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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**05/02/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING S BENCH DIVISION

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ORDER 55 OF THE RULES OF THE COURT OF JUDICATURE IN NORTHERN IRELAND

SECTION 59(13) OF THE LOCAL GOVERNMENT (NORTHERN IRELAND) ACT 2014

IN THE MATTER OF JOLENE BUNTING

AND IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE NORTHERN IRELAND LOCAL GOVERNMENT COMMISSIONER FOR STANDARDS DELIVERED ON 6 MARCH 2023

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Ronan Lavery KC with John Mackell (instructed by Brentnall Legal Solicitors) for the Applicant
Fiona Fee KC with (instructed by Arthur Cox Solicitors) for the Respondent

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SIMPSON J

Introduction

[1] This is a statutory appeal pursuant to the Local Government Act (Northern Ireland) 2014. The appellant seeks leave to appeal a decision of the Local Government Commissioner for Standards. Her original Notice of Appeal is dated 24 March 2023.

[2] From May 2015 to May 2019 the appellant was an elected councillor on Belfast City Council. Following a complaint made in August 2018 to the Local Government Commissioner for Standards — that the appellant had, or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors — the Assistant Commissioner imposed upon her a three-year period of disqualification on her becoming a councillor. Broadly, the complaint from Mr Paul Golding, leader of the political group Britain First , was that he had paid money to the appellant

believing that she had been fined by Belfast City Council as the result of a prank during which the deputy leader of Britain First had been filmed sitting in the Lord Mayor s chair on a visit to Belfast City Hall, and that this prank had been facilitated by the appellant. He alleged that money was paid to the appellant after she provided a pay slip from the Council indicating that she had been fined £545.38, but he subsequently found out that she had not, in fact, been fined.

[3] The Commissioner conducted an investigation. In due course she appointed Mr Ian Gordon OBE, QPM as Assistant Local Government Commissioner in relation to the Adjudication Hearing process. During the process leading to the Adjudication Hearing, the appellant was represented by a solicitor. There was an Adjudication Hearing scheduled for 7 and 8 February 2023. On 6 February 2023, the appellant was informed by her then legal adviser that since she was not able to pay him he could not assist her further. The appellant asserts that she informed the Commissioner by email on the evening of 6 February the following:

> 1. She was unable to secure legal representation for the hearing.
>
> 2. An attempt had been made the previous Thursday to deliver documents to her, but she was not yet in possession of them.
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> 3. She had not had time to seek further funding for legal representation, or to seek alternative representation.
>
> 4. She sought an adjournment on those bases.
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> 5. The complainant was someone who had caused her great consternation and anxiety, she was in fear of him and she was not ready to face or engage with him."

[4] On the morning of 7 February, a solicitor in the Commissioner s office responded by email that she should either attend in person to make this application or we can provide a video link for you to attend virtually." She logged onto the link, but there were technical problems and she was unable to access the hearing. Subsequently, on that day she made contact with the Commissioner s office to be told that the matter was proceeding. The hearing took place in her absence, the complaints were found to be proven, and the Commissioner imposed the sanction set out above.

[5] The appellant alleged that in the process there was procedural unfairness and initially brought judicial review proceedings, which were heard by Scoffield J. He gave judgment ([2023] NIKB 50) in April 2023, dismissing the appellant s application. The appellant appealed to the Court of Appeal. Her appeal was dismissed on 14 December 2023. The Court of Appeal s judgment appears at [2023] NICA 90.

[6] The appellant now seeks the High Court s leave to appeal by virtue of the statutory appeal procedure in section 59(13) and (14) of the Local Government Act (Northern Ireland) 2014.

[7] Section 59 is entitled Decision following report." Where material it provides:

> 59—(1) The Commissioner may make an adjudication on any matter by deciding whether or not any person to which that matter relates has failed to comply with the code of conduct.
> …
> (13) A person who is censured, suspended or disqualified by the Commissioner as mentioned in subsection (3) may appeal to the High Court if the High Court gives the person leave to do so.
>
> (14) An appeal under subsection (13) may be made on one or more of the following grounds—
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> (a) that the Commissioner s decision was based on an error of law;
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> (b) that there has been procedural impropriety in the conduct of the investigation under section 58;
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> (c) that the Commissioner has acted unreasonably in the exercise of the Commissioner s discretion;
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> (d) that the Commissioner s decision was not supported by the facts found to be proved by the Commissioner;
>
> (e) that the sanction imposed was excessive."

[8] Procedural rules are set out in Part II of Order 55. Order 55 Rule 22 states that the provisions of Order 59 rule 10 shall apply to an appeal or reference under this Part." Order 59 Rule 10 provides a range of powers to the court including the power

> to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require" (Rule 10 (3))
>
> and the power to

> make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties." (Rule 10(4)).

[9] When the matter initially came on before me there was an issue arising from the decision of Scoffield J who made a number of findings and the effect of those findings on my hearing the statutory appeal arising from the same facts. In the end, the parties agreed that I was not bound by those findings and that I was free to make whatever findings I considered to be appropriate. When the matter came on again, the appellant applied for leave to amend the Notice of Appeal. The case was adjourned to permit this. Thereafter, there was some difficulty finding a date when the diaries of busy senior counsel and my availability coincided.

[10] The appellant s amended Notice of Appeal, dated 13 June 2024, contains four grounds. Briefly summarised, these are (a) that Commissioner s decision was based on an error of law, that the decision not to adjourn the hearing was contrary to section 6 of the Human Rights Act 1998, read with article 6 ECHR and constituted a disproportionate interference with the appellant s right to a fair hearing; (b) that in refusing to adjourn the hearing the Commissioner acted unreasonably in the exercise of his discretion; (c) that there was a failure properly to exercise discretion in the assessment of the source of the evidence, leading to an unjust and unfair outcome; and (d) the decision was not supported by the facts found to be proved.

Some legal authorities

[11] The nature of a statutory appeal was described by Keegan J in *Brown, Application for Leave to Appeal* [2018] NIQB 62 — an appeal under the same legislative provisions as this is — in the following terms:

> [27] It is important to note that this is a statutory appeal. It is not a simple judicial review, neither is it a hearing de novo. However, the court must apply some test to assess whether the appeal should succeed. It seems to me that there is strength in the submission that the first port of call is the statutory language which sets out when a court can intervene. The various headings there are in relation to error of law, procedural impropriety, error of fact, excessive sanction."

[12] Keegan J, having considered authority in England which she felt provided useful guidance, indicated that the appellate court must engage with the merits of the case, while affording appropriate deference to the tribunal. The degree of deference will depend on all the circumstances of the case and the issue before the appellate court. At para [30] she said:

> In my view the test is best described as whether or not the decision was wrong applying the statutory language. I do not consider that the adverb plainly adds anything for the reasons given by the Supreme Court in *Re B* [2013] UKSC 33. The appellant must satisfy the burden of proof. I do not accept the argument made by the respondent that the court is simply exercising a supervisory function as in a judicial review. In my view the jurisdiction of the court is broader within the parameters of the statutory provisions, allowing due deference to the decision maker."

[13] The reference to the adjective 'plainly' arose from submissions made in the course of the *Brown* hearing. I gratefully adopt the guidance provided in that case.

[14] At the heart of this case is the refusal to adjourn the hearing. Adjournment of proceedings such as this involve an exercise of discretion. In his judgment in the judicial review proceedings Scoffield J said, para [51]:

> Section 59(14)(a) of the 2014 Act specifies as a ground of appeal that the Commissioner s decision was based on an error of law.' I consider this wide enough to encompass a situation where the Commissioner has wrongly considered that it was procedurally fair and/or lawful for him to proceed with an adjudication hearing when, as a matter of law, it was not. It would also encompass a situation where the Commissioner acted in breach of article 6 ECHR. Alternatively, the Commissioner may be found to have acted unreasonably in the exercise of the discretion (the ground at section 59(14)(c)) where an adjournment is unfairly refused."

[15] I respectfully agree with that assessment.

[16] The appellant relies, inter alia, on the decision in *Crown Prosecution Service v Picton* [2006] EWHC 1108 (Admin) with was an appeal to a Divisional Court by way of case stated from the decision of a Magistrates' Court to refuse a prosecution application for an adjournment. Although the decision relates to a criminal prosecution, I consider that the general observations of the court are of broad assistance. In para [9], the court said:

> In *Essen* [2005] EWHC 1077 (Admin) this court considered the relevant law, and it considered in particular the judgments of Lord Bingham in *R v Aberdare Justices ex parte Director of Public Prosecutions* (1990) 155 JP 324 (then as Bingham LJ) and in *R v Hereford Magistrates Court ex parte*

Rowlands [1998] QB 110 (then as Lord Bingham CJ). The following points emerge:

(a) A decision whether to adjourn is a decision within the discretion of the trial court. An appellate court will interfere only if very clear grounds for doing so are shown.

(b) Magistrates should pay great attention to the need for expedition in the prosecution of criminal proceedings; delays are scandalous; they bring the law into disrepute; summary justice should be speedy justice; an application for an adjournment should be rigorously scrutinised.

(c) Where an adjournment is sought by the prosecution, magistrates must consider both the interest of the defendant in getting the matter dealt with, and the interest of the public that criminal charges should be adjudicated upon, and the guilty convicted as well as the innocent acquitted. With a more serious charge the public interest that there be a trial will carry greater weight.

(d) Where an adjournment is sought by the accused, the magistrates must consider whether, if it is not granted, he will be able fully to present his defence and, if he will not be able to do so, the degree to which his ability to do so is compromised.

(e) In considering the competing interests of the parties the magistrates should examine the likely consequences of the proposed adjournment, in particular its likely length, and the need to decide the facts while recollections are fresh.

(f) The reason that the adjournment is required should be examined and, if it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise, if the party opposing the adjournment has been at fault, that will favour an adjournment.

(g) The magistrates should take appropriate account of the history of the case, and whether there have been earlier adjournments and at whose request and why.

(h) Lastly, of course the factors to be considered cannot be comprehensively stated but depend upon the particular circumstances of each case, and they will often overlap. The court's duty is to do justice between the parties in the circumstances as they have arisen."

[17] A further passage from the *Rowlands* case, referred to in *Picton*, is of assistance. At page 127 F/G Lord Bingham CJ said:

> It is not possible or desirable to identify hard and fast rules as to when adjournments should or should not be granted. The guiding principle must be that justices should fully examine the circumstances leading to applications for delay, the reasons for those applications and the consequences both to the prosecution and the defence. Ultimately, they must decide what is fair in the light of all those circumstances."

[18] In the Court of Appeal s judgment in the appeal from Scoffield J the court included appendices. In one of those appendices the court endorsed the views expressed by Carswell J in *In re North Down Borough Council s Application* [1986] NI 304:

> If a person entitled to appear at a hearing is unfairly deprived of an opportunity to present his case, that constitutes a breach of the rules of natural justice. The rule is necessarily qualified by reference to the standard of fairness, because not every refusal of an adjournment will constitute a breach of the rules of natural justice. It has to be an unfair refusal which ties the concept of fairness in with the concept of observance of the rules of natural justice: see *Ostreicher v Secretary of State for the Environment* [1978] 3 All ER 82, 86b, per Lord Denning MR; and see also the discussion in Wade on Administrative Law, 5th ed, pp465-8. There are occasions when it would not be unfair to the applicant to refuse an adjournment, for example, because it would be even more unfair to other persons, or because the applicant has brought it entirely on himself, or because the applicant can be accommodated in some other way, or through a combination of factors. Cases are infinitely diverse and the tribunal has to balance out the

> factors to reach a fair decision. If it is not unfair to refuse an adjournment, the applicant may indeed be deprived of an opportunity to present his case, but that deprivation does not constitute breach of the rules of natural justice."

[19] Most recently in this jurisdiction the matter was considered by the Court of Appeal in *Carson v McKee* [2025] NICA 53., although in very different factual circumstances, where the basis for the adjournment application was medical. The court, allowing the appeal on the question of adjournment, said:

> [42] Procedural fairness directly engages article 6 of the European Convention on Human Rights (ECHR"). Given the appellant's argument that the judge has unfairly treated him during the High Court proceedings and subsequent judgment, the right to a fair trial is engaged.
>
> [43] This appeal turns on whether the appellant was afforded a fair trial at the remedies stage. Related to that question is whether the judge exercised her discretion properly in refusing an adjournment of the case on medical grounds."

[20] At para [49] the court cited a passage from *Teinaz v Wandsworth London BC* [2002] EEWCA Civ 1040:

> ... A litigant whose presence is needed for the fair trial of a case, but who is unable to be present through no fault of his own, will usually have to be granted an adjournment, however inconvenient it may be to the tribunal or court or to the other parties. That litigant s right to a fair trial under article 6 of the European Convention on Human Rights demands nothing less. But the tribunal or court is entitled to be satisfied that the inability of the litigant to be present is genuine, and the onus is on the applicant for an adjournment to prove the need for such an adjournment."

[21] I bear all of the above guidance in mind, noting that cases are infinitely diverse" and all adjournment decisions will arise out of the particular circumstances of the individual case.

The background to the decision to refuse an adjournment

[22] The Adjudication Decision is dated 6 March 2023. Under the heading Preliminary Matter' the Assistant Commissioner traced the sequence of events beginning with a pre-hearing review (PHR") held on 5 January 2023. The subsequent events are outlined in detail in the judgment of Scoffield J, and I can do no better than

to repeat his summary (NB: the 'applicant' referred to in his judgment is the appellant in these proceedings):

> [9] Prior to the adjudication hearing, the Assistant Commissioner had conducted nine pre-hearing reviews (PHRs) to deal with issues of case management. With the exception of a small number of these, at each PHR the applicant was present and/or legally represented. The respondent has provided the following summary:
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> (i) There was a PHR on 16 February 2021 at which the applicant was represented by counsel, instructed on her behalf by John J Rice & Co, Solicitors. A further PHR was held on 14 May 2021 at which the applicant was again represented, and a hearing date of 13 September 2021 was proposed for the substantive hearing. Further PHRs at which the applicant was represented by counsel and/or the same firm of solicitors occurred on 28 September 2021 and 12 May 2022.
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> (ii) On 17 August 2022 the applicant s solicitors advised that they were no longer acting for her. However, around six weeks later, on 30 September 2022, Brentnall Legal Ltd advised that they were now acting for Ms Bunting in relation to the proceedings before the Commissioner. Notwithstanding this, there was no appearance by or on behalf of the applicant at the next two PHRs which occurred on 17 October 2022 and 14 November 2022. On the latter of these two dates, an email was received from Mr Brentnall on the morning of the PHR explaining the non-attendance and apologising for this, accepting that it was not a satisfactory situation given the length of time for which the proceedings had been ongoing.
>
> (iii) Another PHR was convened on 25 November 2022, at which the applicant was represented by Mr Brentnall. He explained at that stage that the applicant did not have the benefit of legal aid for the proceedings before the Commissioner; but he suggested that a listing would bring focus.' The substantive adjudication hearing was listed for 1012 January 2023.

(iv) A further PHR was held on 5 January 2023. The applicant was again represented by Mr Brentnall. At his request the January hearing dates were vacated, and the adjudication hearing was re-listed for 7-9 February 2023. The respondent says that one reason for the adjournment from January to February was to provide the applicant s solicitor with time to assist the applicant to secure funding for the proceedings. The Assistant Commissioner also noted at this point that his role was inquisitorial and that, should the applicant be unrepresented at the hearing, the appointed legal assessor would provide advice and assistance in order to ensure that the hearing was conducted fairly.

(v) Finally, a PHR was held on 27 January 2023 at which the applicant was not represented. Further details of the steps taken by the Assistant Commissioner following this are set out below. These are detailed in the Assistant Commissioner s decision notice in the case which was issued later.

[10] Once the issue of funding for the applicant s representation had been raised again at the PHR on 5 January, and Mr Brentnall had then not appeared at the PHR on 27 January, the Assistant Commissioner was obviously concerned to ascertain the position and plan for the forthcoming hearing. At his direction, an email was sent to Mr Brentnall on 27 January noting his non-attendance at the PHR that day, confirming that the substantive hearing would commence at 12.00 noon on 7 February, and asking him to acknowledge the email by close of business on 30 January with a clear indication of whether or not you continue to represent Ms Bunting in this matter or, if not, [whether] you are aware of any other legal representative she may have." No response was received to this email by the suggested reply date.

[11] On the same day, 30 January, a letter was sent by courier to the applicant from the Commissioner s office (with confirmation later being received that this had been delivered). It advised the applicant of the intended hearing date and commencement time and then said the following:

> Your solicitor Mr Brentnall has been informed of the hearing, and he is aware of my intention that the hearing will proceed on that day whether or not you have legal or other representation. I would urge you to contact Mr Brentnall on this matter.
>
> If Mr Brentnall no longer represents you, a copy of the Bundle of Papers, to be used at the Hearing can be provided by the Deputy Commissioner s Office. It is important that you contact this office about this matter.
>
> I urge you to attend the Hearing; it is important that you give your response to the complaints made against you.

[12] In addition, on 2 February the Assistant Commissioner s staff were informed by the Deputy Commissioner s Senior Investigating Officer (SIO) that he had called to the applicant s home address that afternoon to hand deliver a copy of the evidential bundle in the case. No one answered the door. (The applicant has indicated through counsel that she does not believe anyone called to her house that day or that, if they did, she was not at the house at the time.) The SIO then emailed the applicant to inform her that he had called at her house and of the purpose of the call. He asked her to contact the office to arrange collection or delivery of the documents before the hearing date. Later that day, on 2 February, a member of the Assistant Commissioner s staff also called Mr Brentnall s office. He was unavailable but a message was to be left for him to contact the NILGSC office. It does not appear that this message was responded to. It is disappointing that, in the face of what I accept were concerted efforts on the part of the Commissioner s office to clarify the position, there was a lack of communication from the applicant and her solicitors for a period of 10 days from 27 January until 6 February (the day before the hearing).

[13] On 6 February, the applicant says that she was informed by her legal representatives that, in the absence of remuneration, they were not able to appear on her behalf at the scheduled hearing. On that same date, the legal representatives wrote to NILGCS informing it of the fact

> that the applicant no longer had legal representation as she was not in a position to fund the case herself. Why this was only communicated the day before the hearing is not clear and has not, in my view, been adequately explained. [Counsel] provided some further information, on instruction, in the course of the hearing. It seems that there was a 'lengthy' telephone consultation between Mr Brentnall and the applicant on the morning of 6 February. This was to discuss the hearing and various options. It became clear that Mr Brentnall was not prepared to conduct what was possibly a three-day hearing without remuneration (particularly as his firm had already undertaken or was undertaking some other work for the applicant on a pro bono basis). It should go without saying that I make absolutely no criticism of him or his firm for adopting that perfectly reasonable stance. As already indicated above, however, it would have been much preferable if this position had been resolved some time previously.
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> [14] At 2.00 pm, at the request of the Assistant Commissioner, his legal assessor (Mr Michael Wilson) emailed Mr Brentnall on an urgent basis indicating that they were still unaware if Mr Brentnall was acting for Ms Bunting and asking that the position be confirmed. Mr Brentnall replied at 2:09pm to indicate that funding was not available for his services and that we can confirm that we are not currently acting for Ms Bunting in this case." There was no indication that there would be an application for an adjournment. The legal assessor immediately sought clarification of whether the applicant herself was aware of Mr Brentnall s position. In a further email of 2:25pm Mr Brentnall confirmed that he had consulted with the applicant at length (at lunchtime that day, he said) and that she was fully aware of his decision."

[23] There then followed the appellant s email of 6 February which I have referred to above.

[24] The events of 7 February are also summarised in the judgment of Scoffield J:

> [17] The hearing had been scheduled to commence at 12.00 noon but there was a short delay as a result of the further efforts being made to contact the applicant. As a result, the hearing commenced at 12:20pm. At this point, the Assistant Commissioner noted that there had been no

reply from the applicant despite three telephone calls having been made to her that morning (with no answer) and the email having been sent at 11:08am. He therefore proceeded at the start of the hearing by considering the request she had made for an adjournment. He asked counsel for the Deputy Commissioner (Ms Best BL), who was presenting the case against the applicant, to make any representation she wished in respect of the application. On behalf of the Deputy Commissioner, Ms Best submitted that the hearing should proceed for a variety of reasons. These included that it was the applicant herself who had asked for an in-person hearing; the applicant had had the benefit of advice and assistance from two sets of solicitors and counsel up until very recently; that the matter had been listed for hearing on a number of occasions; and that the applicant s solicitors had been provided with a full set of papers in the case in mid-January and attempts had been made to provide a copy of the papers directly to the applicant herself. Ms Best accepted that the issue was finely balanced but submitted that the interests of justice and the public interest were such that the case should proceed, particularly in light of the time which had passed since the complaint was originally made (some 4½ years) and the fact that the complainant was in attendance and had travelled some distance to give oral evidence.

[18] The legal assessor also gave the Assistant Commissioner some advice at this point. He made reference to the three telephone calls which had been made to the applicant that morning which had not been answered, which were in addition to the email which had been sent to the applicant and attempted contact by way of text message. A WebEx link to the hearing had also been sent to the applicant. Mr Wilson advised that a further check should be made if there was anyone on the WebEx waiting to be admitted.

[19] In addition, Mr Wilson s advice was that the Commissioner was entitled to exercise his discretion but should consider whether all reasonable efforts had been made to advise the applicant in order to ensure that she was aware of the hearing. Assuming that the Assistant Commissioner was satisfied with that, then he ought to have regard to all of the other circumstances and balance fairness to the applicant with the interests of the public. Mr Wilson gave additional advice in respect of a number

> of other relevant considerations, including that the applicant had had legal representation until the previous day; that she had personally appeared in a number of the PHRs; and that, through her legal representatives, she had provided a response to the case against her by means of both a councillor response form and a personal statement. He also noted guidance in the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162. Finally, he reminded the Assistant Commissioner that the Commissioner s guidance on adjudication procedures, at para 48, addresses the failure of a party to attend an adjudication hearing and gave the Commissioner the authority to proceed in their absence."

[25] The Assistant Commissioner then gave his decision on the request for an adjournment. His decision is recorded in the Adjudication Decision in the following way (I have numbered the paras for reference purposes):

> 1. The Assistant Commissioner said that he had considered the papers in the Hearing bundle and had taken into account the submissions from Ms. Best BL and the advice from Mr Wilson, his Legal Adviser. He was very aware that it was important to exercise the utmost care and caution in deciding whether or not to proceed in the absence of former Councillor Bunting.
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> 2. Former Councillor Bunting and her previous legal representatives had clearly shown that they were aware of the contents of the investigation report. To date there had been nine pre-hearing reviews since the case was first referred for adjudication, and in those hearings, there has been involvement by her various legal representatives in all but two of these.
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> 3. In the absence of former Councillor Bunting, the Assistant Commissioner had a discretion whether to proceed or not. He had to be satisfied that all reasonable efforts had been made to contact her and he was so satisfied. He also accepted the propositions put forward by Ms Best BL opposing the adjournment.
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> 4. Whilst former Councillor Bunting had requested an adjournment at a very late stage the Assistant Commissioner was satisfied that she was fully aware of the arrangements for the Hearing. He noted that if her legal representative had not withdrawn, she presumably would

have been present, and her absence was not based on any medical or other similar evidence.

5. Furthermore, in his consideration of the matter the Assistant Commissioner would have the benefit of her Councillor Response Form and also her personal statement, both of which were prepared with the assistance of her legal advisers. This was a case in which many of the facts were not in dispute, having already been agreed through Counsel on behalf of former Councillor Bunting.

6. Therefore, on balance, the public interest in having this matter concluded outweighed the application to adjourn. In proceeding in the absence of former Councillor Bunting, the Assistant Commissioner also reminded Counsel for the Deputy Commissioner of her obligation to draw to his attention, not only the evidence relied on by the Deputy Commissioner, but also the issues raised by former Councillor Bunting in her Councillor Response Form and her personal statement. The Assistant Commissioner also noted that, with the assistance of his Legal Assessor, he might also ask questions of a witness."

[26] The matter was not adjourned, and the hearing proceeded to a conclusion in the absence of the appellant.

The parties' submissions in brief

[27] On behalf of the appellant, Mr Lavery KC, complains of a breach of the equality – of arms' principle (*De Haes and Gijsels v Belgium* [1998] EHRR1) and that the decision not to adjourn the hearing was unfair. He relies on the dicta in *Terluk v Berezovsky* [2010] EWCA Civ 1345 where the court said that the test to be applied to a decision on the adjournment of proceedings is not whether it lay within the broad band of judicial discretion, but whether in the judgment of the appellate court, it was unfair." Further, because there was a failure to carry out a full examination of the circumstances behind the adjournment application, he submits that the appellant was not afforded a full opportunity to present the adjournment application. Reliance is also placed on the decision in *Rowlands*, to which I have referred.

[28] As a result of the failings, Mr Lavery submits that the appellant has been denied a fair hearing.

[29] He also submits that the appellant s asserted fear of the complainant had a reasonable basis in fact. His skeleton argument identifies a number of convictions of the complainant: a conviction, in 2020, under the Terrorism Act 2000; a conviction for harassment aggravated on the grounds of religion; and a conviction under hate crime

legislation. There was a BBCNI Spotlight programme in which, according to the skeleton argument, the complainant was covertly recorded and admitted to assaulting two women.

[30] On behalf of the Commissioner Ms Fiona Fee KC, opposing the appeal, argues that it is quite wrong to suggest that the appellant was not given the opportunity to make oral submissions for an adjournment. She submits that multiple attempts were made on the morning of 7 February and at lunchtime to facilitate her but it was her informed choice not to engage" with those attempts. As to the reliance on *Picton*, Ms Fee says that she does not accept that that decision, arising from criminal proceedings, is analogous. It should be approached with caution. However, an examination of all the matters contained in the *Picton* guidance would still result in the conclusion that the Assistant Commissioner was justified in deciding not to adjourn the hearing. She analyses each of the *Picton* principles and provides justification for the Assistant Commissioner s decision in relation to each.

[31] She points out that when the Assistant Commissioner was alerted to the appellant s presence on the Webex link to the hearing, the hearing was adjourned over lunchtime to allow the appellant to speak by telephone to the legal adviser, Mr Wilson.

[32] As to the reliance on the issue of fear of the complainant, Ms Fee submits that there are several matters for consideration: (1) that it was the appellant who had requested an 'in-person' hearing; (2) that the issue was only raised the evening before the hearing; (3) it was not raised at any of the pre-hearing reviews; (4) that the office of the Commissioner had in place appropriate measures to ensure the safety of all participants, and the appellant was told this by email; (5) that in the telephone call referred to above, Mr Wilson told her that they would ensure that she had no contact with the complainant.

[33] She also points to the inquisitorial, rather than adversarial, nature of the proceedings as a protection for the appellant.

Discussion

[34] One matter which I consider to be of significance in the background of this case is that the appellant had the benefit of legal representation and advice throughout this case right up to the day prior to the hearing. It was only on the day prior to the hearing, because of financial difficulties relating to the payment to her solicitor, that the solicitor indicated that he could no longer provide representation or advice. It is a reasonable inference to draw that the appellant had, throughout the process to that date, been reliant on that representation and advice and I note from the summary in the judgment of Scoffield J that one reason for the adjournment from January to February was to provide the applicant s solicitor with time to assist the applicant to secure funding for the proceedings."

[35] In para 2 of the reasons for the decision not to adjourn, the Assistant Commissioner refers to the fact that the appellant and her legal representative have both been involved throughout. In para 3, he expresses his satisfaction that all reasonable efforts had been made to contact the appellant. In para 4, he stated that he was satisfied that she was fully aware of the arrangements for the hearing and that if her legal representative had not withdrawn, there appeared to be no medical reason why she could not have attended. In para 5, he refers to the fact that he has available to him documentation containing her side of the matter. In para 6, he considered that the public interest in having the matter heard outweighed the application to adjourn"; he noted that counsel for the Deputy Commissioner had an obligation to draw to his attention issues raised by the appellant; and that he, himself, might also ask questions.

[36] I am not persuaded that it was correct to weigh the public interest against the application to adjourn, rather than against the interests of the appellant. It was a significant matter, which he did not appear to take into consideration, that she had found herself, at the 11th hour, suddenly deprived of legal representation and advice, having relied on both throughout the process. Further, in her email of the 6 February the appellant had raised the issue of her fear of the complainant. Whatever view one might take about that, and however skeptical one might have been that it was only raised on the evening prior to the hearing, fear appeared on the face of the email to be a factor in the appellant s mind. She may well have intended that any engagement with the complainant at the hearing would have been done by her legal representative, thus alleviating her fear somewhat, but found herself without that representation.

[37] There was no reference either to the issue of fear, or the potential effect on the appellant at finding herself unrepresented at the last minute, having previously been represented. I would have expected some discussion about these matters and some consideration to have been given to them in the decision of the Assistant Commissioner not to adjourn the hearing. I would have expected, for example, the Assistant Commissioner to have alluded to the fear expressed by the appellant and to the matters which could have been put in place potentially to ameliorate those fears. The absence of any reference to those matters means that the court does not know whether they featured in any way in the exercise of the Assistant Commissioner s discretion.

[38] Rather, the concentration within the decision not to adjourn was on the facts that she was aware of the hearing date and that there was no medical evidence to suggest that she could not attend in person While factually those considerations were correct, they really did not speak to the issue which underlay the stated reasons for the application for an adjournment.

[39] In all the circumstances, I have come to the conclusion that, there appears not to have been a proper consideration of the matters raised. I am of the view that had the Assistant Commissioner considered carefully both of the issues to which I have

referred above, he may have come to a different conclusion in relation to the adjournment application.

[40] I consider, therefore, that in the circumstances of this case the whole of the adjudication hearing was unfair.

[41] Accordingly, I conclude that that the Commissioner s decision was based on an error of law (section 59(14)(a) and that the Commissioner has acted unreasonably in the exercise of the Commissioner s discretion (section 59(14)(c)).

[42] I quoted above part of para [51] of the judgment of Scoffield J in the judicial review proceedings. In the remaining part of the para he said:

> Where such a ground of appeal is made out before the High Court, there may be cases where the court itself can, in the course of the appeal process, remedy the unfairness. In other cases, such as this, where the complaint is that the whole adjudication hearing was therefore unfair, I consider it to be within the powers of the High Court hearing an appeal to set aside the Commissioner s decision with the result that the Commissioner should then conduct a fair adjudication procedure afresh and reach a lawful decision.

[43] I agree. In the circumstances I grant leave to appeal, allow the appeal and set aside the decision of the Assistant Commissioner. The matter will be remitted for consideration by a different decision-maker.

[44] The appellant is entitled to her costs of this appeal, to be taxed in default of agreement. The appellant is an assisted person, so I order taxation of her costs in accordance with the second Schedule to the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.