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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**03/06/2026**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION JUDICIAL REVIEW

BETWEEN:

DANIEL McATEER

Appellant

v

SOLICITORS DISCIPLINARY TRIBUNAL FOR NORTHERN IRELAND

Respondent

Mr McAteer appeared as Litigant in Person
Laura Curran (instructed by Mark Jackson, Secretary to the Solicitors Disciplinary Tribunal) for the Respondent

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Before: Treacy LJ and McBride J

TREACY LJ (*delivering the judgment of the court*)

Introduction

[1] This is an appeal by Mr Daniel McAteer ("the appellant") against the decision of Scoffield J refusing leave to apply for judicial review in respect of certain decisions of the Solicitors Disciplinary Tribunal ("the SDT").

[2] The appellant advances four grounds of appeal. In essence, these challenge:

(i) The SDT's decision to limit the scope of complaints under consideration ("the scope decision");

(ii) The judge's conclusion as to when time began to run for the purposes of a JR application;

(iii) The refusal to consider a challenge to the SDT's substantive decision dated 16 August 2021; and

(iv) Findings concerning an alleged lacuna in regulation relating to the Oversight Commissioner and the deficit in the regulatory framework in Northern Ireland.

[3] For reasons set out below, this court concludes that the appeal must be dismissed.

Factual background

[4] The relevant factual background to this application is set out in the judgment of Scoffield J (*In re Daniel McAteer* [2022] NIKB 12). In relation to the first decision under challenge, under ratio of his decision at [54], the judge held that there were two bars to judicial review: first, the appellant could, and should, have appealed the decision in 2017; and second, the challenge was 'irredeemably out of time.' He also concluded that, *obiter*, the appellant did not enjoy a realistic prospect of success on the merits (para [53]).

[5] In addition, he noted that there was no utility in the appeal in this regard because the Order 53 statement sought an order "prohibiting the SDT from any further involvement in relation to the complainants that have not yet been properly investigated", whilst challenging its failure to do so (para [66]).

[6] In relation to the second decision, the court noted that the matter had become academic even before the issue of proceedings, and there was no basis for the court exercising its discretion to hear an academic case on the facts (paras [71]-[72]).

[7] The substantive findings and order of the SDT on 16 August 2021 ('the substantive decision') is not listed as a decision under challenge; however, the appellant sought relief under para 4.1(iii) of the Order 53 Statement for an order of certiorari in respect of that decision. The respondent contended that that decision was not properly in the scope of the judicial review proceedings, and the court noted the appellant's written submissions set out that the application did not "address the merits of the complaints themselves." The ratio of the decision was, at para [75]:

> "However, if and insofar as the applicant is now seeking to challenge the substantive conclusions of the Tribunal, this again is an area where he plainly has or had an alternative remedy by way of appeal under Article 53 of the 1976 Order. In fact, in his preliminary submission filed in response to the court's initial case management directions order, Mr McAteer said that he could see that an appeal to the High Court "might be more appropriate"

> in relation to the findings of the SDT that there was no misconduct. He indicated that he would issue an application for leave to the High Court and issue a notice of appeal (I am unaware if he has done so: no such application has come before me). Alternatively, Mr McAteer asked that the court give leave so that the notice of appeal could be lodged. However, such an application should be made in the proper manner in accordance with Part II of RCJ Order 55 and RCJ Order 106. In the course of submissions, the applicant again accepted that he may have a remedy by way of appeal in relation to that part of his complaint which the Tribunal did determine."

[8] Further, Scoffield J held that there was 'significant force' in the proposed respondent's submission that, of the grounds which seemed to be targeted at the substantive decision, the irrationality ground had no realistic prospect of success; concluded that the ground of procedural unfairness did not have a realistic prospect of success; and considered the claims of bias and bad faith not to have any evidential foundation (para [74]).

[9] The appellant also argued that he had a substantive legitimate expectation that if complaints were not properly dealt with by the SDT, there would be an effective remedy by way of referral to the Legal Services Oversight Commissioner, which he contended was denied by a 'statutory and regulatory lacuna.' Scoffield J noted this was "not a matter which is before the court, otherwise than by way of contextual background" with there being no challenge to the Department of Finance as the body responsible for the legislation yet to be commenced which would give the Commissioner powers; nor, when she had those powers, would they provide any remedy in relation to the SDT's actions (paras [78]-[79]).

[10] The appellant took up the appeal under Article 53 of the Solicitors (Northern Ireland) Order 1976 ("the 1976 Order"), which has now been the subject of a judgment by McBride J ([2024] NIKB 8), in relation to both the scope decision and the substantive decision (see para [38] of the judgment) the application was struck out as it was out of time and McBride J refused to extend time to lodge the appeal.

[11] At the same time, the appellant lodged a notice of appeal, dated 25 October 2022 against the decision of Scoffield J on four grounds, namely error of law in relation to the findings:

(i) on the scope decision;

(ii) as to when time began to run for the purposes of a JR application;

(iii) regarding the challenge to the substantive decision, 'notwithstanding the fact there may be an alternative remedy that is being pursued by the appellant; and

(iv) in relation to the alleged 'lacuna' in regulation relating to the Oversight Commissioner and the deficit in the regulatory framework in Northern Ireland.

Issues on appeal

[12] The issues arising for determination are:

(i) Whether the existence (and subsequent pursuit) of a statutory appeal precluded judicial review;

(ii) Whether the judge erred in his approach to the time limit under Order 53;

(iii) Whether there was any error in refusing to permit a challenge to the substantive SDT decision; and

(iv) Whether any arguable error arises in respect of the alleged regulatory lacuna.

Discussion

The alternative remedy

[13] The rationale for the alternative remedy principle is not, as the appellant intimates, to prevent specialist tribunals from being undermined but, *inter alia*, to protect the will of Parliament. It is a well-established principle that judicial review is a remedy of last resort. Per Sales LJ in *R (Glencore Energy UK Ltd) v Revenue and Customs Comrs* [2017] EWCA Civ 1716, at [55-56]:

> "[…] Also, in considering what should be taken to qualify as a suitable alternative remedy, the court should have regard to the provision which Parliament has made to cater for the usual sort of case in terms of the procedures and remedies which have been established to deal with it. If Parliament has made it clear by its legislation that a particular sort of procedure or remedy is in its view appropriate to deal with a standard case, the court should be slow to conclude in its discretion that the public interest is so pressing that it ought to intervene to exercise its judicial review function along with or instead of that statutory procedure …

> Treating judicial review in ordinary circumstances as a remedy of last resort fulfils a number of objectives. It ensures the courts give priority to statutory procedures as laid down by Parliament, respecting Parliament's judgment about what procedures are appropriate for particular contexts."

[14] Where Parliament has provided a statutory appeal mechanism, that procedure will ordinarily constitute a suitable and adequate alternative remedy. In the present case, Article 53 of the 1976 Order provides a bespoke appeal route from decisions of the SDT. That procedure includes defined requirements, including a strict 21-day time limit and a requirement for leave.

[15] The fact that the appellant elected not to pursue a remedy of which he was on notice and had previously made reference to utilising, does not affect the court's consideration of whether it was an alternative remedy: per Lambert J, at [11] in *R (Chaudhry) v SSHD* [2018] EWHC 3887 (Admin):

> "… judicial review is not normally to be used when an adequate alternative remedy is available, save in exceptional circumstances. The fact that the remedy is no longer available because the Claimant chose not to pursue it does not make the remedy any less 'adequate.'"

[16] The appellant was aware of this remedy. Indeed, he expressly acknowledged its availability and ultimately sought to pursue it. The fact that the appellant failed to avail himself of the statutory remedy within time does not render that remedy inadequate.

[17] The statutory appeal allowed for a merits-based challenge. By contrast, the judicial review proceedings sought to advance, in substance, similar complaints under the guise of public law grounds.

[18] In these circumstances, the judge was correct to conclude that the availability of an alternative remedy constituted a complete answer to grounds (i) and (iii).

The time limit issue

[19] Order 53 rule 4 of the Rules of the Court of Judicature (NI) 1980 ("the RCJ") requires that an application for judicial review be brought promptly and within three months of the date on which the grounds first arose. The judge found that the grounds relied upon by the appellant were apparent as early as 2017. The judicial review application was brought more than three and a half years later. No satisfactory explanation for this delay has been provided.

[20] The appellant's reliance on the statutory appeal provisions to argue for a different commencement of time is misconceived. The statutory appeal regime and judicial review operate under distinct procedural frameworks, each with its own time limits.

[21] McBride J explained at para [46] the difference between the two statutory regimes dictating time limits: Article 53(6) of the 1976 Order for the statutory appeal, and Order 53 rule 4 of the RCJ for the purposes of judicial review:

> "[46] Under Article 46 when the Tribunal decides a prima facie case has not been shown, the Tribunal is required to notify the applicant. Article 46(5) provides that where a complainant has been notified of a decision by the Tribunal that a prima facie case has not been shown that person or the solicitor can request in writing and the Tribunal is required to make a formal order embodying their decision. Article 53(6) states that an appeal from the decision that there is no prima facie case shall be brought within 21 days from the date of making "the order." Article 53(6) makes no reference to the date of notification. Having regard to all the provisions of the 1976 Order I am satisfied that time for appeal runs from the date of the service of a formal order and not the date of notification."

[22] Time for the purposes of an application under Order 53 runs from when the grounds of challenge 'first arose.' As explained by Scoffield J at [57] of his judgment, "[t]he grounds on which Mr McAteer relies were as evident back in 2017 as they are now. No good reason for extending time has been shown in this case." The fact that there is an alternative remedy with a differently constructed time limit does not render Scoffield J's decision a misinterpretation of the basic and well-known principle in Order 53 Rule 4.

[23] The judge correctly applied the applicable principles under Order 53. The application was over three and a half years out of time. There is no error of law in his conclusion.

Challenge to the substantive decision

[24] To the extent that the appellant sought to challenge the SDT's substantive decision, the judge was correct to find that such a challenge fell within the scope of the statutory appeal mechanism.

[25] The appellant expressly accepted that an appeal might be the more appropriate route. That acknowledgment reinforces the conclusion that judicial

review was not the proper avenue. Furthermore, the judge found that the proposed grounds, including irrationality, procedural unfairness, bias, and bad faith, did not disclose any realistic prospect of success, and in some instances lacked any evidential foundation.

[26] There is no basis to interfere with those conclusions.

Appeal in relation to the 'Statutory Lacuna'

[27] The appellant contends that there exists a lacuna in the regulatory framework, in particular concerning the powers of the Legal Services Oversight Commissioner. That issue was not properly raised within the judicial review proceedings. No relevant relief was sought, nor was any appropriate respondent (such as the Department of Finance) joined to the proceedings.

[28] It is submitted that the court should give consideration to the overriding objective in the case. In *Bryson's Application* [2022] NIQB 4, Scoffield J refused to grant leave to a case with 'no practical effect', noting at [29]:

> "… I also take into account the need to allocate resources fairly and proportionately amongst the Judicial Review Court's heavy caseload. That would indisputably be a relevant consideration in giving effect to the overriding objective contained in RCJ Order 1, rule 1A (as expounded in Order 1, rule 2) but – whether or not the grant of leave to apply for judicial review is formally the exercise of a power given to it by the Court Rules for the purposes of Order 1, rule 3 – it is also, in my view, plainly a relevant consideration in the exercise of the court's Salem discretion."

[29] In any event, the issue is academic insofar as it concerns this appellant. Even if there were a delay in the commencement of statutory provisions, it would not affect the validity of the SDT's decisions under challenge. This ground is therefore without merit.

Conclusions

[30] The appellant had a clear and appropriate alternative remedy by way of statutory appeal. He failed to utilise that remedy in time and now seeks to circumvent the statutory scheme through judicial review

[31] The judicial review application was manifestly out of time, disclosed no realistic prospect of success, and in part concerned matters that were academic or

not properly before the court. Each of the grounds of appeal is devoid of merit. The appeal is dismissed.