**Neutral Citation No.: [2009] NICA 19** | *Ref:* **McCL7442**

*Judgment: approved by the Court for handing down* | *Delivered:* **20/03/09**

*(subject to editorial corrections)**

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

_____

**ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

_____

**O'Neill's Application (Daniel) [2009] NICA 19**

**AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY DANIEL O'NEILL**

_____

## HEADNOTE

*Judicial review – refusal of leave – appeal or renewal of application for leave? – grant of leave by appellate court – RSC Order 53, Rule 5(8) – delay – exhaustion of alternative remedies – relitigation – misuse of the court's process – vexatious litigant.*

## McCLOSKEY J

## INTRODUCTION

**[1]** The Appellant appeals against the order of Gillen J dated 2nd April 2008, whereby the learned judge dismissed the Appellant's application for leave to apply for judicial review. While the order recites the Appellant's consent to the dismiss, this is a matter of some dispute and will not, in any event, influence the disposal of this appeal. The Appellant is an unrepresented litigant. The public authorities against which these proceedings have been brought are, respectively, the Department for Social Development ("*the Department*") and the entity known as "The Appeal Tribunals Northern Ireland" ("*the Appeal Tribunals*"). Each of these agencies was represented, separately, before this court.

**[2]** At first instance, the Appellant pursued nine individual challenges. These are, somewhat confusingly, numbered 2 – 10 in his Order 53 Statement. At the outset of the hearing of this appeal, the Appellant unequivocally withdrew those challenges numbered 4, 7 and 8. As a result, six matters remain actively under challenge and these are, in the phraseology employed by the Appellant:

(a) A decision by the Social Security Agency dated 6th July 1994 to disqualify the Appellant from Income Support from 29th June to 12th July 1994.

(b) The introduction of a requirement to "actively seek work" to receive Income Support presumed to have been April 1992 (*sic*) by the Secretary of State for Social Services.

(c) A decision by an adjudication officer of the Department of Health and Social Services dated 9th August 1994 to pay the Appellant Income Support at inflated rates between 29th June and 12th July 1994.

[The connection with challenge (a) is evident].

(d) The payment by the Secretary of State for Social Services of Income Support to illegal immigrants up to and including 4th February 1996.

(e) A decision of the Appeals Service dated 24th August 2007 "to await the Appellant's readiness to proceed in respect of an appeal BE 621/05S relating to Severe Disablement Allowance".

(f) "The continuing abuse of human rights of the Appellant".

**[3]** The Appellant, in respect of each of his challenges, pursues various forms of relief, consisting of mainly (but not exclusively) Orders of Certiorari and declarations.

## THE APPELLANT'S CHALLENGES: CONSIDERATION

**[4]** Each of the Appellant's challenges will be considered in turn, taking into account the totality of the documentary materials upon which he relied, together with his written and oral submissions.

### First Challenge

**[5]** This concerns a decision of the Social Security Agency ("*the Agency*"), whereby the Appellant was disqualified for receipt of Income Support during a period of fourteen days, from 29th June to 12th July 1994. The Appellant contends that this decision was unlawful and *ultra vires*. He draws attention to Regulation 10A of the Income Support (General) Regulations (Northern Ireland) 1987 ("*the 1987 Regulations)*, as amended, which provides, in paragraph (2):

> "*(2) A claimant, other than a person to whom Regulation 10(1)(h) applies, shall not be required to be a person who is actively seeking employment during any week in which the adjudication officer is satisfied that, unless Income Support*

*is paid, the claimant or a member of his family (if any) will suffer hardship*".

As the text of this Regulation indicates, this operates as an exception to a statutory requirement that Income Support is not available unless the claimant is actively seeking employment. Regulation 10A was not included in the 1987 Regulations, in their original form. It was, rather, inserted by Regulation 6 of the Income Support (General) (Amendment No. 3) Regulations (Northern Ireland) 1989 which, per Regulation 1(1), came into operation on 9th October 1989.

**[6]** The requirement to be actively seeking employment, in the case of applications for Income Support is statutory in nature, as appears from Section 123(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ("*the 1992 Act*") which, in its original form, provided:

> "***Income Support***
>
> 123(1) *A person in Northern Ireland is entitled to Income Support if –*
>
> *(a) he is of or over the age of eighteen …;*
>
> *(b) he has no income or his income does not exceed the applicable amount;*
>
> *(c) he is not engaged in remunerative work and, if he is a member of a married or unmarried couple, the other member is not so engaged;* ***and***
>
> ***(d) except in such circumstances as may be prescribed –***
>
> ***(i) he is available for, and actively seeking, employment;***
>
> *(ii) he is not receiving relevant education*".
>
> [Emphasis added].

Section 123(1) came into operation on 1st July 1992. It was amended subsequently. In particular, with effect from 17th July 1996, it was no longer necessary for a claimant to demonstrate that he was available for, and actively seeking, employment: this was the effect of Section 13(4) of and Schedule 2 to The Jobseekers (Northern Ireland) Order 1995 and Article 2 of The Jobseekers (1995 Order) (Commencement No. 3) Order (Northern Ireland) 1996]. The effect of these amendments was to substitute a new Section 123(1)(d) in the following terms:

> "*(d) Except in such circumstances as may be prescribed, he is not receiving relevant education*".

It will be immediately apparent that the previous requirement that the claimant be "*available for, and actively seeking, employment*" (set out in paragraph [6] above) was thereby extinguished. However, as the relevant amendments did not take effect until 17th July 1996, this requirement was in vogue during the period to which the Appellant's first and third challenges relate viz. June/July 1994.

**[7]** The requirement to be available for, and actively seeking, employment was reiterated in an explanatory leaflet published by the Social Security Agency (UBL1), to which the Appellant drew attention and in which the following statement is found:

> "***Actively Seeking Work***
>
> *This is a condition you **must** satisfy in order to receive Unemployment Benefit, Income Support and National Insurance Credits.*"

Relying on Regulation 10A(2) of the 1987 Regulations, as amended, the Appellant complains that he suffered "*hardship*" as a result of the impugned decision. The hardship which he articulated was the need to pay for medication and the discontinuance of Housing Benefit. The Appellant advanced this complaint in the abstract, without particulars. He was disposed to accept that, arguably, *all* refusals of Income Support would occasion hardship of some kind to the unsuccessful claimant.

**[8]** On behalf of the Department, it was asserted that the impugned decision was reconsidered at the time, giving rise to a reversal, followed by the tendering of a cheque, in the appropriate amount, which the Appellant refused to encash. This assertion was not disputed by the Appellant. Indeed, it seems to be confirmed by the terms of the Appellant's third challenge: see paragraph [2](c), *supra*. It would appear that this can be related to one of the many letters in the Appellant's bundle, namely a letter dated 22nd July 1994 addressed by him to the Knockbreda Social Security Office, whereby he returned a Girobank cheque in the amount of £1.44. The bundle also contains an adjudication officer's decision, dated 26th July 1994, to the effect that the Appellant was not entitled to Income Support between 29th June and 12th July 1994 because "*… he was not and cannot be deemed to have been actively seeking employed earner's employment*" between these dates. This, properly analysed, is the decision under challenge and its terms appear indisputable.

**[9]** The Appellant's challenge to this decision must be rejected, for five reasons. Firstly, as appears from the analysis in paragraph [8] above, the decision about which the Appellant complains was reconsidered and reversed, in his favour. When this occurred, the Appellant elected to reject the amount of benefit proffered to him.

The effect of the reversal was to extinguish the earlier decision. The Appellant's first challenge does not attack the reconsidered decision. Rather, its focus is the original decision, subsequently reconsidered and reversed. Accordingly, at this remove, there is nothing that can be challenged. The misconception in the challenge with the Appellant purports to make is obvious.

**[10]** Secondly, there is no evidence, direct or inferential, of any error of law on the part of the adjudication officer or any other vitiating factor in the impugned decision of a kind which would render it vulnerable to successful challenge by judicial review. Regulation 10A(2) of the 1987 Regulations operated as an exception which would be triggered where the adjudication officer was satisfied about the matter of hardship. The Appellant's challenge, which is advanced in abstract and unparticularised terms, fails to establish any error of law or other vitiating factor in this respect.

**[11]** Thirdly, the Appellant's challenge to this decision must be rejected on the freestanding ground of delay. Order 53, Rule 4 of the Rules of the Supreme Court (NI) 1980 provides:

> "*An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period in which the application shall be made*".

In this jurisdiction there are various decisions concerning the meaning and rationale of this Rule. These are summarised in the recent decision in ***Re Giboney's Application*** [2008] NIQB 156, at paragraph [25]. In the present case, proceedings were commenced on 29th February 2008, over thirteen years after the impugned decision had been made. To observe that this did not occur promptly is a substantial understatement. The grounds for advancing the Appellant's challenge crystallised when the impugned letter of decision, dated 26th July 1994, was transmitted to him. Accordingly, the "*in any event*" limb of Rule 4 triggered a period of three months, commencing on that date. It follows that the Appellant's challenge can be permitted to proceed only if the court is satisfied that there is good reason for extending time. Neither the Appellant's affidavit nor the arguments advanced by him establish anything approaching the kind of explanation or justification which would be required to permit such a manifestly delayed challenge to proceed.

**[12]** Fourthly, this discrete challenge is defeated by reason of the Appellant's failure to challenge the impugned decision by exercising his right to appeal to an independent tribunal. This is a statutory right, which was brought to his attention in the letter dated 26th July 1994. In the field of social security, it is clearly preferable that dissatisfied claimants should give vent to their grievances by appealing to the relevant tribunal, rather than initiating judicial review proceedings. This will almost

invariably be the more efficient, convenient and efficacious method of procedure. Moreover, it entails a remedy of real value. The applicable legal principles are summarised in ***Re Ballyedmond's Application*** [2000] NI 174, p. 178A-179G. The dominant principle is that where a failure to pursue an alternative statutory remedy occurs, an application for judicial review is not available save in exceptional or special circumstances. Having regard to the evidence available to the court, the position of the Appellant in July 1994 appears to have been no different from that of any unsuccessful social security claimant. However, rather than pursue an appeal, the Appellant opted to engage in lengthy correspondence with the Department. Moreover, his letter dated 22nd July 1994 demonstrates that he had some contact with a firm of solicitors (Messrs. Lundy & Company) at the material time. There is no exceptional or other factor to warrant any relaxation of the general principle that an alternative remedy should be pursued, particularly in this kind of context. Accordingly, the Appellant's first challenge fails on this ground also.

**[13]** Finally, the Appellant's first challenge falls to be rejected on the further ground that it is a misuse of the process of the court. On behalf of the Department, this court's attention was directed to three previous applications for leave to apply for judicial review, pursued by the Appellant, all of them unsuccessful. In each of these earlier applications, the Appellant sought to pursue this challenge. This is clear from paragraphs 3-9 of his affidavit sworn on 27th July 2006 and paragraphs 3-8 of his affidavit sworn on 16th February 2007. These refusals of leave to apply for judicial review also stimulated, as in the present case, recourse to the Court of Appeal, without success. It is an unexceptional proposition that it is a misuse of the process of the court to seek to relitigate a challenge which the court has previously considered and dismissed. While there could conceivably be some exception to or relaxation of this general principle, in some unusual case, there is no warrant for disapplying the general rule in the instant proceedings.

**Second Challenge**

**[14]** As formulated, this is a frontal challenge to the requirement to be actively seeking work as a pre-requisite to a successful application for Income Support. This appears to be linked to the Appellant's first challenge. It focuses on the opening paragraph of leaflet UBL1: see paragraph [5], *supra*. In argument, the Appellant labelled this statement "*a con trick*". He also drew attention to a comparable statement in another official publication of this kind. The thrust of his argument would appear to be that these publications do not have the effect of requiring an Income Support claimant to be actively seeking work, as a pre-requisite to payment of this benefit, having regard to Regulation 10A(2) of the 1987 Regulations. This contention is misconceived. As demonstrated in paragraph [6] above, the requirement to be actively seeking work was a statutory one: see Section 123(1)(d)(i), as originally enacted. Properly analysed and construed, Regulation 10A(2) of the 1987 Regulations, as amended, operates as an exception to this requirement. These are the relevant statutory provisions which were in force at the material time. These two provisions of primary and secondary legislation, respectively, are perfectly

harmonious *inter-se*. The Appellant's contention that this requirement is unlawful and *ultra vires* has no substance, in consequence.

**Third Challenge**

**[15]** This challenge is also related to the first of the Appellant's challenges. It entails his complaint that an adjudication officer of the Department decided to pay Income Support to him at an enhanced rate in respect of the period 29th June to 12th July 1994. The evidence before the court includes a letter dated 9th August 1994 from the Social Security Agency to the Appellant, intimating a decision by the adjudication officer that the Appellant was entitled to Income Support of £26.34 in respect of the period 29th June to 12th July 1994. This was reiterated in a further letter dated 11th August 1994. In his affidavit, the Appellant avers that he received a cheque in this amount, which he chose to return. This challenge must be rejected, on the ground that there is no evidence, direct or inferential, that the impugned decision is tainted with illegality or any other vitiating factor exposing it to a successful application for judicial review. This challenge fails on the further ground of delay, for the same reasons as those set out in paragraph [11] above.

**Fourth Challenge**

**[16]** In developing this challenge, the Appellant draws attention to Regulation 70 of the 1987 Regulations. This Regulation appears under the rubric "Urgent Cases" and paragraph (3) makes provision for so-called "special cases". In short, a claimant falling within the ambit of paragraph (3) is an "urgent case" within the compass of Regulation 70. Such a claimant is, by definition, "*a person from abroad*" who satisfies one of a series of requirements. The Appellant argues that Regulation 70 is "*incompatible*" with the governing primary legislation viz. Section 123 of the 1992 Act. This appears to entail a contention that Regulation 70 was *ultra vires* the enabling legislation.

**[17]** As appears from the recitals, the enabling powers invoked in the 1987 Regulations are various provisions of the Social Security (Northern Ireland) Act 1975 and the Social Security (Northern Ireland) Order 1986. These are the relevant enabling statutory provisions. The Appellant's challenge fails to address these provisions and, erroneously, focuses on a statutory provision postdating the 1987 Regulations by several years viz. Section 123 of the 1992 Act. The fallacy in the Appellant's challenge is obvious and it must be rejected in consequence. This challenge also falls to be rejected on the ground of delay, for the same reasons as those set out in paragraph [11] above.

**Fifth Challenge**

**[18]** By this challenge, the Appellant seeks an Order of Certiorari quashing the existence of appeal BE621/05S. His first argument is that there is no such appeal in existence. He contends that the only valid extant appeal is No. BE1911/06S. This

concerns the Appellant's claim for Severe Disablement Allowance, which was refused: see, *inter alia* the letter dated 19th August 2003 from the Agency. The evidence establishes that the Appellant exercised his right to appeal against this decision, by Notice dated 8th March 2004. The Appellant's bundle contains, *inter alia*, an order of the Appeal Tribunal, dated 20th April 2006, recording an invalid disposal of the Appellant's appeal by an improperly constituted Appeal Tribunal on 8th June 2005 and determining such disposal to be "*void and of no effect*". This order continues:

> "*The appeal remains outstanding and will be revisited for hearing as soon as an up to date submission is received from* [DSD] *on behalf of the decision maker*".

The appeal to which this order refers is identified as BE621/05S.

**[19]** The evidence also includes a letter dated 15th December 2006, written by the Appeals Tribunals President, addressed to the Appellant. This contains the following passage:

> "*Your appeal was made on 9th March 2004 and the reference number was BE621/05S …*
>
> *The appeal was heard on 8th June 2005. The Appeal Tribunal decided that the claim was validly made and the Department did not dispute the finding. However, the Tribunal was not properly constituted and the decision was set aside. For administrative reasons only, the Appeal Service then allocated your appeal a new number BE1911**/05S** and a further hearing took place on 16th October 2006. The issues considered at this hearing were whether you were at least 80% disabled and if you were unfit to work. The Tribunal decided that you were less than 80% disabled. No other issues were therefore considered.*"

[Emphasis added].

As appears from the remainder of the President's letter dated 15th December 2006, an application for judicial review was pursued by the Appellant thereafter. This did not give rise to any remedy. However, apparently as a result of certain observations made by Coghlin J, the Tribunal Chairman exercised his power to set aside the decision made on 16th October 2006. In consequence, a rehearing before a differently constituted tribunal was to be arranged. The evidence further establishes that the Appellant was informed of this reversal, by letter dated 21st February 2007. Since that date, the Appellant's stance appears to have been one of declining to communicate. This would seem to be his chosen way of expressing his refusal to recognise the validity or existence of the renumbered appeal.

**[20]** Almost one year later, the Appellant initiated the present application for leave to apply for judicial review. By letter dated 19th May 2008, the Appeals Service informed the Appellant that there were two issues only in dispute between him and the Department. These were:

(a) Whether his claim for Severe Disablement Allowance from 28th January 1996 was met and, if so, whether he had any entitlement in respect of the period 28th January 1996 to 19th December 2000.

(b) "*Whether you are entitled to Severe Disablement Allowance from and including 20/12/00, which depends on your proving that you are, by reason of some physical or mental condition, 80% disabled*".

By the same letter, the Appellant was asked whether he was willing to submit to assessment by a consultant psychiatrist of the Tribunal's choice in advance of any further hearing; to consent to the disclosure of his general practitioner's notes and records; and to attend the next arranged hearing and, if the Tribunal decided it necessary, to consent to a medical examination. It would appear that the Appellant did not respond to this communication or any subsequent communications from the Appeals Service, including a letter dated 8th September 2008 advising him of the forthcoming hearing of his appeal at Cleaver House, Belfast on 26th September 2008.

**[21]** Ultimately, the appeal was determined on 26th September 2008. The evidence establishes that the Appeal Tribunal decided, unanimously, to disallow the appeal. The text of this decision makes clear that the appeal thereby determined was Appeal No. BE1911/06S and it includes the following passage:

> "*However the claim for Severe Disablement Allowance from 28th January 1996 was late and he is not entitled for the period 28/1/996 – 19/12/00 and he is not entitled from and including 20/12/00 as he has not shown that by reason of some physical or mental condition he is 80% disabled*".

The notification to the Appellant informed him of his right to request a written statement of reasons and his further right to apply to the Tribunal Chairman for leave to appeal to a Commissioner. It is apparent that the Appellant has taken neither course.

**[22]** As appears from the evidence rehearsed above, an identification number was initially allocated to the Appellant's appeal and this number was the subject of administrative re-numbering subsequently. Indeed, the evidence suggests that the appeal was renumbered twice (unless there is a printing order in some of the documents). It is manifest that there was nothing unlawful about this purely administrative step. It had no impact on the existence or substance of the Appellant's appeal, which endured and was, ultimately, determined. Furthermore, the "decision" which the Appellant purports to challenge – rehearsed in paragraph

[2](e) above – insofar as it is correctly characterised a "decision" at all was subsequently overtaken and rendered moot by the final determination of the appeal, on 26th September 2008. The final consideration in play here is that there is nothing contentious between the Appellant and the Appeal Tribunals regarding this matter. The parties are *ad idem* that there was but one appeal in existence which, ultimately, was identified by the reference number BE1911/06S. Properly analysed, there is simply nothing to challenge. The conclusion that the Appellant's challenge is confused and incoherent is unavoidable.

**[23]** However, at the hearing, the Appellant developed an argument which had not been foreshadowed in his Order 53 Statement or written submission. He contended, in terms, that the Appeal Tribunal had exceeded its jurisdiction and/or erred in law in concluding that (in the language of the impugned decision) the Appellant "*… has not shown that by reason of some physical or mental condition he is 80% disabled*". The Appellant developed this argument by reference to an official publication of some sort (possibly the Disability Rights Handbook) which contains the following passage:

> "***Who decides the 80% test?***
>
> *The 80% test … is decided by the adjudicating medical authorities – not by an Adjudication Officer. At the first stage, a single Adjudicating Medical Practitioner … or two AMPs sitting as a medical board will make the decision. If you are unsuccessful, you have the right to appeal to a Medical Appeal Tribunal*".

The essence of the Appellant's argument appears to be that he had not been assessed by an Adjudicating Medical Practitioner at any time, in connection with his claim for Severe Disablement Allowance. This failure, he contended, deprived the Appeal Tribunal of jurisdiction to make the finding recited in its decision: see the final clause in the passage set out in paragraph [20] above.

**[24]** On behalf of the Appeals Tribunals, the riposte was made that the publication on which the Appellant relied was promulgated in respect of the year 1995/1996 and the passage invoked by the Appellant had no application at the time when the Appeal Tribunal made its determination viz. 26th September 2008. It was submitted that the functions of adjudication officers, including adjudicating medical practitioners, were transferred to the Department by virtue of Article 3 of the Social Security (Northern Ireland) Order 1998 ("*the 1998 Order*"), which provides:

> "*3. The following functions are hereby transferred to the Department, namely –*
>
> *(a) The functions of adjudication officers appointed under Section 36 of the Administration Act …*".

The latter is a reference to the Social Security Administration (Northern Ireland) Act 1992, Section 36 whereof provides:

> *"36 Adjudication Officers*
>
> *(1) Adjudication officers shall be appointed by the Department, subject to the consent of the Department of Finance and Personnel as to number, and may include officers of the Department of Social Security appointed with the concurrence of the Secretary of State.*
>
> *(2) An adjudication officer may be appointed to perform all the functions of adjudication officers under any enactment or such functions of such officers as may be specified in his instrument of appointment."*

Article 3(a) of the 1998 Order came into effect on 5th July 1999: see Schedule 1 to the Social Security (1998 Order) (Commencement No. 7 and Savings, Consequential and Transitional Provisions) Order (Northern Ireland) 1999 No. 310 C23.

**[25]** Separate provision is made for the appointment of adjudicating medical practitioners, by Section 47 of the 1992 Act. Pursuant to Section 47(1), adjudicating medical practitioners are appointed by the Department. Section 47(3) makes provision for regulations and the relevant measure, in this respect, is the Social Security (Adjudication) Regulations (Northern Ireland) 1995. Regulation 35 provides that an instrument of appointment will prescribe the areas or purposes for which the Department shall appoint adjudicating medical practitioners. These Regulations came into operation on 25th August 1995. A further material part of the statutory jigsaw is Article 5 of the 1998 Order, which provides:

> *"[1] Subject to the provisions of this Order –*
>
> *(a) the functions of Social Security Appeal Tribunals, Disability Appeal Tribunals and Medical Appeal Tribunals constituted under Part II of the Administration Act …*
>
> *are hereby transferred to appeal tribunals constituted under the provisions of this Chapter*".

Article 9 of the 1998 Order provides:

> *"(1) Subject to the provisions of this Chapter, it shall be for the Department –*
>
> *(a) to decide any claim for a relevant benefit;*
> *(b) subject to paragraph (5), to make any decision that falls to be made under any relevant statutory provision*".

The material provisions of the 1998 Order were brought into operation through a succession of Commencement Orders, mainly with effect from 5th July 1999 and 18th October 1999.

**[26]** The effect of the various statutory reforms recited in paragraphs [24] and 25] above was to transfer to the Department the function of making decisions which had previously belonged to the province of adjudicating medical officers. This conclusion suffices to defeat this particular aspect of the Appellant's fifth challenge. Further, in ***Application No. C1/01-02(11),*** the Social Security Commissioner referred to the aforementioned statutory reform, in the following terms:

> "*[5] By the time the matter reached the Tribunal there had been a change in the statutory provisions relating to the adjudication of Industrial Disablement Benefit. With effect from 5th July 1999 decisions on diagnosis and disablement questions, which had formerly been made by adjudicating medical authorities, were for the Department to decide. These questions could no longer be referred by the Department to adjudicating medical authorities for decision.*"

Appeals against decisions of the Department are regulated by Article 13 of the 1998 Order. Article 13(8) provides:

> "*In deciding an appeal under this Article, an appeal tribunal –*
>
> *(a) need not consider any issue that is not raised by the appeal …* ".

It is well established that proceedings before the Appeal Tribunal are inquisitorial in nature and, further, can give rise to a proactive approach on the part of the Tribunal: see ***Mongan –v- Department for Social Development*** [2005] NICA 16, paragraph [15]. There the issue was whether the Appeal Tribunal should have investigated whether the claimant was entitled to a level of benefit lower than that claimed. The powers available to the Appeal Tribunal were also considered in ***R (IB) 2/04*** where, in considering the equivalent English statutory provision – Section 12(8)(a) of the Social Security Act 1998 - the Commissioner stated:

> "[25] … *Taking the simple case of an appeal against a decision on an initial claim, in our view the Appeal Tribunal has power to consider any issue and make any decision on the claim which the decision maker could have considered and made. The Appeal Tribunal in effect stands in the shoes of the decision maker for the purpose of making a decision on the claim …*

> [31] *We consider our conclusion as to the nature of an appeal to an Appeal Tribunal is reinforced by Section 12(8)(a) of the 1998 Act …*
>
> [32] *The jurisdiction* [of an Appeal Tribunal] *has … been described as inquisitorial or investigatory …*
>
> *Such a jurisdiction generally extended to include a duty on the tribunal to consider and determine questions which are necessary to ascertain the claimant's proper entitlement, whether or not they have been raised by the parties to an appeal …*".

**[27]** The burden of the Appellant's argument was that the Appeal Tribunal was not competent to consider the question of his physical/mental disability. As appears from the foregoing, this argument was based on an outdated handbook and is confounded by a consideration of the relevant statutory provisions, in tandem with the proactive inquisitorial role and responsibility of the Appeal Tribunal. The Appellant's argument is misconceived and must be rejected in consequence.

**Sixth Challenge**

**[28]** The Appellant's sixth, and final, challenge is described in his Order 53 Statement as "*the continuing abuse of human rights of the Appellant*". Notably, the Appellant does not seek any corresponding remedy. His case appears to be that the Government and public authorities in general have subjected him to fourteen years of deprivation and mistreatment, as he explained in oral argument. These matters are addressed, in summary form, in paragraphs 158-167 of his affidavit. His grievances extend to complaints about the Police Service of Northern Ireland, the Public Prosecution Service, the Northern Ireland Housing Executive and the Northern Ireland Court Service, in addition to the Respondents in the present proceedings. The Appellant asserts his belief that he is the subject of some kind of secret official edict which operates to his detriment generally.

**[29]** This aspect of the Appellant's case is characterised by a mixture of bare assertion and pure speculation. It is vague, unparticularised and incoherent. It discloses no semblance of a case against either Respondent and must be rejected accordingly. Furthermore, this challenge is a misuse of the process of the court, as it constitutes an attempt to relitigate a challenge which has been included in previously dismissed judicial review applications: see paragraph [13], *supra*.

**CONCLUSION**

**[30]** For the reasons elaborated above, the court concurs with the conclusion of Gillen J. In ***Re Bignell's Application*** [1997] NI 36, this court expressed a preference that this *genre* of challenge should take the form of an appeal against the refusal of leave to apply for judicial review, rather than a renewal of such application. The

same approach was adopted by this court in ***Re Farrell's Application*** [1999] NIJB 143. This course engages Order 53, Rule 5(8) and will be adopted in the present case. Accordingly, the court grants leave to apply for judicial review and dismisses this appeal on its merits.

**[31]** It is the considered, and unanimous, opinion of the members of this court that this litigation was, from the outset, characterised by a mixture of futility and misuse of the court's process. The processing and determination of the Appellant's case has entailed the investment of substantial resources both at first instance and on appeal. This futile and misconceived litigation has engaged the time and attention of a total of four judges and has also entailed the dissipation of human and financial resources on the part of the public authorities concerned. Further, the time and effort employed in the preparation of this judgment were utterly disproportionate, having regard to the hopeless, confused and incoherent nature of the Appellant's challenges. At the conclusion of the main hearing, the Appellant stated, in terms, that he intended to litigate about these matters continually, referring to a "perpetual judicial review application". Whether he will be permitted to indulge in such conduct remains to be seen.

**[32]** Finally, it is appropriate to record that this court finds the complaint, repeated throughout the Appellant's Notice of Appeal, that he was denied a fair hearing at first instance to be without foundation.

**[33]** At first instance, the court made no order as to costs. The parties will have an opportunity to address this court on the question of the costs of the appeal.