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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 DOMINIC GALLAGHER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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Dominic Gallagher, as a Litigant in Person
Alistair Fletcher BL (instructed by Carson McDowell, Solicitors) for the Proposed Respondent

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McLAUGHLIN J

Introduction

[1] This is an application for leave to apply for judicial review of a decision of Queen's University Belfast ("QUB") dated 14 October 2024 to expel the applicant. The decision was taken on behalf of QUB by the Student Conduct Appeals Committee, following a lengthy and procedurally complex disciplinary process. The process involved:

(i) Investigation into a series of complaints against the applicant.

(ii) Decision by a conduct officer.

(iii) Appeal to a conduct committee.

(iv) Appeal to the Student Conduct Appeals Committee.

[2] At the time of the relevant events, the applicant was a student on the barristers' training course run by the Institute of Professional Legal Studies ("the Institute") and which forms part of QUB.

Investigation and findings

[3] It is not necessary for me to set out the entire procedural history of events or make findings of fact, at this stage. However, I have set out below the charges faced by the applicant, the ultimate findings made and events at each stage of the disciplinary process. In summary, the applicant was ultimately found to have committed a series of breaches of the QUB Conduct Regulations ("the Conduct Regulations"). The charges which he faced, and the findings made by the conduct officer, are summarised as follows:

(i) **Abusive, threatening, intimidating, bullying or harassing behaviour**. This offence comprised a series of acts of misconduct:

- On 8 December on a class social night out in a bar, the applicant spoke in abusive terms to a female class member using foul language. He later apologised.

- On 9 February 2024, the applicant threatened to slap a fellow student during a disagreement in class. The applicant stated that he made the comment after a sustained campaign of relentless teasing by the other student and that the threat was made after requests to stop had been ignored. The applicant considered his conduct to be reasonable.

- During a different class the applicant directed abusive and strongly worded insults at a fellow student after she had spoken about menstruation. The applicant later accepted that this was wrong and apologised.

- On 10 February 2024, on the night of the Institute formal, the applicant directed insulting remarks at the partner of a fellow student. The applicant accepted he had done so, but only after the other individual and the student had made personally insulting remarks to him.

- Following the events at the Institute formal (which comprised the remarks referred to above and also an allegation of physical assault by the applicant which was later dismissed and is referred to in more detail below) the applicant sent a message to his class WhatsApp group, demanding that the complaint of assault against him by his fellow student (both to police and the Institute) be withdrawn or he would press charges.

All of these elements of this charge were found to have been committed by the applicant (save for the allegation of physical assault at the Institute formal) and the conduct officer found that the cumulative effect of these incidents was sufficient to prove the charge of abusive, threatening, intimidating, bullying or harassing behaviour.

(ii) **Physical Misconduct.** A female fellow student alleged that at the Institute formal on 10 February 2024, the applicant assaulted her partner. This complaint was made to both the police and to QUB. The applicant accepted that he had engaged in a physical altercation with the individual, but contended that he had acted in self-defence. Review of the CCTV footage from the hotel by police resulted in police forming the view that the applicant had not been the aggressor and that he had been the victim of assault. The fellow student then withdrew the complaint to police, but did not withdraw her complaint to QUB. The applicant had been suspended from the Institute, pending investigation of this and the other complaints. The QUB charge of assault was dismissed, and it was found that the applicant had not assaulted the individual at the formal.

A related charge of causing or threatening to cause minor harm to the female fellow student was also dismissed for the same reason.

(ii) **Threat of physical misconduct & causing or threatening to cause minor harm.** It was alleged that on 9 February 2024 the applicant had made a threat of physical misconduct by threatening to slap a fellow student in the course of a disagreement during class. The charge of threatening physical misconduct was dismissed on the grounds that the threat was not sufficiently serious to reach the threshold of a threat of physical harm. However, it was found that the lesser charge of making a threat of minor harm was established.

(iv) **Disruption or obstruction of or interference with the functions, duties or activities of the University or staff.** This charge comprised a series of incidents:

- The incident on 9 February 2024 involving a threat to slap to a fellow student during class.

- On 19 February 2024, the applicant misbehaved in class by continually chatting, laughing, being inattentive and disrupting the class. His behaviour was found to have been such as to make the teacher feel uncomfortable.

- In November 2023, the applicant had made jokes about domestic violence during a family law tutorial.

- The applicant had repeatedly engaged in generally disruptive behaviour during class which had interrupted the learning of fellow students.

- Each of the elements of this charge were found to have been established.

(v) **Breach of Student Charter.** The conduct officer also found that the actions of the applicant which were found to be established also amounted to breaches of several provisions of the Student Charter. There was no separate conduct which was found to be unacceptable, rather a separate offence, consisting of the same conduct.

[4] The events at the Institute formal form an important aspect of the above findings and the subsequent course of the disciplinary process. It is necessary to explain the background in more detail. As set out above, an incident occurred which involved a physical altercation between the applicant and the partner of a fellow female Institute student. This resulted in a complaint by the fellow student that the applicant had assaulted her partner. The applicant was suspended pending investigation. The complaint was made to both police and to QUB. The applicant made a cross-complaint to QUB that he had been the victim of an assault by the fellow female student. Subsequent review of the hotel CCTV by police resulted in the police reporting to the conduct officer that the fellow student and her partner had been the physical aggressors. The fellow student then withdrew the police complaint, but not her complaint to QUB. The applicant remained suspended while the assault complaint against him and the other complaints were investigated by QUB. The applicant's cross-complaint that he had been assaulted by the female fellow student was ultimately upheld and it was found by the investigating officer that she had assaulted him. In his interview with the investigating officer, the applicant alleged that she had made a false complaint against him and had lied. He complained about her failure to withdraw her complaint to QUB, despite having withdrawn her complaint to police. The applicant asked that QUB investigate her failure to withdraw the complaint. However, by the time the University considered this complaint, the academic year was over, the fellow student had completed her course of study, and she was no longer a student. The "failure to withdraw" complaint was not therefore determined by QUB.

[5] The result of all of the above is that the conduct officer found that the applicant had committed the following breaches of the Conduct Regulations:

(i) Abusive, threatening, intimidating, bullying or harassing behaviour.

(ii) Threatening minor harm by threatening to slap a fellow student during class.

(iii) Disrupting class, by reason of the threat to slap; inappropriate and continued disruptive behaviour during one class; and making inappropriate jokes about domestic violence during a tutorial.

(iv) Breach of Student Charter.

[6] Pursuant to the Conduct Regulations, the standard penalties for a first offence of these charges are:

(i) **Abusive behaviour** - expulsion from the University.

(ii) **Threat of minor harm; Disruption of class; Breach of Student Charter** – £150 fine and written warning.

[7] It is clear from the above that the disparity in severity of the standard penalty for these offences is very significant. It is also clear that there is some degree of overlap between the offences, insofar as the incident involving the threat of a slap features as part of all offences. Similarly, the events at the Institute formal form part of the two most serious charges, namely the allegation of physical assault and the abusive behaviour charge, for which there were very different outcomes. The allegation of physical assault by the applicant was dismissed and the applicant's counter complaint of assault was upheld. The abusive behaviour charge, which was found to be established, included both the applicant's insulting comments to the fellow student and his WhatsApp message to the class group after the formal in which he threatened to press charges. The charge of breach of the Student Charter relied entirely upon the same underlying conduct and did not involve any new or different allegations. Accordingly, there is some degree of overlap between the four charges which attract vastly different standard sanctions.

Conduct Committee

[8] On foot of these findings, the conduct officer referred the case to the conduct committee for a decision on sanction. On 18 June 2024, the applicant also appealed to the conduct committee against the findings of the conduct officer. He alleged procedural error and relied upon two grounds of appeal:

(i) The applicant relied upon QUB's failure to consider his "failure to withdraw" complaint against the female student who had accused him of a physical assault at the Institute formal. She had withdrawn the complaint to police but not the complaint to the Institute. The applicant therefore requested the University to obtain the CCTV footage from the hotel and maintained his position that the complaint against him had been false all along for which he had been suspended for a considerable period of time. As set out above, the applicant's "failure to withdraw" complaint was ultimately not adjudicated upon before the student in question had left the University.

(ii) The applicant also contended that there had been a procedural error by not considering whether the event involving exchanges with a female student about menstruation actually constituted sexual harassment of him, by her.

[9] The applicant relied upon both of these grounds to contend there had been procedural error in the investigation. However, he did <u>not</u> contend that there had been a procedural error by QUB on the ground that it had considered the underlying evidence to be sufficient for it to find that the conduct had occurred. Nor had he

contended that the conduct in question, even if it had occurred, was sufficient to constitute one or more of the charges.

[10] The conduct committee screened out the appeal on the ground that it was not sufficient to make good the complaint of procedural error.

[11] Importantly, the applicant had a right to seek a further review of the screening decision pursuant to 9.5.5.3 and 9.5.5.4 of the Serious Misconduct Procedure. He could have presented additional evidence or attempted to reformulate his grounds of appeal on procedural error. The applicant did not do so. In the course of the leave hearing, when asked by the court about this failure, the applicant confirmed that he made a conscious decision not to challenge the findings of guilt and that he wished to make submissions to the committee only on the issue of penalty. He stated that at that point in time, he had felt worn down by the process and he considered that there were strong arguments to make on penalty.

[12] An oral hearing took place before the conduct committee on 13 August 2024. The applicant was accompanied by a representative for that hearing. He made submissions which were found by the committee to be focused upon justifying his actions and also upon the fact that he had been provoked and had apologised. The Committee considered that the applicant had not demonstrated much insight into the fact that the charges had been established, the impact which had resulted from his conduct or shown empathy for the other parties.

[13] The committee ultimately found that that the fact of the applicant's apology and the other factors put forward in mitigation were not sufficient to justify departing from the standard penalty. It therefore decided to impose the penalty of expulsion for the abusive behaviour charge and to impose warnings plus £75 fines on each of the other charges.

[14] The decision of the conduct committee records the following:

> "The Committee also agreed that, should you seek re-admission to the University, in the future to a professional course, this matter should be referred to the relevant school for the University Fitness to Practice Regulations."

[15] This comment is a reference to the University's Fitness to Practise Regulations, which establish a procedure by which a panel of the University may impose sanctions upon a student who is studying for a professional qualification, or which will lead to direct entry into a profession. Where such a student has been found to have committed breaches of the Conduct Regulations, the matter can be referred to the Fitness to Practice Panel. The sanctions available to the Panel are set out in Regulation 10.2 and range from a warning to expulsion from the University.

Student Conduct Appeals Committee

[16] The applicant appealed the decision on penalty to the Student Conduct Appeals Committee, but the appeal was dismissed. The Appeals Committee dealt with each of the grounds of appeal raised by the applicant but considered that the applicant had not demonstrated procedural irregularity by the conduct committee which had a clear and demonstrable impact on the decision. It did not find any reason to depart from the standard penalties and dismissed the appeal. The final paragraph of the appeal decision letter states:

> "There is no further internal appeal against a decision of the Student Conduct Appeals Committee. However, you may submit a complaint about maladministration in the processing of your appeal to the NI Public Services Ombudsman within six months of the date of this letter."

Extension of time

[17] The first issue arising in this application is the request for an extension of time. The application for leave to apply for judicial review was filed on 26 June 2025, just over eight months after the decision of the Appeals Committee. The outer time limit for commencement of an application for judicial review is three months from the date of the decision. The application is therefore over five months out of time. A court will extend time only if there are good reasons for doing so. The onus lies upon the applicant to demonstrate good reason.

[18] The applicant relies upon the fact that he made a complaint to the Public Services Ombudsman, which was lodged just within the six-month time frame. He has provided some correspondence with the Ombudsman from which it is evident that he requested advice about whether the Ombudsman was an adequate alternative remedy which he was required to exhaust before initiating judicial review proceedings. The correspondence reveals that a representative from the Ombudsman's office offered to discuss the matter on the telephone, but the applicant declined. In oral exchanges in court the applicant informed me that he declined the offer because he had lost faith in public authorities and was not confident he would get a clear answer to his query. Unsurprisingly, the complaint was rejected by the Ombudsman the day after it was submitted on the ground that the applicant's complaint related to the outcome of the disciplinary appeals process, rather than the manner in which it was conducted. The complaint was therefore rejected. The Ombudsman has no power to alter a disciplinary finding of this nature, which ought to have been obvious to a reasonably well informed person looking into the matter, especially one with legal training. In any event, if the applicant was genuinely uncertain about when time may have started to run, a precautionary approach would have been to initiate judicial review proceedings in parallel with a complaint to the Ombudsman.

[19] After the Ombudsman rejected the applicant's complaint, he attempted to seek legal assistance and representation for the purposes of a judicial review. No clear evidence is provided about when this process commenced or why it had not commenced earlier. He ultimately decided to commence proceedings as a litigant in person, and he did so just within three months of the decision of the Ombudsman.

[20] In support of the application for an extension of time, the applicant also relies upon the case of *Re Allister* [2022] NICA 15, in which the Court of Appeal found that a particularly weighty public interest can be sufficient to amount to good reason for an extension of time. The case concerned an important point of constitutional importance, which was ultimately determined by the Supreme Court. In this case, there are no broader issues of public importance. On the contrary, the interests are purely private in nature, insofar as the decision impacts only upon the applicant and his future ability to study towards and to enter the barristers' profession in Northern Ireland.

[21] Ultimately, the test for the court involves consideration of a whether there are good reasons for the delay and whether the applicant has demonstrated a reasonable objective excuse. The court will look for the possibility of substantial hardship to or prejudice to rights, the potential detriment to good administration and any public interests. I have given this matter anxious consideration. As stated, I do not consider that there are any uniquely important public interest considerations. In my view there are three key factors of relevance:

(i) The decision letter of the Appeals Committee expressly states that the applicant may submit a complaint to the Ombudsman, within six months, about the processing of the appeal. Although it ought to have been clear to the applicant that this procedure could never have changed the expulsion decision, it is important not to assess that factor with the benefit of hindsight. The language used in the letter which advises of a right to complain to the Ombudsman is carefully chosen. Perhaps unsurprisingly, it makes no reference to the possibility of judicial review or of how the two procedures may overlap. However, I do accept that the express reference within the letter to the availability of a further complaint procedure might have been capable of setting the applicant off on the wrong track initially, even if he did not help himself by refusing to take a call from the Ombudsman.

(ii) The University candidly accepted and adduced no evidence to suggest that its operations or that future admissions cycles might be prejudiced by reason of the delay. Indeed, it candidly accepted during the hearing that there was no such prejudice. Even if the proceedings had been commenced promptly the applicant would always have missed at least an entire academic year. Insofar as the delay may result in the proceedings straddling two further academic years, any prejudice falls more heavily upon the applicant.

(iii) While there are no broader public interests in play, I do accept that the proceedings raise an issue of intense private interest for the applicant. The outcome affects his ability to pursue the only course in Northern Ireland which can lead to admission to his chosen career of barrister. The decision has impacted upon his ability to complete the course and may also impact upon his ability both to seek re-admission to the course or to the profession. The decision therefore has very significant implications for the applicant.

[22] Taking account of all of these matters, I am ultimately persuaded that time should be extended for these proceedings, and I do so.

[23] I wish to make expressly clear that this decision is based upon my own assessment of the particular circumstances of this case and should not in any way be interpreted as a finding of general application that a complaint of maladministration to the Public Services Ombudsman will amount to good reason for extending time, or that it will have the effect of suspending time beginning to run for the commencement of judicial review proceedings.

Consideration

[24] The test for leave is whether any of the applicant's proposed grounds of challenge are arguable and have reasonable prospects of success.

[25] Following the conclusion of the leave hearing, I afforded both parties the opportunity to submit further evidence or submissions on two issues which overlap and which I considered to be relevant to the challenge. The first issue was the applicant's personal circumstances and any particular impacts which the decision may have had upon him. The second issue was the impact, if any, which the disciplinary findings and expulsion decision may have for the applicant if he re-applied for admission to the Institute and also the Bar as a result of the expulsion decision.

[26] The materials submitted by the proposed respondent included reference to the relevant rules and procedures applied by the Benchers of the Inn of Court when making admissions decisions. I do not propose to undertake a full or exhaustive analysis of those provisions at this stage, and it is not necessary to do so. For present purposes, it is sufficient to make clear that the Benchers have discretionary powers to consider fitness to practice at the point of admission and the disciplinary findings and penalty which have been imposed upon the applicant may be taken into account for that purpose, in the event that he seeks re-admission to the university or admission to the profession. The findings and penalty therefore could have longer term implications for the applicant's ability to pursue his chosen career of barrister. The response provided by QUB includes a note provided by the Benchers on the relevant rules and contains the following statement:

> "Past expulsion from the IPLS (or other punishment imposed by QUB) and the circumstances surrounding giving rise to same may be matters that the Education Committee and the Benchers would consider to be relevant to the question of his fitness/suitability. It is not possible to pre-judge the Education Committee or the Bencher's views in respect of such issues."

[27] Other options may still be available to the applicant in the event he cannot or does not gain admission to the profession in Northern Ireland through the Institute. The applicant may be able to qualify as a barrister outside the jurisdiction and to have his qualification recognised in Northern Ireland after a period of time. He may also be able to qualify as a solicitor and then transfer to the Bar. Admission to the bar in Northern Ireland does not therefore appear to be entirely ruled out as a result of the impugned decision, however, direct qualification through the Institute may be precluded depending upon the views of the Fitness to Practice Panel of the University or the Benchers of the Inn of Court.

[28] In light of this background, it is necessary to consider the merit of the proposed grounds of challenge.

[29] The first proposed ground of challenge is irrationality. I do not consider that this proposed ground is arguable, nor does it enjoy reasonable prospects of success. The rationality challenge is, in substance, an attempt to re-open the findings at each stage of the disciplinary process, including the conduct of the original investigation. In particular, the applicant seeks leave to re-open the findings of guilt on all of the charges. As set out above, the applicant had the opportunity during the disciplinary process to make precisely that challenge. However, following the screening decision of the conduct committee, he made a conscious election not to do so, but instead to make submissions on penalty only. It is entirely inappropriate for the applicant to now attempt to use the procedures of this court to challenge decisions which were not challenged at the time. In any event, the thrust of his proposed rationality challenge is that the conduct committee and Appeals Committee did not take account of his apologies, the fact that he had been provoked in several of the incidents and that the most serious complaint against him of assault on the evening of the formal had been dismissed. In my view, the proposed irrationality challenge is entirely without merit. It is clear from the reasoned written decisions at each stage of the disciplinary process that all of these factors were raised by the applicant and were taken into account. It is a matter for the University to decide the appropriate weight to afford to his mitigation. This was most clearly encapsulated in the written decision of the conduct committee in which all of the mitigating factors relied upon were recorded, but the committee found that they were insufficient to justify a departure from the standard penalty of expulsion. In the circumstances, it is simply not arguable that the applicant's mitigation was not taken into account. Accordingly, I refuse leave on the irrationality ground.

[30] Similarly, the proposed procedural fairness and natural justice challenges relate to the entire disciplinary process, not simply the final stage of the process. The applicant wishes to challenge the entire process on the ground that its remit was too narrow and did not afford him the opportunity to challenge the findings. I do not consider this ground to be arguable or to have reasonable prospects of success. As explained above, the process was sufficiently broad to enable the applicant to challenge the procedures by which the conduct officer's decision had been reached, however the applicant did not avail of the process to the extent available. Many of the issues and criticisms about the process which he now wishes to raise were not raised at the time as part of the appeal to the conduct committee or to challenge the screening decision. The applicant then expressly elected to appeal only the issue of penalty. The applicant cannot argue that the process was structurally unfair by reason of its unduly narrow remit, when he did not avail of the procedural opportunities to challenge matters which he now wishes to raise in this court. In my view, the procedures could have accommodated the type of challenge which the applicant now wishes to make, and he ought to have at least attempted to do so. If he had not been permitted to do so or if relevant grounds of appeal had been scoped out, then it may have been possible for this court to have contemplated a procedural fairness challenge. However, it is simply not arguable that a disciplinary decision is vitiated by procedural unfairness, when the applicant elected not to take up the available procedural opportunities for challenge. For the same reasons, the proposed article 6 ECHR challenge is also unarguable. Leave is therefore refused on the article 6 and natural justice grounds.

[31] The proposed article 10 ECHR challenge is also unarguable, without reasonable prospects of success. This is an attempt to challenge the finding of misconduct on Convention grounds, which were not argued at any stage of the appeals process. In any event, it is simply unarguable that QUB could not maintain and enforce Conduct Regulations which restrict abusive behaviour of the type perpetrated by the applicant. The findings against the applicant involved conduct going well beyond the expression of opinions, and included rude, insulting and even threatening behaviour. It is not arguable that restrictions of this nature amount to unjustified restrictions on expression in a university and classroom environment. Leave on this ground is therefore refused.

[32] The applicant also contends that the penalty decision is vitiated by apparent bias on the grounds that the failure of the university to deal with the "failure to withdraw" allegation before the student left the university is evidence of bias against him on the ground that he is a white, Christian man. This is an allegation of actual bias, not a perception of bias. The applicant is therefore required to establish that the University was disposed against him on the ground of his gender, ethnicity and religious belief. The applicant has adduced absolutely no evidence which could support this contention, aside from his own belief. Nor is there any evidence from which such motivation on the part of the University could reasonably be inferred. It may be that the applicant is entitled to feel aggrieved about the failure of the university to deal with his "failure to withdraw" complaint in a timely manner.

Indeed, on this issue, I have considerable sympathy for the applicant, but there is no arguable basis upon which it could be asserted that the University's failure was on account of a bias against him on the grounds of his gender, ethnicity or religious beliefs. This proposed grounds of challenge is therefore unarguable, without reasonable prospects for success and leave is refused.

[33] In my view, the proposed article 8 challenge is arguably different. It is not disputed that restrictions upon an individual's ability to pursue a chosen career or profession may amount to an interference with the right to respect for private life. It appears to me to be arguable that an expulsion decision which has the effect of potentially restricting significantly the ability of the applicant to seek readmission to the single course of education in Northern Ireland which could lead to admission to his chosen profession, or which might render him unfit for admission to the profession could amount to an interference with the applicant's article 8 rights. In those circumstances, the sanction of expulsion would be lawful only if it was in accordance with law, in pursuit of a legitimate aim and was proportionate to the attainment of that aim. Having reviewed carefully the decisions at the various stages of the disciplinary process, it is not clear to me whether the potential implications for the applicant's ability to pursue his career in Northern Ireland were also factored into an assessment of whether the overall penalty was proportionate to the conduct of which he was found to be guilty. As stated above, some of the same conduct relied upon to support the most serious charge of abusive behaviour was also relied upon to support the much lesser charges and attracted a much lower penalty.

[34] In light of the information which is now clear about the potential longer term implications of the expulsion decision for the applicant's ability to pursue his chosen career and to obtain re-admission to the Institute or to the profession, I consider that it is at least arguable that the decision to expel the applicant was disproportionate and I therefore grant leave on that sole ground.

[35] In granting leave on this ground, I wish to make two matters clear. First, the grant of leave on this ground is limited to an assessment of the proportionality of the penalty as opposed to the findings of misconduct. Since the applicant chose not to exhaust the opportunities to challenge those findings during the process, it is not appropriate to re-open them now by way of judicial review.

[36] Second, a proportionality challenge of this nature does not turn upon the extent to which the conduct committee, Appeals Committee or the other decision makers, themselves carried out a proportionality assessment. Rather, it requires the court itself to conduct an overall assessment of the proportionality and justification for the penalty, taking account of any longer term professional implications of that penalty, in light of the nature and seriousness of the underlying incidents of misconduct which were established. As a first instance judge, it is my duty to carry out my own proportionality assessment of the penalty, independently of the

decisions of conduct committee and the Appeals Committee. This is now the sole issue for determination in these proceedings.