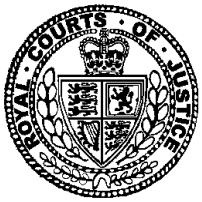

Neutral Citation Number: [2024] EWHC 87 (Admin)

Case No: CO/165/2023
AC-2023-LON-000395

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 January 2024

Before :

MRS JUSTICE LANG DBE

- -

Between :

ROBERT MACCALLUM	**Appellant**
- and -	
SECRETARY OF STATE FOR EDUCATION	**Respondent**

- -
- -

Mark Harper KC (instructed by **Escalate Law Ltd**) for the **Appellant**
Simon Pritchard (instructed by the **Government Legal Department**) for the **Respondent**

Hearing date: 19 December 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30 am on 24 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice Lang :

Introduction

1. The Appellant applies for an extension of time to "until after 16 January 2023" in which to file an appeal against the terms upon which the Respondent issued a prohibition order against him. The Respondent adopted a neutral position to this application.

2. On 11 November 2022, a Professional Conduct panel of the Teaching Regulation Agency ("the Panel") found allegations proved which amounted to unacceptable professional conduct by the Appellant which was likely to bring the profession into disrepute. The Panel recommended that he should be issued with a prohibition order, which prohibits him from teaching indefinitely, and that it should be subject to a review in 2 years' time. The Respondent decided to impose a prohibition order, with effect from 17 November 2022, to be subject to a review not before 5 years from the date of the order.

3. The Respondent's decision was communicated to the Appellant by a letter from the Teaching Regulation Agency dated 15 November 2022. The letter stated:

> "In accordance with the Teachers Disciplinary (England) Regulations 2012, you have the right to appeal against the prohibition order to the Kings Bench Division of the High Court within 28 calendar days of the date on which the order is served upon you. You must submit any appeal by 15 December 2022.
>
> The contact details of the High Court are as follows:
>
> Administrative Court Office
> Royal Courts of Justice
> Strand
> London WC2A 2LL
>
> Telephone: 020 7947 6000"

4. The Appellant seeks to appeal against the Respondent's decision to increase the length of time before he can apply for a review from 2 years to 5 years on the grounds that the Respondent:

   i) wrongly relied on Former Pupil A's description of her relationship with the Appellant having created a 'situation of emotional dependency' when the Panel had found allegations against the Appellant between 2010-2014 unproven;

   ii) gave insufficient weight to the fact five years had elapsed since Former Pupil A had been a pupil at the school;

   iii) gave no or insufficient consideration to the Panel's findings on serious sexual misconduct;

   iv) gave insufficiently reasoned justification for altering the factual conclusion of the panel that there was no continuing risk to the wellbeing of pupils;

v) placed insufficient weight on the Appellant's contribution to the profession;

vi) in all the circumstances was disproportionately harsh or excessive.

History

5. The Appellant received the Prohibition Notice on 15 November 2022. His employer (Stockport County Football Club) contacted JMW Solicitors ("JMW") on his behalf and sent them initial instructions on 15 November 2022. The Appellant had a conference with JMW via TEAMS on 17 November 2022. Immediately after the conference, the Appellant formally retained Ian Lewis, regulatory partner at JMW to represent him in the appeal. Counsel, Mr Harry Bentley, was instructed and a conference took place on 8 December 2022. The Appellant and his legal representatives were aware throughout this period that the deadline for lodging an appeal was 15 December 2022, as stated in the Respondent's letter of 15 November 2022.

6. According to the Appellant's witness statement, he regularly checked on the progress of the appeal and its preparation. He did everything that was asked of him by his solicitors. He was notified by JMW on 14 December 2022 that the appeal had been lodged. JMW did not inform the Appellant that the appeal had not been lodged within the time limit until 15 August 2023.

7. Mr Lewis has made a witness statement. Ms Kaur and Ms Windsor, who were paralegals at JMW at the time, have also made witness statements. Ms Ogunbo (nee Nolan), who was then a solicitor at JMW, has also made a witness statement. I have pieced together a history of events based on their witness statements and exhibits, and the evidence summarised in the revised Appellant's Notice. There are gaps and inconsistencies in the evidence.

8. Mr Lewis states that on 13 December 2022 he instructed Ms Windsor to file the appeal at the Court by 14 December 2022. He therefore left it very late. Ms Windsor posted the Appellant's Notice to the Administrative Court Office ("the ACO") and the Respondent by special delivery on 14 December 2022. In my view, it was very risky to send the documents by post so close to the deadline. Furthermore, there was a royal mail strike that week, so mail was delayed.

9. Mr Lewis explains that he and Ms Windsor were both unsure of the procedure for filing. In particular, Mr Lewis thought that the Appellant's Notice had to be sealed but was not sure how that would be achieved. He advised Ms Windsor to consult Mr Bentley on 14 December 2022. Mr Bentley sent Ms Windsor guidance on how to use CE-File, and advised her to "submit the relevant form at the RCJ, pay the relevant fee, and get it stamped" by the deadline.

10. Ms Windsor was busy with other matters on the following day, 15 December 2022, and so she asked another paralegal (Ms Kaur) to file the appeal by CE-File, which she duly did. It appears that she filed it in the Kings Bench Division. The appeal was rejected in an automated response which stated that it had been sent to the wrong Court.

11. Ms Kaur and Ms Windsor communicated with the Court by email and by telephone on 15 and 16 December 2022. They were advised by email that the Administrative Court

does not have a CE-File facility and that it had no record of the appeal. The email gave advice on sending the documents via email or the Document Upload Centre ("the DUC").

12. Ms Kaur sent the Appellant's Notice and supporting documents by email to the ACO at 1649 on 15 December 2022. Any document filed by fax or email after 1600 will be treated as filed on the next day on which the court office is open: see CPR PD5B 4.2. But even if the documents had been emailed before 1600, they would not have been accepted for filing because the application was defective, for the reasons set out in paragraph 15 of my judgment below. In particular, the court fee had not been paid as the Court had not been provided with JMW's account details.

13. Ms Windsor emailed the ACO at 15.48 on 16 December 2022, attaching the Appellant's Notice and supporting appeal documents. She also referred to the sets of appeal documents which had been sent by post and via CE-File. She asked the ACO to confirm that the appeal had been filed.

14. Nothing further was done until early January 2023. Ms Ogunbo (nee Nolan) reviewed the file and found that the appeal had not been accepted, processed or issued. There was no sealed appeal and no court reference number. Ms Ogunbo contacted the ACO who gave advice by email on how to remedy the defects in the appeal documents and how to file the appeal. They also sent a copy of the Administrative Court Office guidance.

15. In an internal email, Ms Ogunbo explained that the appeal was defective for a number of reasons, including the following:

    i) It was not accompanied by details of JMW account number so no fee had been paid;

    ii) The name and details of the Respondent were incorrect (it should have been the Secretary of State not the Teachering Regulation Agency);

    iii) The date of the decision being appealed was incorrect;

    iv) A copy of the prohibition order was not submitted;

    v) The Appellant's Notice did not specify the part of the prohibition order which was being appealed;

    vi) ACO guidance on filing documents was not complied with.

16. Ms Ogunbo re-drafted the Appellant's Notice and corrected the errors. She sent Counsel's skeleton argument, and applied for an extension of time for filing the appeal.

17. On 12 January 2023, JMW filed a revised Appellant's Notice at the ACO, including an application for an extension of time, and with grounds of appeal. The fee was paid. Although the email is timed just after 1600, and so would ordinarily be deemed to have been received on the following day, it has been recorded in the ACO as filed on 12 January 2023, not 13 January, 2023. The date in the court records is conclusive.

18. The ACO issued the appeal on 16 January 2023, and sent a sealed Appellant's Notice to JMW for them to serve. According to the certificate of service filed by JMW, the appeal documents were served on the Respondent's solicitors, the GLD, after working hours (1839) on 16 January 2023, and so service was effected on 17 January 2023.

19. The Appellant instructed new solicitors and they filed an application for an extension of time, which was sealed on 27 November 2023.

Statutory framework

20. Section 141B of the Education Act 2002 provides for the investigation of disciplinary cases by the Secretary of State for Education:

> "(1) The Secretary of State may investigate a case where an allegation is referred to the Secretary of State that a person to whom this section applies—
>
> (a) may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession into disrepute, or
>
> (b) has been convicted (at any time) of a relevant offence.
>
> (2) Where the Secretary of State finds on an investigation of a case under subsection (1) that there is a case to answer, the Secretary of State must decide whether to make a prohibition order in respect of the person.
>
> (3) Schedule 11A (regulations about decisions under subsection (2)) has effect.
>
> (4) In this section—
>
> a "prohibition order" means an order prohibiting the person to whom it relates from carrying out teaching work;
>
> ….."

21. Paragraph 5 of Schedule 11A to the Education Act 2002 provides:

> "5 Appeals against prohibition orders
>
> (1) Regulations under paragraph 1 must make provision conferring on a person to whom a prohibition order relates a right to appeal against the order to the High Court.
>
> (2) The regulations must provide that an appeal must be brought within 28 days of the person being served with notice of the prohibition order.
>
> (3) No appeal is to lie from any decision of the Court on such an appeal."

22. Regulation 17 of the Teachers' Disciplinary (England) Regulations 2012 provides:

> "17. Appeals
>
> A person in relation to whom a prohibition order is made may appeal to the High Court within 28 days of the date on which notice of the order is served on that person."

Human Rights Act 1998

23. Prior to the Human Rights Act 1998 ("HRA 1998"), statutory time limits were regarded by the courts as immutable (in contrast to time limits contained in rules of court). See *Croke v Secretary of State for Communities and Local Government* [2019] EWCA Civ 54, per Lindblom LJ at [6].

24. However, by section 3 HRA 1998, the court must read and give effect to legislation in a way that is compatible with Convention rights. Article 6 ECHR is engaged in professional disciplinary proceedings which are capable of decisively affecting an individual's right to practise their profession (*Le Compte, Van Leuven and De Meyere v Belgium* (1981) 4 E.H.R.R. 1). Article 6(1) confers a right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

25. The Article 6(1) right includes a right of access to a court. Although there is no right to an appeal, in those cases where an appeal is available, Article 6(1) is engaged. The right of access is not absolute, and may be subject to limitations, since "by its very nature [it] calls for regulation by the state, which may vary in time and place according to the needs and resources of the community and of individuals" (*Golder v United Kingdom* (1975) 1 E.H.R.R. 524, at [36] - [38], in which the ECtHR found that a refusal to allow a prisoner to instruct a solicitor to commence legal proceedings was in breach of the right of access under Article 6(1)).

26. In *Tolstoy Miloslavsky v United Kingdom* (1995) 20 E.H.R.R. 442, the ECtHR found that a security for costs order imposed on appeal did not impair the Appellant's right of access to court and was not disproportionate.

27. The ECtHR has held that limitation periods are, in principle, compatible with Article 6. In *Stubbings & Ors v United Kingdom* (1997) 23 E.H.R.R. 213, the ECtHR stated:

> "48. The Court recalls that Article 6(1) embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect. However, this right is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a

> limitation will not be compatible with Article 6(1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.
>
> 49. It is noteworthy that limitation periods in personal injury cases are a common feature of the domestic legal systems of the Contracting States. They serve several important purposes, namely to ensure legal certainty and finality, to protect potential defendants from stale claims which might be difficult to counter, and to prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time.
>
> 50. In the instant case, the English law of limitation allowed the applicants six years from their eighteenth birthdays in which to initiate civil proceedings. In addition, subject to the need for sufficient evidence, a criminal prosecution could be brought at any time and, if successful, a compensation order could be made. Thus, the very essence of the applicants' right of access to a court was not impaired."

28. In *Pomiechowski v District Court of Legnica, Poland* [2012] 1 WLR 1604, the Supreme Court, held in the conjoined case of *Halligen v Secretary of State for the Home Department*, that the provision in section 26(4) of the Extradition Act 2003, requiring notice of an appeal against an extradition order to be given within 7 or 14 days could in individual cases impair the very essence of the right of appeal, contrary to Article 6(1).

29. Lord Mance considered the position of a litigant who missed the deadline because of the failings of his legal representative:

> "36. It has been held, in the public law context of removal from the jurisdiction of an alien, that a litigant must answer for the failings of his legal advisers, with the result that he was unable to obtain the reopening of an adjudicator's decision on the ground of such advisers' negligent failure to inform him of the hearing: *R v Secretary of State for the Home Department, Ex p Al-Mehdawi [1990] 1 AC 876*. Any other decision would, it was said, come "at the cost of opening such a wide door which would indeed seriously undermine the principle of finality in decision-making": per Lord Bridge of Harwich, at p 901e. In Ex p Al-Mehdawi there was however a residual discretion in the Secretary of State to refer the matter back to an adjudicator. In contrast, in an asylum context where no such residual discretion existed, the Court of Appeal in *FP (Iran) v Secretary of State for the Home Department [2007] Imm AR 450* held ultra vires immigration rules deeming a party to have received notice of a hearing served on the most recent addresses notified to the relevant tribunal and requiring the tribunal to proceed in the party's absence if satisfied that such notice had been given. The

> solicitors acting for the asylum seekers in FP (Iran) had failed to give the tribunal new addresses to which the asylum seekers had been moved by the National Asylum Support Service. Distinguishing Ex p Al-Mehdawi, the Court of Appeal held that there was "no universal surrogacy principle" which (reformulated) rules "would have to depart from in order to operate justly": para 46. The rules were framed so as to be "productive of irremediable procedural unfairness". Both the appellants were "among those affected by this deficiency, because both have lost the opportunity to be heard through the default of their legal representatives and not through their own fault": para 48. This decision (reached in the context of aliens) turned on common law principles regarding access to justice, though reference was made by analogy to the position under the European Convention for the Protection of Human Rights and Fundamental Freedoms.
>
> 37. The position is a fortiori in so far as article 6.1 is directly applicable in Mr Halligen's case. It is clear that the statutory provisions regarding the permitted periods for appeals may in individual cases impair "the very essence of the right" of appeal. The previous judicial expressions of concern are eloquent about the potential and actual unfairness of the position in which prisoners find themselves in trying to meet the statutory requirements, with such aid as the prison legal services department or legal advisers can, under difficult conditions, provide. The problems of communication from prison with legal advisers in the short permitted periods of seven and 14 days are almost bound to lead to problems in individual cases. It is no satisfactory answer that a person wrongly extradited for want of an appeal as a result of failings of those assisting him might, perhaps, be able to obtain some monetary compensation at some later stage. Strict application of the surrogacy principle would be potentially unjust. I am not persuaded that the interests of finality and certainty outweigh the interests of ensuring proper access to justice by appeal in the limited number of extradition cases where this would otherwise be denied. There would not be "a reasonable relationship of proportionality between the means employed and the aim sought to be achieved."

30. Lord Mance concluded as follows:

> "39. In the present case, there is no reason to believe that Parliament either foresaw or intended the potential injustice which can result from absolute and inflexible time limits for appeals. It intended short and firm time limits, but can only have done so on the basis that this would in practice suffice to enable anyone wishing to appeal to do so without difficulty in time. In these circumstances, I consider that … the statutory provisions concerning appeals can and should all be read subject to the

> qualification that the court must have a discretion in exceptional circumstances to extend time for both filing and service, where such statutory provisions would otherwise operate to prevent an appeal in a manner conflicting with the right of access to an appeal process held to exist under article 6.1 in Tolstoy Miloslavsky. The High Court must have power in any individual case to determine whether the operation of the time limits would have this effect. If and to the extent that it would do so, it must have power to permit and hear an out of time appeal which a litigant personally has done all he can to bring and notify timeously."

31. In *R(Adesina) v The Nursing and Midwifery Council* [2013] EWCA Civ 818, Maurice Kay LJ recognised the distinctions between extradition appeals and appeals in disciplinary or regulatory cases (at [13]), but concluded that the principle established in *Pomiechowski* should apply. He held:

> "14. …. There is good reason for there to be time limits with a high degree of strictness. However, one only has to consider hypothetical cases to appreciate that, without some margin for discretion, circumstances may cause absolute time limits to impair "the very essence" of the right of appeal conferred by statute. Take, for example, a case in which a person, having received a decision removing him or her from the Register, immediately succumbs to serious illness and remains in intensive care; or a case in which notice of the disciplinary decision has been sent by post but never arrives and time begins to run by reason of deemed service on the day after it was sent (Nursing and Midwifery Council (Fitness to Practice) Rules 2004, rule 34(4)). In such cases, the nurse or midwife in question might remain in blameless ignorance of the fact that time was running for the whole of the 28 day period. It seems to me that to take the absolute approach in such circumstances would be to allow the time limit to impair the very essence of the statutory right of appeal.
>
> 15. The real difficulty is where to draw the line. Mr Pascall, on behalf of the appellants, does not contend for a general discretion to extend time. Parliament is used to providing such discretions, often circumscribed by conditions (see, for example Employment Rights Act 1996, section 111(2), in relation to unfair dismissal). The omission to do so on this occasion was no doubt deliberate. If Article 6 and section 3 of the Human Rights Act require Article 29(10) of the Order to be read down, it must be to the minimum extent necessary to secure ECHR compliance. In my judgment, this requires adoption of the same approach as that of Lord Mance in *Pomiechowski*. A discretion must only arise "in exceptional circumstances" and where the appellant "personally has done all he can to bring [the appeal]

> timeously" (paragraph 39). I do not believe that the discretion would arise save in a very small number of cases….."

32. In *Stuewe v Health and Care Professions Council* [2023] 4 WLR 7, the Court of Appeal dismissed an appeal by an unrepresented claimant on the basis that he failed to take meaningful opportunities to file his appeal during the prescribed 28 day period, and so the essence of his right of appeal had not been impaired and it was not an exceptional case. Carr LJ reviewed the authorities and held:

> "49 Thus, there is a discretion (or duty) to extend time for the bringing of a statutory appeal but only in exceptional circumstances, namely where to deny a power to extend time would impair the very essence of the right of appeal. That is the key question. Once the discretion (or duty) arises, it must then be exercised to the minimum extent necessary to secure ECHR compliance.
>
> 50 As set out above, Lord Mance at [39] in *Pomieschowski* identified the power to permit and hear an out of time appeal if statutory provisions would otherwise operate to prevent an appeal in a manner conflicting with the right of access under article 6 as identified in *Tolstoy*. He went on (in the same sentence) to add that the appeal would be one "which a litigant personally has done all he can to bring and notify timeously." Maurice Kay LJ adopted this sentence in Adesina at [15], as have other courts subsequently (see for example *Anixter Ltd v Secretary of State for Transport* [2020] EWCA Civ 43; [2020] 1 WLR 2547 at [67]).
>
> 51 Care needs to be taken in relation to this additional statement. The reference to a litigant doing all that they personally could to bring and notify timeously appears to have been treated in some of the cases as an independent requirement for the discretion (or duty) to arise (see for example *Gupta v General Medical Council* [2020] EWHC 38 (Admin) ("*Gupta*") at [58]–[60]). Fordham J in *Rakoczy* [21(ii)], on the other hand, appears to have doubted that it was. There he stated that it was not "laying down a test, in the nature of a legal litmus test" (albeit that he also described it as an "expected essential characteristic"). He stated that it was instead "intended to be a valuable encapsulation", "a guide as to what, in essence, the [court] could expect to be looking for". He also stated at [13] that the obligation on the appellant (to do all that they could to bring and notify timeously) would have to be tempered by reference to reasonableness.
>
> 52 I do not consider that Lord Mance in [39] of *Pomiechowski*, having referred to the relevant test by reference to *Tolstoy*, was then imposing an additional condition (beyond the need for the existence of "exceptional circumstances") by reference to the efforts made (or not) by an appellant to appeal in time. Rather, he was simply identifying the type of situation in which

> exceptional circumstances sufficient to give rise to the discretion (or duty) may arise. Put simply, and without being in any way prescriptive, exceptional circumstances are unlikely to arise where an appellant has not personally done all that they could to bring the appeal in time. There is no independent jurisdictional requirement that a litigant must have done personally all that he could.
>
> 53 The need to import the notion of reasonableness, as suggested in *Rakoczy*, underscores the importance of adhering to the approach identified above. It is both undesirable and counter-intuitive for there to be potentially intricate and nuanced debate as to the reasonableness of a litigant's conduct in the context of an examination of whether the "exceptional circumstances" jurisdiction exists.
>
> 54 As set out above, therefore, the central and only question for the court is whether or not "exceptional circumstances" exist, namely where to deny a power to extend time would impair the very essence of the right of appeal. Any gloss is unhelpful. Answering the question may or may not include consideration of whether or not the litigant has done everything possible to serve within time, depending on the facts of the case. Once the discretion (or duty) arises, it must then be exercised to the minimum extent necessary to secure compliance with article 6 rights."

33. At my request, the parties sent me written submissions on the surrogacy principle after the hearing. The conclusion I draw from the authorities and textbooks cited is that the Court does not ordinarily distinguish between a litigant and his legal advisers: see *Hytec Information Systems v Coventry City Council* [1997] 1 WLR 1666; *Hashtroodi v Hancock* [2004] 1 WLR 3206, at [35]; *Atkas v Adepta* [2011] QB 894, at [91]; *R(Good Law Project) v Secretary of State for Health and Social Care* [2022] 1 WLR 2339, at [61]. However, the surrogacy principle is not universally applied in cases where it would be unjust to do so: see *Pomiechowski* (*above*)*; FP (Iran) v Secretary of State for the Home Department* [2007] Imm AR 450, *R (A) v Criminal Injuries Compensation Board ex parte A* [1999] 2 AC 330; *Greece v O'Connor* [2022] UKSC 4, [2022] 1 WLR 908; *Sangra v Secretary of State for the Home Department* 1997 SLT 545 (Court of Session Outer House); *R (Nori) v* Secretary *of State for the Home Department* [2011] EWHC 1604 (Admin).

Conclusions

34. In my judgment, JMW had ample opportunity to file a valid appeal in time. The notification letter dated 15 November 2022 helpfully set out the deadline (15 December 2022) and the address and telephone number of the Administrative Court. JMW received initial instructions on 15 November 2022, and the Appellant formally instructed JMW on 17 November 2022 immediately after a conference with them.

35. The cause of the delay was that JMW were not familiar with the procedure to be adopted. They did not take the trouble to contact the court well in advance for guidance, and to research the relevant guides. They left it until the "last minute" to file the appeal, which then left them with insufficient time to correct their multiple mistakes in failing to prepare the appeal documentation correctly and failing to comply with the procedures for filing an appeal in the Administrative Court: see paragraphs 8 and 10 to 15 above.

36. The length of the delay was more than minimal. There were avoidable errors in the preparation of the appeal documentation which meant that the ACO found it to be defective and could not accept the appeal as filed. A revised appellant's notice had to be prepared and it was not filed until 12 January 2023, nearly a month after the expiry of the initial deadline of 15 December 2022.

37. However, Mr Harper KC submits that the Appellant was not personally at fault and so he should not be fixed with the errors made by his solicitors when acting on his behalf, which he was not even aware of at the relevant time.

38. Lord Mance in *Pomiechowski*, at [36] – [37], considered that strict application of the surrogacy principle would be unjust in the circumstances of Mr Halligan's case where the statutory provision imposing a short period for serving notice of an appeal was liable to impair the very essence of the right of appeal by prisoners whose ability to communicate with legal advisers was restricted.

39. In the Education Act 2002, Parliament made provision for a 28 day period from the date of service of a prohibition order within which to lodge an appeal to the High Court, without any provision for a discretionary extension of time. A 28 day period also applies to other disciplinary appeals (see e.g. the Nursing and Midwifery Council (*Adesina*) and the Health and Care Professions Council (*Stuewe*)). The United Kingdom enjoys a margin of appreciation in determining the statutory time limit and in my view, the legitimate aim of the 28 days time limit is to provide finality and certainty, which is desirable for both the practitioner and the regulator who is responsible for protecting the public from teachers who have been found guilty of unacceptable professional conduct. In my judgment, the 28 day time limit does not impair the very essence of the right of access to the court, and it is a proportionate restriction on the exercise of the right of appeal, applying the principles confirmed in *Stubbings* for limitation periods. However, the absence of any discretionary power to extend time in exceptional cases may give rise to a breach of the right of access to the court under Article 6 ECHR. The Court of Appeal has applied the approach in *Pomiechowski* to statutory appeals in professional disciplinary cases in *Adesina* and *Stuewe*, and I am bound to do the same in this case.

40. I consider that there are exceptional circumstances in this case, and application of the surrogacy principle would have the effect of impairing the Appellant's right of access to the Court, in breach of Article 6 ECHR. The Appellant "personally has done all he can to bring [the appeal] timeously" (per Maurice Kay LJ in *Adesina* at [15], citing Lord Mance in *Pomiechowski*, at [39]). The Appellant was aware of the strict deadline and regularly checked on the progress of the appeal and its preparation. He did everything that was asked of him by his solicitors. The delay in filing was entirely the fault of his solicitors. His solicitors misled him by informing him that the appeal had been lodged on 14 December 2022 when in fact no valid appeal had been lodged on that date. They did not inform him that an extension was needed until 15 August 2023.

41. The Appellant has a potential claim against JMW for damages for professional negligence. His employer is willing to continue to employ him for the duration of a 2 year prohibition order, but cannot do so for as long as 5 years. Therefore he stands to lose his employment if he cannot successfully appeal. An award of damages, which would have to be evaluated on a "loss of a chance" basis, would not adequately compensate the Appellant for the inability to pursue his profession.

42. For these reasons, the application for an extension of time to file the appeal to 16 January 2023 is granted.