interim for MO Ryan. As noted above, it has an OSO stamp indicating receipt on 28 April 2025. There are no court markings on that document whatever.

[20] Other than receipt of that unstamped notice of appeal on or around 28 April 2025, the respondent's case is that it received no communication at all from Mr Lappin about his appeal before it was advised by the court office, in September, that the appeal was listed for first review in the King's Bench Division. That prompted the correspondence of 22 September and the provision of the book of appeal. (The appeal was then also transferred to the Chancery Division in light of the fact that it involved an equity civil bill concerning the possession of land.)

[21] Ms Fox's affidavit contains the following averments in relation to the respondent's complaints about non-compliance with the rules:

"8. The Defendant/Appellant purported to serve a Notice of Appeal on our office on the 28th April 2025. That Notice was unstamped. I accordingly contacted the King's Bench Office on 1st May. They confirmed that no appeal was showing on the system. They further advised that as it was an Equity Civil Bill it should properly have been lodged with the Chancery Office. I contacted the Chancery Office on 15th May and no appeal was lodged.

9. Our office has had no contact whatsoever from the Defendant/Appellant in the intervening period. I was only made aware that an appeal had in fact been lodged on receiving a notification of listing from Central Office on 5th September (letter dated 4th inst.). I have never been served with a stamped Notice of Appeal.

10. I understand from communications with the Court Office that the appeal was only lodged with the Court on 18th August. Even had the Defendant/Appellant complied with service requirements, which he has not, the Notice of Appeal was lodged over four months after the expiry of the 21 days permitted to the Defendant/Appellant under Order 55 rule 3 of the Rules of the Court of Judicature (NI) 1980."

[22] The respondent's position is, therefore, that the appellant, in breach of the rules, served an unstamped copy of his notice of appeal on 28 April 2025 and did not lodge and enter his appeal with the court office until 18 August 2025.

[23] The appellant's account is different. He has filed a replying affidavit sworn on 6 October 2025 and provided some additional details in his oral submissions. His

version of events, as relevant to the present application, may be summarized as follows:

- (a) First, Mr Lappin says that he applied to the county court judge “for leave to appeal her decision of 16.04.25” and that he received her reply on 24 April 2025. I assumed that this meant an application for leave to appeal was made *on* 16 April 2025. Mr Lappin’s affidavit did not explain how this application was made and no documentation in relation to it was provided. In oral submissions, however, he informed me that he had made the application by letter. He did not copy this to the Official Solicitor.
- (b) He also said that the court replied virtually the following day; but that he did not receive the court’s reply until 24 April 2025. His affidavit also states that the reply from the county court was received on Thursday 24 April “due to it being the Easter Holiday weekend”. (Easter Sunday was on 20 April.) Mr Lappin says the judge told him that he did not need to ask for permission to appeal and that he had the right to appeal directly to the High Court.
- (c) Mr Lappin then says that he “immediately appealed to the High Court and lodged [his] appeal on 25.04.23 in the central office of the High Court.” He avers that he also left in a copy of the appeal for the Official Solicitor (whose office is also in the Royal Courts of Justice) on the same day. In oral submissions, he explained that he had left two copies at the Central Office, one for the office and one for the Official Solicitor. He said he just left them there along with the document seeking remission of the court fee. The documents were taken off him “and that was it”. His expectation was that a stamped copy of the notice of appeal would be sent out to him.
- (d) After that, Mr Lappin avers that for almost three months he heard nothing from the Central Office. He was attending at that office in relation to another matter on 18 August 2025 and, at the same time, asked about the progress of the appeal. He says that he was initially told “there was no such appeal” and that the staff had searched everywhere for it; and then was told that something had happened to the appeal and that he would have to make another appeal, which he says he did immediately. In oral submissions, he said he was informed that the application for fee exemption had got ‘tangled up’ and that he could re-appeal if he wished to. The court official handed him a form which he signed and also handed him an application to appeal; but he (Mr Lappin) did not himself give in a new document.
- (e) Mr Lappin avers that he has never been given a stamped notice of appeal by the Central Office.

[24] On Mr Lappin’s case, therefore, he validly commenced the appeal on 25 April 2025 by lodging his notice of appeal with the Central Office and serving it (by

leaving it in the Royal Courts of Justice building for delivery to the OSO) on the same date.

[25] At the hearing, I enquired whether either party had any objection to my asking court staff to assist in trying to ascertain when the appeal had been lodged in this case and what had happened to it. Neither party had any objection. I was hoping, in particular, to ascertain whether or not the notice of appeal had been lodged with the court office on 25 April 2025 as Mr Lappin asserts. A summary of the information provided to me by court staff (some but not all of which was available during the hearing) is as follows:

- (a) A letter from the county court office dated 10 April 2025 has been located, addressed to Mr Lappin, and in the following terms:

“Please note the appeal which you left at Armagh Court Office and is here enclosed for your attention needs to be lodged in the High Court, Royal Courts of Justice, Belfast as mentioned by the Officer at the counter this morning 10/04/2025.

The Judge who presided over the case does not need to provide authority for you to lodge your appeal.”

- (b) None of the potentially relevant offices – Central Office, Front of House, King’s Bench or Chancery – have any record or recollection of Mr Lappin attending with his notice of appeal in April.
- (c) The first record the offices appear to have recorded on the court system relates to an application for a fee exemption or fee remission dated 18 August 2025. It is this date on which court staff believe that the appeal documentation was received by the office.
- (d) The staff canvassed cannot account for Mr Lappin’s version of events, since none of them recalls speaking to him in August about any difficulties which had arisen with his appeal.
- (e) The stamped notice of appeal has been located. It is dated 25 April 2025 by Mr Lappin (see para [15] above). It is addressed to the Principal Clerk at the Central Office. (That address is *not* scored out, as it is on the copy of the notice served on the OSO.) However, it bears the court seal dated 18 August 2025, indicating that it was only received by the court office on that date.
- (f) The stamped notice of appeal also has a receipt printed on it in the top right-hand corner dated 27 August 2025. This usually records payment of the appropriate fee, along with the ICOS number assigned, and represents the date when the appeal goes live on the ICOS computer system. The printed

receipt on this occasion records a fee of £0.00 having been paid because the fee was waived. This indicates that the application for remission of the fee was successful. The difference in the date of the notice of appeal being received (18 August) and the receipt being applied (27 August) is accounted for by the time taken to process the application for remission of the fee.

- (g) The stamped notice of appeal is also accompanied by another document, using the same font, layout and heading as the notice of appeal. This bears an endorsement noting that a true copy of the notice of appeal had been served on the respondent “by hand”. *That* document is dated 28 April 2025, in typed text.

[26] It is difficult to know precisely what to make of all of this. I am satisfied from the content of the letter from the county court office of 10 April 2025 that Mr Lappin tried to engage with that office in pursuance of an appeal on that date. He was informed by that letter that he did not require leave or permission to appeal. This accords, to some degree, with his averment that he sought leave to appeal from the county court judge and was told this was not required. However, the letter from the court office suggests that this exchange took place a good deal earlier than Mr Lappin indicated.

[27] On balance, I do not accept that the notice of appeal was validly lodged with the High Court on 25 April. For reasons given below, this finding is not determinative of the outcome of the application (see paras [44] and [65] below), since lodgment on that date would also be out of time. However, there is no copy of the notice of appeal bearing a court stamp indicating its receipt on 25 April. The only version of the notice of appeal bearing a court date-stamp has the receipt date of 18 August 2025. That the notice of appeal was lodged on that date is corroborated by the fact that the fee exemption application is noted as having been received on the same date and processed thereafter (resulting in the applicable fee being waived before the document had the receipt printed on it on 27 April).

[28] It is also significant that that version of the notice of appeal was accompanied by particulars of service dated 28 April 2025 by Mr Lappin (see para [25](g) above). In my view, it is highly unlikely that this would have been produced and lodged on 25 April 2025, since Mr Lappin seems to have been *referring back* to service on the OSO by hand on 28 April. If service on the OSO did, in fact, occur by hand on that date, it casts further doubt on Mr Lappin’s evidence that he lodged both copies of the notice of appeal at the same time on 25 April.

[29] I accept that Mr Lappin must have served a copy of the notice of appeal on the OSO in late April. It is unclear if this was left into the OSO on Monday 28 April or left in the Royal Courts of Justice on Friday 25 April and only opened on Monday 28 April, although the particulars of service endorsed on the stamped notice of appeal appear to suggest the latter.

[30] Significantly, however, I am driven to the conclusion that the appeal was not entered on 25 April (or indeed 28 April) by provision of the notice of appeal accompanied by either the relevant fee or application form for exemption or remission of the fee. The responsibility to ensure that the appeal was so entered, with the relevant paperwork in order, is that of the intending appellant. In light of this, 18 August should be taken as the date when the appeal was lodged and entered in accordance with Order 55, rule 2.

[31] I am also sceptical that, when the appeal was lodged on 18 August, this occurred as Mr Lappin recounts it. I do not doubt that Mr Lappin may have been in the Royal Courts of Justice on other business that day. However, the copy of the notice of appeal stamped received that day was accompanied by the document providing particulars of service on the OSO on 28 April 2025. This would almost inevitably have had to have been prepared after 28 April but before attendance at the office on 18 August. It is unlikely that this would have been located in the court office and provided to him, especially when other evidence suggests that the court office did not have a copy of the notice of appeal until 18 August.

[32] The reliability of Mr Lappin's affidavit evidence in relation to these matters must also, in my view, be considered to be undermined by the fact that he contended that he appealed "immediately" after receiving a response from the county court judge, which only arrived on 24 April because of the Easter weekend. The letter from the county court is dated 10 April, some eight days before the Easter weekend commenced. It appears to me highly unlikely that his recollection is correct that this correspondence only arrived with him on 24 April.

[33] In summary, I accept that Mr Lappin took steps with a view to pursuing his appeal in April 2025. He had been given some brief advice as to the procedure in the county court office's letter of 10 April. However, I proceed on the basis, on the balance of probabilities, that he did not comply with the requirements of the rules as to entering the appeal until 18 August 2025.

[34] In the respondent's view, there is some significance to the notice of appeal having been lodged with the court office only on 18 August 2025, or at least of Mr Lappin attending the court office on that date to progress the appeal. This is also addressed in Ms Fox's affidavit. She explains that, in the absence of an appeal against the county court order having been made, the Office of Care and Protection (OCP) authorized the Official Solicitor to sell the property (which was the subject of the proceedings below) by way of Order dated 11 June 2025. The property was subsequently marketed for sale on 1 August 2025. An offer in line with the market value was accepted on Friday 15 August and the property was then withdrawn from the market. Ms Fox avers that Mr Lappin's notice of appeal was lodged the next working day. The respondent's position is that this was an attempt to stymie the sale.

[35] Mr Lappin denies this. In his replying affidavit, he says the first he knew about the proposed sale was on 22 September 2025 when he received Ms Fox's affidavit in support of the strike-out application. (In oral submissions, he said the first he heard of the sale was at the review hearing on 24 September 2025.) In any event, he denies that he is seeking to frustrate the sale and says this is "just scurrilous nonsense".

[36] I am afraid I also have difficulty accepting that version of events for a number of reasons. Mr Lappin made a number of submissions about the current position as to sale of the property, including that it had only been marketed much more recently than the respondent suggested. When I asked how he was in a position to make these submissions, he indicated that he had been in contact with the selling agents and had made enquiries. The whole dispute giving rise to the proceedings in the county court occurred because Mr Lappin takes the view that his aunt's house should not be sold and/or is not in a position to be sold at proper market value because of structural damage to it. His actions in installing tenants in the house (which are not in dispute) indicate a preparedness, indeed determination, to involve himself in the arrangements relating to the house. In all of the those circumstances, it appears highly unlikely, in my view, that he would not have been taking a keen interest in the marketing and proposed sale of the house over the summer period and making such enquiries as he could as to the position. His actions in installing tenants in the house without the consent of the controller also suggests to me that he is more than capable of seeking to thwart any proposed sale; indeed, his submissions to me on the merits of the appeal support the suggestion that that is his motivation for pursuing it.

Was there a breach of the rules in this case?

[37] In the present case, the respondent seeks to strike out the appeal because, in her submission, the appeal was commenced out of time and there is no proper reason to exercise the court's discretion to extend time. Her position as to the chronology is as follows:

- (a) The county court order was pronounced on 27 March 2025. The 21-day time limit for appeal therefore expired on 17 April 2025.
- (b) The appellant produced an unstamped notice of appeal on 25 April. This was received by the respondent only on 28 April 2025.
- (c) An appeal was purportedly lodged with the court on 18 August 2025, although at the time of the application being made, the respondent still did not have a copy of this.
- (d) No stamped notice of appeal had ever been served on the respondent in order to comply with the rules.

[38] I consider that some of the respondent's submissions proceeded on the basis of a misapprehension about the effect of the rules, discussed further below. However, it is clear that there are a number of objections of substance which have been raised. In particular, even assuming that the notice of appeal had been served on the OSO on 25 April 2025 *and* lodged and entered with the Central Office on that date, that would still have been outside the 21-day time limit contained within Order 55, rules 2 and 3. Put another way, on the appellant's best case, he was still out of time.

[39] The misapprehension referred to at para [38] above arises in the following way. The respondent's submissions assert that an appellant is obliged to produce a notice of appeal, have it stamped (and pay the relevant fee), and then serve the stamped copy on the other parties; and that only service of a stamped copy is valid service under the rules. In my view, the rules are not so prescriptive. The misapprehension is perhaps understandable because it assumes that Order 55, rules 2 and 3 describe a chronological sequence. However, on close analysis, it is clear that the service of the notice of appeal on the other parties under rule 3 is envisaged *before* the appeal is then lodged and entered for hearing. That is clear from the fact that one of the copies of the notice of appeal which is required to be lodged at that time must be "endorsed with particulars of service" (see rule 2(2)). The relevant pro forma within Appendix A to the RCJ provides a draft endorsement which is to be completed with the particulars of service (including the date and means by which service of the notice of appeal was effected): see para [7] above.

[40] On that basis, I consider that the rules anticipate service of the notice of appeal first, then endorsement as to service and *then* the appeal being lodged and entered (with the fee paid) after service has been effected. Of course, both of these steps must be taken within the applicable 21-day time limit. As a matter of fact, I understand that there may be some variance in practice, with some solicitors serving the notice and then entering the appeal at the office; and some entering the appeal first so that they have a notice of appeal with the court's stamp or seal on its face for later service. The latter practice is not a requirement of the rules (and is not, in fact, what the rules contemplate).

[41] For that reason, I do not consider there to be any force in the complaint that Mr Lappin did not serve the OSO with a *stamped* copy of the notice of appeal. The copy he did serve, received on 28 April 2025, would have been sufficient if it had been served in time. But it was not.

[42] Some guidance as to the application of analogous provisions is provided in *Re Secretary of State for Northern Ireland's Application* [1991] NI 64, a case about appeal to the county court from the Secretary of State's determination of an application for criminal injuries compensation. The appellant had lodged his notice of appeal within time but had not served it on the Secretary of State within that time limit. When the court determined that it nonetheless had jurisdiction to hear the appeal, the Secretary of State applied for judicial review. The tenor of Carswell J's judgment

is that lodging the notice of appeal with the court office is the more important step. Although service of the notice of appeal on the respondent should have taken place *before* the appeal was lodged, the court could extend time for service of the notice and permit this to occur after the appeal had been lodged, even where service was out of time. (It is for this reason, I understand, that court officials will accept notices of appeal even when not endorsed with particulars of service, since to refuse to accept the appeal when lodged with proper payment of the appropriate fee, or an application for fee exemption as the case may be, would prejudice the intending appellant and is a matter for judicial, rather than administrative, consideration.)

[43] There is also an issue in relation to the timing of the appeal being lodged and entered in this case. For the reasons already discussed, I proceed on the basis that this only occurred on 18 August 2025, over 17 weeks after expiry of the relevant time limit.

[44] Accordingly, I find that the appellant did not comply with the rules, as to service on the respondent within 21 days, nor as to lodging and entering the appeal within 21 days. His default in relation to the latter step was much more significant than in relation to the former. However, even if he had taken both steps on 25 April 2025 – the earliest date for which he contends – he would still have been out of time in respect of each. Although a more minor point, it is also relevant to note that the appellant also failed to comply with the requirement to file books of appeal as required by Order 55, rule 6A.

Should an extension of time be granted?

[45] The next question is whether time for commencing the appeal should be extended? Mr Lappin did not formally seek such an extension. At the first review of the appeal, he maintained that he had brought his appeal within time. On no reading is that correct. However, I have treated his submissions on the respondent's application as amounting, in substance, to an application that time be extended for the appeal, if required.

[46] The leading authority on applications for extension of time remains *Davis v Northern Ireland Carriers* [1979] NI 19 (a case in relation to the extension of time for an appeal by way of case stated to the Court of Appeal from an industrial tribunal). Lowry LCJ set out the following principles:

“Where the time is imposed by rules of court which embody a dispensing power, such as that found in Order 64, rule 7, the court must exercise its discretion in each case, and for that purpose the relevant principles are:

- (1) whether the time is spent: a court will, where the reason is a good one, look more favourably on an application made before the time is up;

- (2) when the time-limit has expired, the extent to which the party applying is in default;
- (3) the effect on the opposite party of granting the application and, in particular, whether he can be compensated by costs;
- (4) whether a hearing on the merits has taken place or would be denied by refusing an extension;
- (5) whether there is a point of substance (which in effect means a legal point of substance when dealing with cases stated) to be made which could not otherwise be put forward; and
- (6) whether the point is of general, and not merely particular, significance.

To these I add the important principle:

- (7) that the rules of court are there to be observed."

[47] Lowry LCJ further added that, in connection with the last principle cited, he did not feel that he could improve upon what Lord Guest had said in *Ratnam v Cumarasamy* [1965] 1 WLR 8, at 12, namely that:

"The rules of court must *prima facie* be obeyed, and in order to justify a court in extending the time during which some step in procedure requires to be taken there must be some material upon which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules, which is to provide a time table for the conduct of litigation..."

[48] In Mr Ringland's submission, consideration of each and every one of the principles set out in *Davis v Northern Ireland Carriers* militates against an extension of time in this case. I deal with each in turn.

[49] It is clear that time has sped in this case. No prospective application for an extension of time was made. As noted above, Mr Lappin's initial response was to claim that the appeal had been brought within time (in light, it seems, of his having approached the county court in relation to appeal within the 21-day time limit). Considering the matter at the present time, the expiry of the deadline for appeal expired several months ago.

[50] The appellant is in significant default in relation to entering and lodging the appeal, which only occurred properly on 18 August, some four months after the deadline for doing so.

[51] I consider that the respondent is prejudiced if the appeal is permitted to proceed. First, she will be put to the time and expense of litigating the case again, in circumstances where the appeal has no reasonable prospect of success; and, second, perhaps more importantly, the delay in disposing of the appeal will or may interfere with the intended sale of the property. The Official Solicitor is keen to progress the sale on the patient's behalf and for her benefit. She views the present appeal as being an attempt to frustrate the sale. Ms Fox also avers that the OCP Master has requested that steps be taken to advance the matter to avoid losing the sale which has been agreed in principle. However unmeritorious the appeal may be, a prospective purchaser may well be put off by the fact that an appeal is pending in which the appellant seeks to overturn a ruling that the seller is entitled to vacant possession. Whether or not this is Mr Lappin's intention in bringing the appeal, that is a likely effect. I do not believe this could simply be compensated in costs to the respondent. In addition, if Mr Lappin was unable to pay any costs, this would represent a further drain on the patient's funds.

[52] This is a case where there has been a hearing on the merits in front of the county court. Denying an extension of time will not deprive the appellant from having had any hearing on the merits. Moreover, there is no point of substance in this case. There is no point of general legal significance or wider public importance. The case simply concerns whether or not the second defendant and others were entitled to occupy the property on the first defendant's arrangement. I discuss the merits of the appeal below; but the appeal is in my view bound to fail.

[53] Lowry LCJ's seventh principle – namely, that the rules of court are there to be observed – speaks for itself. Nonetheless, it is appropriate to say something about this principle in the context of litigants in person, such as the appellant is in this case. It applies with equal force to those who, for whatever reason, litigate without the assistance of legal representation. The rules are there to ensure fairness to other parties; to ensure that litigation is conducted in an orderly and regulated fashion; and, in the case of time limits, in the interests of certainty and finality. Compliance with the rules saves time and costs (including the time and costs necessary to deal with arguments such as the present, as to whether the rules have been breached or not and what the consequences of non-compliance should be). Compliance with the rules is also in the broader public interest rather than simply the interests of one or more parties in the particular case. There is no warrant for any approach as a matter of generality to the effect that unrepresented litigants should not be expected to comply with the rules, or that they should be excused non-compliance as a matter of course or as long as they have made some attempts at compliance. This was expressed by Gillen LJ, on behalf of the Court of Appeal in *Re Gibson's Application* [2017] NICA 77 at para [7], as “the now oft repeated principle that personal litigants

cannot have an unfair advantage against represented parties”, including that they “cannot seek to rely on inexperience or lack of proper appreciation of what the law requires”. (See, to like effect, *H v H* [2015] NICA 77, at para [27]; and, for an example of this principle in practice in the context of time limits, *Re Nhembo’s Application* [2021] NIQB 62, at para [65]).

[54] All of these indicators suggest that an extension of time to bring the appeal late should not be granted and that, therefore, the respondent’s application should succeed.

The merits of the appeal

[55] I commented briefly on the merits of the appeal at para [52] above. It is appropriate to say something about these in the circumstances.

[56] The case made below by the Official Solicitor as plaintiff below was simple. The house belongs to Olive Ryan, Mr Lappin’s aunt. Ms Rafferty, a solicitor, was appointed as Controller Ad Interim in relation to the affairs of Ms Ryan (pending resolution of objections to the registration of her niece as Attorney for her under an Enduring Power of Attorney). She was later replaced by the Official Solicitor.

[57] In the meantime, two of Ms Ryan’s nieces had been checking on the property and kept it insured. However, in December 2023, it transpired that a window had been smashed in the property to gain entry, and the locks had been changed. The property was then occupied by a number of men under a tenancy agreement which they had entered into with Mr Lappin. He was asked by way of correspondence to have the property vacated and return the keys. Master Wells, the OCP Master who is charged with overseeing the exercise of the controller’s functions, directed the controller to issue a civil bill to recover possession of the property and evict any tenants unlawfully present there under the unauthorized tenancy agreement. The proceedings were commenced after a notice to quit did not result in the property being vacated. The controller’s intention was that the property be sold because the proceeds are required in order to meet Ms Ryan’s care costs.

[58] The plaintiff therefore contended that the first defendant had purported to grant a tenancy to the second defendant in circumstances where neither of them owned nor had any beneficial interest in the home, nor the permission or consent of the controller of the owner’s affairs. The case was clear-cut.

[59] Mr Lappin’s affidavit in the county court proceedings appears to confirm that he did rent the property out. Indeed, in his submissions before me, he accepted as much. He believed that this was appropriate given that he had discussed this with his aunt and, on his case, “she was quite happy for me to rent it out as long as I lodged the rental monies in her account”, which he says he did. The defendants agreed that Ms Ryan had full title to the property. Notwithstanding this, there was a tenancy agreement dated 1 December 2023 purporting to be between Ms Ryan and

Mr Keidia; but the landlord is noted to be Mr Lappin, described as “Attorney to Margaret Olive Ryan”. The document appears to have been signed by Mr Lappin “on behalf of the landlord’s agent Brendan Lappin”.

[60] Mr Lappin says that he cannot see how the property can be economically sold when there is major structural damage to the house which has not been repaired. He says that he has previously requested that this structural damage be repaired but that this was ignored by the Official Solicitor and the OCP. He avers that it is possible that when an engineer examines the house he will condemn it. No explanation has been given as to why he considered it appropriate to accommodate tenants in the house if, at the same time, he considers that it may be uninhabitable.

[61] Mr Lappin further contends that there has been no proof adduced that a window was smashed in the property, and he strongly denies any suggestion that he broke a window to gain entry into the house. He says that he had a key to the property. The county court judge did not have to determine whether the allegation about breaking the window was correct, nor do I. In any event, Mr Lappin repeats that his aunt was quite happy for him to rent out the house as she got the rental money. He contends that Mr Keida, the second defendant, effected repairs to the house after storm damage at his own expense. He complains that there is £15,000 worth of rental income which was not received during a previous two-year period when the property ought (in his view) to have been rented out; and a further £3,750 rental income for the six months since OCP has been in charge of his aunt’s affairs. He disputes that the sale of the house will benefit his aunt. He is particularly concerned as to where she will be waked if she were to pass away.

[62] In his affidavit on the appeal, Mr Lappin appears to accept that there was no defence to the claim against the defendants in the county court, as the judge pointed out that she could not overturn the decision of a higher court (namely the decision of the OCP Master in the High Court). Mr Lappin notes that he asked Master Wells to recuse herself on the basis that she was biased against him. (It seems that this was because she had previously suggested he be removed as executor of a will in the context of a previous family dispute, as he ultimately was by order of the court (see *Courtney v Lappin* [2022] NICH 14) and/or because she had taken a view that his renting out of the house was inappropriate.) Since Deputy County Court Judge Harmer had indicated that she was unable to overturn the order of the Master, Mr Lappin asks this court to overturn that order so that the house is able to be rented out once again. Mr Lappin feels that all five of Ms Ryan’s nephews and nieces should have a say in whether the house should be sold or rented. He would prefer if an Armagh-based solicitor was appointed as controller, or even one of her relatives. In short, he wishes for this court, in the context of his appeal, to supervise and overturn the OCP Master’s directions.

[63] It is clear that there is some considerable background to the dispute about the house. Some of this appears to have grown out of a deeper family dispute which was the subject of the earlier proceedings mentioned above. However, none of this

is to the point in the present proceedings. Ms Ryan, the patient, is the owner of the house. Since she is incapable of managing her own affairs a controller has been appointed for that purpose. Mr Lappin is not that controller. The controller is obliged to act under the supervision of the Master, who has ordered that the house be sold. It is not for Mr Lappin to take matters into his own hands as to what happens to the house. He has no lawful authority to do so. Even were he to be correct that the house ought not to be sold, that is not a matter for me in these proceedings. The county court proceedings, and these proceedings on appeal, relate simply to whether Mr Keida and his fellow tenants were legally entitled to occupy the property. They were not. Nor did Mr Lappin have any right to arrange for their occupation, however good an idea that may have been. Even assuming that his aunt expressed some approval of the arrangement, she is incapable as a matter of law to authorize it, lacking capacity to manage her own affairs and with a court-appointed controller in place to do so. These proceedings are not an appropriate vehicle to seek to overturn a previous order of the Master as to what the controller should do with the house.

[64] In short, there was, and remains, no answer to the claim on the part of the Official Solicitor, as controller for Ms Ryan, that she was entitled to vacant possession of the house. To permit the appeal to proceed would simply be to incur further time and costs for no purpose because the appellant appears to have fundamentally misunderstood the nature and scope of these proceedings. This was encapsulated in Mr Ringland's pithy submission that a strike-out of the proceedings would be "a kindness" to Mr Lappin. The appellant may not see matters that way. However, it appears to me that the appeal is bound to fail.

Conclusion

[65] For the reasons given above, I allow the respondent's application. The appeal will be struck out on the basis that it was not brought within time, either as to service on the respondent or as to entering and lodging the appeal with the office. Even assuming that both of those steps occurred on 25 April 2025 as Mr Lappin contends, they were still out of time. There is no good reason to extend time, even for a short period, and all of the factors set out in the leading authority point away from granting an extension.

[66] The appeal is therefore struck out pursuant to RCJ Order 55, rule 11. I will hear the parties on the issue of costs.