



THE COURT OF APPEAL - UNAPPROVED

Court of Appeal Record No.: 2023/285
High Court Record No.: 2023/501JR
Neutral Citation No.: [2024] IECA 198

**Faherty J.
Binchy J.
Pilkington J.**

BETWEEN/

TINKA ZAPRYANOVA

**(APPLICANT/
APPELLANT)**

- AND -

THE LEGAL SERVICES REGULATORY AUTHORITY

(RESPONDENT ON NOTICE)

- AND -

DECLAN WADE BL

(NOTICE PARTY)

JUDGMENT of Mr. Justice Binchy delivered on the 31st day of July 2024

Introduction

1. On 7th July 2022, the appellant filed a complaint (the “Complaint”) with the respondent regarding professional services rendered by the notice party to the appellant through her solicitor, a Mr. Power. It is necessary to say immediately that the appellant disputes that Mr. Power was retained by her at the time that the relevant advice was provided by the notice

party, and so when I refer to him as “her solicitor”, it is with that qualification, and I will explain how this state of affairs arose presently.

2. On 24th February 2023, the respondent, through Mr. Daniel Nolan, Complaints and Resolutions Officer, having conducted a preliminary review of the Complaint pursuant to s. 57(1) of the Legal Services Regulation Act, 2015 (the “2015 Act”) determined the Complaint to be inadmissible pursuant to s. 57(5) of the 2015 Act (the “Determination”). By application made *ex parte* on 15th May 2023, the appellant sought leave for judicial review seeking an order for *certiorari* to quash the Determination. That application came before Hyland J. on 24th July 2023, who ordered that the appellant should have liberty to file and serve a notice of motion together with grounding affidavit and proposed statement of grounds on the respondent, and thereafter returned the application for the 3rd October 2023.

3. An affidavit was sworn and filed by Mr. Nolan on behalf of the respondent on 15th September 2023 for the purpose of opposing the application for leave, on the grounds that the facts relied upon by the appellant for the purpose of her application are not sufficient to support stateable grounds for the reliefs sought, and that the appellant had failed to establish an arguable case for the same. The appellant delivered a further affidavit 29th September 2023, not so much in reply to the affidavit of Mr. Nolan but more so as to provide further reasons in support of her application. I address these affidavits in more detail below. On 3rd October 2023, Hyland J., being satisfied that the pleadings were closed and the matter was ready for hearing, fixed the matter for hearing the following week, on 10th October, when it came before Barr J.

Background

4. The appellant was involved in a road traffic accident on 13th November 2017. She retained a firm of solicitors to act on her behalf in submitting a claim for compensation to the Injuries Board. Soon afterwards, however, it appears that she changed solicitors and

retained the firm of Bernard L. Gaughran & Co. Solicitors (hereafter “Bernard L. Gaughran & Co.”), in which firm Mr. Power was then a partner. Mr. Power then assumed responsibility for advising the appellant and processing her claim before the Injuries Board. On 22nd October 2019, the Injuries Board issued a determination that it would not be appropriate to make an assessment in the claim, because of “*the interaction between one or more injuries arising from different causes*”. The Injuries Board therefore issued an “*Authorisation*” permitting the appellant to take legal action to resolve the claim. The letter of the Injuries Board of 22nd October 2019 noted that the limitation period for taking proceedings had been put on hold with effect from 29th November 2018, and would remain on hold for a period of six months from the date of the Authorisation of 22nd October 2019.

5. Thereafter, the appellant continued to instruct Bernard Gaughran & Co. to act on her behalf for the purpose of issuing proceedings on her behalf, and Mr. Power continued to be responsible for dealing with the matter. Mr. Power instructed the notice party, Mr. Wade, to advise and draft proceedings in the usual way. None of this is controversial.

6. Mr. Wade drafted a personal injuries summons, and Mr. Power sent it to the appellant for her approval, in January 2020. The appellant did not respond. According to the appellant this is because she was unwell and did not feel up to the task of instructing her solicitors at the time. She accepts that Mr. Power did issue reminders to her, but in her view she had until April 2021 to issue proceedings and on 9th March 2020 she provided Bernard L. Gaughran & Co., by email, with her calculation as to when the limitation period for the issue of proceedings would expire. At this time, the appellant was in Bulgaria and could not travel due to Covid-19 travel restrictions.

7. In July 2020, the partnership of Bernard L. Gaughran & Co. dissolved, and following upon that dissolution Mr. Power, who had established his own firm, Power and Co., retained seisin of the file, although the appellant maintains that this was without her authority. By

email of 23rd December 2020, Mr. Power wrote to the appellant advising her that Bernard L. Gaughran & Co. had been dissolved, and that she should elect a new firm of solicitors. The appellant did not respond to this email. She submitted to the trial judge that this was during the Covid lockdown and so, in her words “*there was no communication*”. In early 2021 Mr. Power became concerned that proceedings had still not been issued and that the limitation period for issuing the proceedings might expire. He contacted Mr. Wade for advice as to how to proceed in the absence of any up-to-date instructions from the appellant. Mr. Wade advised that proceedings would become statute barred on or about 17th March 2021, and he advised Mr. Power that the proceedings that had been drafted in January 2020 should be issued, notwithstanding the difficulty that Mr. Power had encountered in obtaining instructions from the appellant. The rationale for this advice was in order to prevent the proceedings from becoming statute barred. Mr. Power acted upon this advice and caused the proceedings to be issued on 16th February 2021, as per the draft originally drafted by Mr. Wade.

8. On 1st April 2021, the appellant resumed contact with Mr. Power and indicated that she was happy for him to represent her in the proceedings. At this point there appears to be some divergence between the parties on the facts. According to the submissions of the respondent, Mr. Power advised the appellant at this time that proceedings had already been issued; according to the appellant herself, Mr. Power did not inform her at this time that he had gone ahead and issued proceedings, and she only discovered this on 22nd April 2021 when she conducted an internet search.

9. The appellant claims that she was misled, insofar as she was not informed by Mr. Power on 1st April 2021 that proceedings had already been issued, and in particular she was not made aware that they had been issued on the basis of the original draft personal injuries summons, with which she was dissatisfied, because she considered it did not properly reflect

the injuries that she had sustained in the accident. She says that she requested Power and Co. to return her file, and she claims that they refused to do so for more than a year, insisting that they be paid before they would do so.

The Complaint

10. The appellant then made separate complaints to the respondent, alleging that the solicitor and the barrister had provided inadequate services, and were guilty of misconduct. It is appropriate to stress at this point that these proceedings are concerned only with the appellant's complaint made against the notice party, and the Determination. The complaint against Mr. Power is a separate matter, and resulted in a separate decision of a divisional committee of the respondent, whereby that complaint was not upheld.

11. The complaints made by the appellant against Mr. Wade may be summarised as follows:

- (1) That he failed to notify her of the dissolution of Bernard L. Gaughran & Co.;
- (2) That he failed to notify the appellant of what she claims is a conflict of interest between the appellant and Bernard L. Gaughran & Co. and failed to advise her of the need to appoint a new firm of solicitors following the dissolution of that firm;
- (3) That the personal injuries summons that he drafted was incomplete and inaccurate and did not represent the appellant's best interests;
- (4) That he liaised with Power & Co. Solicitors after the dissolution of Bernard L. Gaughran & Co. knowing that neither he nor Power & Co. Solicitors had been instructed by the appellant subsequent to the dissolution of Bernard L. Gaughran & Co.;
- (5) That he took a decision on behalf of the appellant without seeking her approval to initiate the proceedings without the approval of the appellant; and

- (6) That he failed to advise as to the limitation period at any time between November 2019 and July 2020, and that he subsequently provided incorrect advice as to the limitation period.

The Determination

12. As already mentioned, the Determination was issued by Mr. Nolan on 24th February 2023. Having summarised the Complaint, Mr. Nolan stated that the Authority is of the opinion that the complaint is frivolous and vexatious and, if proved, could not result in a finding against the legal practitioner under Part 6 of the Legal Services Regulation Act, 2015. He then quoted from the decision of Barron J. in Supreme Court in *Farley v. Ireland* [1997] IESC 60 in order to explain that the words “*frivolous and vexatious*” as used in the 2015 Act are not intended to be pejorative, but rather are intended to convey that a complaint has no reasonable chance of success. Mr. Nolan then proceeded to provide the following reasons for the Determination:

- (1) That it was not the responsibility of Mr. Wade, as a practicing barrister, to inform the appellant of the dissolution of her solicitors’ firm. Mr. Nolan stated that Mr. Wade could only rely on instructions received from the solicitors and is not required to check [those instructions] “*without acting in breach of his role as counsel*”.
- (2) Mr. Wade had provided supporting documents to demonstrate that he had drafted the personal injuries summons and provided it to the appellant’s solicitors a year prior to the expiration date of the Statute of Limitations, and that he had not received any information subsequently as regards any amendments to the personal injuries summons.
- (3) Mr. Wade had exercised his professional judgment in advising the appellant’s solicitors about the “*imminent statute of limitations*”. The respondent has no

authority to interfere with legal practitioners exercising their professional judgment. Mr. Nolan stated that Mr. Wade is not responsible for the “*filing of documents*”, by which I think it may reasonably be inferred that Mr. Nolan means that counsel is not responsible for the actual issue of proceedings.

- (4) Mr. Wade was unaware of the appellant’s dissatisfaction with the content of the personal injuries summons.

The Proceedings

13. In her draft statement of grounds, the appellant asserts:

- (1) That the respondent ignored “*the fact*” that Mr. Wade was not authorised to act on her behalf after 10th July 2020, when the firm of Bernard L. Gaughran & Co. was dissolved;
- (2) That the respondent ignored what the appellant describes as an inaccurate statement of Mr. Wade, of 28th July 2022 to the respondent, in which he said that he was not privy to the dissolution of Bernard L. Gaughran & Co. The appellant maintains that Mr. Wade must have been aware of the dissolution of the firm since he was receiving instructions, via email, from Power & Co. Solicitors and not Bernard L. Gaughran & Co. She complains the respondent did not investigate this further;
- (3) That the respondent failed to have regard to the alleged failure of Mr. Wade to comply with section 3.28 of the Code of Conduct for the Bar of Ireland by failing to notify her about “*the conflict of interest between me and Power & Co. Solicitors*”;
- (4) That Mr. Wade took a decision on behalf of the appellant, and was not entitled to do so. He was not authorised to deal with the appellant’s case, and he advised the solicitor to issue the personal injuries summons without notifying

the appellant or seeking her consent. In this ground, the appellant does not mention the respondent at all, but by reasonable implication she means that the respondent failed to have regard to these matters.

14. The appellant swore a brief affidavit verifying her statement of grounds on 15th May 2023. Following upon the order of Hyland J. of 24th July 2023, whereby it was ordered that the appellant should have liberty to file and serve a notice of motion, the statement of grounds and grounding affidavit upon the respondent, Mr. Nolan swore an affidavit in opposition to the application on 15th September 2023.

14. Mr. Nolan averred that the appellant had failed to set out facts that would be sufficient to support a statable ground for an order of *certiorari* for the following reasons:

- (1) He noted that it is common case that the appellant had not informed either her former solicitor or her former barrister about her wish to amend the proceedings as drafted. Mr. Nolan averred that Mr. Wade had no role in the issue of proceedings, and he further avers that the mere provision of advice on foot of a request for the same could not constitute a ground for the respondent to take a measure against a legal practitioner under the 2015 Act.
- (2) Moreover, Mr. Nolan avers, the respondent did not ignore this element of the appellant's complaint, and had specifically addressed it in the Determination in stating, *inter alia*, that Mr. Wade can only rely on instructions received from the solicitors' firm, and cannot be required to check with the appellant without acting in breach of his role as counsel.
- (3) In relation to the appellant's complaint that the respondent disregarded Mr. Wade's "*inaccurate statement*" that he (Mr. Wade) was not privy to the dissolution of Bernard L. Gaughran & Co., Mr. Nolan avers that the materiality of this proposed ground has not been set out by the appellant. Mr.

Nolan says that to the extent that this is relevant, the point is mentioned in the Determination, but the point is not relevant to the advice provided by Mr. Wade to the solicitors.

- (4) As regards the appellant's complaint about a conflict of interest between the appellant and her solicitors, Mr. Nolan says that the appellant had not set out any basis upon which her former barrister ought to have concluded that there was a conflict of interest between her and her former solicitor, at the time he provided the advice that he did, or at all.
- (5) As regards the appellant's complaint that Mr. Wade had advised the solicitor in the proceedings without her authority and without notifying her of that advice, Mr. Nolan avers that the appellant has failed to set out under this ground the shortcomings that she alleges in the decision-making process of the respondent so far as this ground is concerned.

15. For all of the above reasons, Mr. Nolan expresses the view that the appellant had failed to establish any facts which, if proved, would be sufficient to support a statable ground for the reliefs sought by the appellant.

16. The appellant swore a further affidavit on 29th September 2023. Although one might have anticipated that this would be in the nature of a replying affidavit, she does not in fact reply to the affidavit of Mr. Nolan, but rather repeats and expands upon her complaints about the Determination. She says that her complaint outlines "*serious issues concerning the professional conduct of*" Mr. Wade and his dealings with her personal injury claim, and it is inexplicable to the appellant how the allegations that she made to the respondent could be considered as frivolous and vexatious. She then quotes a large portion of the text of the Complaint. The appellant then proceeds to make a new complaint, that being that neither her solicitors nor Mr. Wade ever requested the Garda report relating to the road traffic

accident in which she was involved on 13th November 2017. She then proceeds to make further complaints about the contents of the Form A submitted by her solicitors to the Personal Injuries Assessment Board.

Decision of the High Court

17. This court was given a full copy of the Transcript of the proceedings before Barr J. Barr J. noted that the threshold for the grant of leave was a low threshold and he referred to the decision of *G v. DPP* [1994] 1 IR 374 which, he stated, establishes in broad terms that in order to be allowed to proceed, an applicant is only required to establish an arguable case that the decision or matter in respect of which they make a complaint should be quashed.

18. Barr J. then summarised the background to the Complaint in some detail. He referred to the dissolution of the firm of Bernard L. Gaughran & Co. on 10th July 2020, following which Mr. Power continued in practice on his own account, and continued to handle the appellant's file in relation to her road traffic accident, but that the appellant was unaware of this. The judge noted that Mr. Power became concerned about the passage of time and the fact that the summons had not yet issued, and that it was reasonable for him to be concerned about the possible expiration of the limitation period for the issue of proceedings. It was reasonable both for the client (the appellant) and the solicitor, who the judge noted might well be sued if the action became statute barred. It was in those circumstances that the solicitor sought advice from Mr. Wade. He noted that Mr. Wade advised Mr. Power that the summons should be issued so as to protect the appellant's interests, because if the proceedings became statute barred that would be the end of her case. The judge noted that the appellant had said that she resumed contact with the solicitor on 16th April 2021, suggesting amendments to the personal injuries summons, but that the appellant claims that it was only some time later that she discovered that proceedings had in fact been issued on 16th February 2021.

19. The judge then summarises the Complaint. He says that insofar as the appellant complains that she should have been told about the dissolution of Bernard L. Gaughran & Co. and that Mr. Power had continued to keep her file after the dissolution of that firm, he says that insofar as this is a complaint, it is one against the solicitor and not the barrister. From the point of view of the barrister, he was asked for advices by the solicitor who had instructed him on behalf of Bernard L. Gaughran & Co. The judge said the barrister was not obliged, when asked for advices by the same solicitor following the dissolution of Bernard L. Gaughran & Co. in the early part of 2021, to inquire whether or not the solicitor continued to have instructions on behalf of the appellant. The judge said that such an enquiry would be “*unreasonable*” and not one that a barrister is expected to make.

20. The judge then considered the advice provided by Mr. Wade and concluded that there is no question but that he gave the advice that he perceived as being in the best interests of the appellant in order to prevent her claim from becoming statute barred. The Complaint, the judge noted, was that there had been misconduct on the part of Mr. Wade in giving advice that the most prudent thing to do in the absence of any response from the appellant was to issue the proceedings so as to ensure that her claim did not become statute barred. The judge said that in his view Mr. Wade’s advice was eminently sensible, reasonable and prudent advice, and the fact that the appellant had not returned the draft writ between the period of January 2020 and February 2021 (when Mr. Wade provided his advice), was not the fault of Mr. Wade.

21. For all of these reasons, the judge concluded that the appellant had failed to demonstrate an arguable case that the Determination was in any way unsound or legally infirm and he therefore refused the relief sought. On the application of the respondent, the judge granted the respondent its costs.

The Appeal

22. The appellant filed a notice of appeal dated 13th November 2023, setting out five grounds of appeal. The first of these grounds runs to approximately three and a half pages, the first two and a half pages of which address the Determination rather than the decision of the trial judge. The first criticism of the trial judge is to be found mid-way through the third page of her grounds of appeal wherein the appellant states that the trial judge erred in his *ex tempore* judgment in stating that “*the applicant accepts that she received the draft affidavit which had been drafted by the barrister and returned by him to the instructing solicitor in the normal way and that she had received the draft summons in January of 2020*”. The appellant states that this is “*totally inaccurate*”. However, it is apparent from both the context and the end of the same sentence to which the appellant refers that the judge was referring to the summons as drafted by counsel, and not an affidavit. In the following paragraph, the appellant continues to quote the following extract from the judgment under appeal “*and the applicant accepts that she received it (draft summons) but said that she wasn’t, due to her medical condition, in a position to approve it and consider it at that time. That is reasonable enough but one can’t complain about counsel or solicitor in the action that they took at that time.*” The appellant then proceeds to disagree with this statement of the trial judge.

23. The appellant claims that the trial judge erred in holding that neither Mr. Power nor Mr Wade could be faulted for issuing the proceedings in circumstances where the appellant had failed to give any instructions on the draft personal injuries summons provided in January 2020, and her legal advisors had concerns about the approaching deadline for the issue of proceedings. The appellant claims, *inter alia*, that both solicitor and counsel failed to keep her informed as to the requirements of the statute of limitations, failed to plead the “*true facts*” relating to her injuries and the impact of the accident upon her, and failed to obtain the Garda report into the accident.

24. All of the above is within this first ground of appeal, within which the appellant also takes issue with the conclusion of the trial judge that Mr. Wade was not obliged, when asked for advice by Mr. Power, to inquire as to his authority to act on behalf of the appellant, and the appellant claims that the conclusion of the judge that a barrister is not expected to make such an “*unreasonable*” inquiry is erroneous.

25. The appellant claims that it was both reasonable and necessary for Mr. Wade to inquire of Mr. Power whether or not he had authority to act on behalf of the appellant in circumstances where it would have been clear to Mr. Wade from the email address appearing on emails sent to him by Mr. Power, that another firm of solicitors, namely Power & Co., were now purporting to act on behalf of the appellant, and not Bernard L. Gaughran & Co. from whom Mr. Wade had originally received instructions on behalf of the appellant.

26. The appellant states that both the respondent and the trial judge erred in not holding that Mr. Wade had failed to advise the appellant as to the conflict of interest between her and Mr. Power, as counsel is required to do pursuant to s. 3.28(a) of the Code of Conduct from the Bar of Ireland.

27. By her second ground of appeal, the appellant asserts that the Determination (not the decision of the High Court) was not taken in accordance with proper procedures because Mr. Nolan did not have due regard to the facts and evidence presented, as required by s. 57(5) of the 2015 Act.

28. By her third ground of appeal, the appellant claims that the absence of an appeal procedure from determinations on admissibility of complaints is in breach of Article 40.3.1 of the Constitution and article 6.1 of the European Convention on Human Rights (“ECHR”).

29. In her fourth ground of appeal, the appellant claims a violation of fair procedures in the High Court. Firstly, she claimed that Hyland J., on 3rd October 2023, gave very short notice in listing the matter for hearing the following week, on 10th October, and in directing

that papers be filed by 4.30pm on 3rd October. The appellant also complains that the manner in which the proceedings came to be listed before Barr J. on 10th October was irregular and complains that the hearing appeared more like a specially arranged private hearing rather than a public hearing. In her submissions to the Court at the hearing of this appeal, the appellant repeatedly submitted that the proceedings were not listed in the legal diary and argued that her right to fair procedures was violated. She claimed that Hyland J. displayed bias by ordering that the respondent be put on notice of application, and that it was open to Hyland J. to decide the application without doing so, and without exposing the appellant to the costs of the respondent.

30. The appellant submitted that the trial judge did not consider the Determination and instead just asked questions. The appellant submitted that her file was taken by a solicitor (Mr. Power) who had no authority to act on her behalf, and that Mr. Wade did not have authority to act on her behalf either. It was only when she conducted an internet search that she discovered that proceedings had been issued on her behalf. She relies on the fact that the personal injuries summons bears the name of Mr. Wade.

31. The appellant submitted that the judge did not engage properly with her arguments. She submitted that nobody informed her that Bernard L. Gaughran & Co. had been dissolved in July 2020. She acknowledged having received the draft personal injuries summons in January 2020.

32. The appellant submitted that both the solicitor and Mr. Wade owed her a duty of care, with which they each failed to comply. She complained about the delay in obtaining her file from the solicitor, who refused to give her the file until she paid the fees due.

33. She also complained that the correspondence on the file appears to disclose that the solicitors were engaging with insurers, without her knowledge or authority.

34. The appellant submitted that the personal injuries summons as drafted by the notice party did not reflect properly the injuries that she suffered in the accident the subject of the proceedings, and that neither the solicitor nor the notice party had requested the Garda report of the incident.

35. The appellant submitted that the last contact she had had with Mr. Power, before the issue of proceedings, was on 9th March 2020 when she sent a letter to Mr. Power, and she had no further contact with him again until April of the following year. In the meantime, the partnership of Bernard L. Gaughran & Co. had been dissolved. She asserted that Mr. Wade incorrectly advised that the time for the issue of the proceedings would expire in March 2021, whereas by her estimation it did not expire until early April 2021.

36. The appellant is an accountant and she submitted that in her profession it would be misconduct to purport to act on behalf of a person without that person's authority, and that, by analogy, Mr. Wade should not have issued proceedings on her behalf without her authority.

Respondents' Notice and Submissions of Respondent

37. The respondent says that the first two and a half pages of ground 1 of the grounds of appeal do not relate to any order of the High Court or to any error of law on the part of the trial judge, but are partially a repeat of submissions made by the appellant to the trial judge and are partly new submissions that should have been made to the trial judge. The respondent proceeds to deny each ground of appeal and further denies each and every assertion or suggestion of any failure by the respondent to carry out its statutory functions properly or at all. The respondent says that the trial judge was correct in refusing to grant the appellant leave to issue judicial review proceedings, because the appellant had failed to aver to any facts sufficient to support a stateable ground for judicial review.

38. The respondent submits that Barr J. correctly applied the test of *G v. DPP*. The respondent submits that the appellant has failed to advance a stateable case. Moreover, Barr J. correctly concluded that Mr. Wade had given the solicitor prudent advice – to issue the proceedings rather than let the limitation period expire. The respondent says that the appellant has failed to identify any error of law or of fact on the part of the trial judge, or any facts upon which an arguable case in law could be made that the appellant is entitled to the relief sought, and that the appeal should be dismissed accordingly.

39. As to the costs issue raised by the appellant i.e. that Hyland J. should not have directed that the respondent be put on notice, it was submitted that Hyland J. was entitled to put the respondent on notice, and the respondent would only be entitled to costs from the date upon which it was put on notice, and not any earlier date on which the respondent had been in attendance by coincidence (in this regard counsel for the respondent informed the court that he had coincidentally been in court on behalf of the solicitor on 3rd October, when this matter was mentioned. The respondent then anticipated that Hyland J. might make a direction as regards the filing of papers, on 10th October, and the respondent had taken the opportunity to prepare papers for filing in the intervening period).

Discussion and Decision

40. Although little, if anything turns on them, it is nonetheless appropriate to set out at the outset of this discussion the statutory provisions applicable to the Complaint. These are to be found in Part 6 of the 2015 Act. Section 50 of the 2015 Act defines what constitutes misconduct by legal practitioners for the purposes of the Act. There are fourteen categories of misconduct, but for present purposes it is apparent that only three have any possible relevance:

- (i) Fraud or dishonesty (s. 50(1)(a));

- (ii) The act or omission complained of is connected with the provision by the legal practitioner of legal services, which were, to a substantial degree, of an inadequate standard (s. 50(1)(b)); and
- (iii) In the case of a barrister, [the act or omission complained of] is likely to bring the barrister's profession into disrepute (s. 50(1)(g)).

41. In section 49(2) there is a definition of what constitutes the provision of services to an inadequate standard. For the purposes of these proceedings, just one part of that definition is relevant. It is stated that "*where the legal practitioner is a barrister, [the legal services provided] were inadequate in any material respect and were not of the quality that could reasonably be expected [of a barrister]*".

42. Section 51 makes provision for the making of complaints by clients of legal practitioners to the respondent where, *inter alia*, the client considers that the legal services provided to the client by the legal practitioner were or are of an inadequate standard. Section 51(2) provides that a person may make a complaint to the respondent in respect of a legal practitioner where the person considers that an act or omission of the legal practitioner constitutes misconduct.

43. Section 57 of the 2015 Act makes provision for the preliminary review of complaints. Section 57(5) provides that where the respondent has considered all of the information provided by the complainant and the legal practitioner in response to the complaint, and any other information requested by the respondent, the respondent shall determine that the complaint is (a) admissible, (b) inadmissible or (c) is one to which s. 58(6) applies (this concerns complaints which are the subject of civil or criminal proceedings). Section 57(7) provides that where the respondent makes a determination that a complaint is inadmissible, it shall take no further action in relation to the same.

44. Section 58 of the 2015 Act addresses the admissibility of complaints. Section 58(2) provides that the respondent shall determine a complaint to be inadmissible if, in the opinion of the respondent, the complaint is (a) frivolous or vexatious, or (b) without substance or foundation.

45. While the appellant has multiple grievances, her principal grievance is that Mr. Wade continued to act on the instructions of Mr. Power, without confirming that Mr. Power still had authority to act on her behalf following the dissolution of the firm of Bernard L. Gaughran & Co. Related to this grievance, the appellant claims that Mr. Wade took a decision on her behalf and without her authority to issue the proceedings. The appellant further complains that Mr. Wade should have, but did not, contact her directly in order to advise her of the limitation period. It is clear, however, that all of these complaints are misconceived and are owing to a misunderstanding on the part of the appellant as to the respective roles of solicitors and counsel.

46. The appellant places much emphasis on the statement made by Mr. Wade to the respondent in which he said that he was not “*privy to the dissolution of Bernard L. Gaughran & Co.*”. Whilst the appellant asserts that it is clear that Mr. Wade must have known that Mr. Power was no longer with that firm when he advised Mr. Power to issue the proceedings in early 2021, in my view, it does not follow from the fact that Mr. Wade would or should have been aware of the dissolution of Bernard L. Gaughran & Co. that he should also have been aware that Mr. Power did not have authority to act on behalf of the appellant, or that he should have made inquiries of Mr. Power in this regard. When a solicitor seeks advice from counsel on behalf of a person that the solicitor either names as a client or a person who by implication the solicitor holds out as being a client of the solicitor, counsel is under no obligation to verify the authority of the solicitor to act on behalf of the client, and Barr J. was correct in so holding. The appellant has not cited any authority to the contrary.

47. This misunderstanding of the respective roles as between solicitor and counsel is further demonstrated by the appellant's suggestion that counsel should have been in direct correspondence with the appellant to advise her as to the limitation period applicable to the proceedings. These are not the kind of circumstances to which direct access would normally be afforded by counsel to members of the public. The appellant's misunderstanding as to the role of counsel is further underscored by her impression that counsel took a decision to issue proceedings when quite clearly what occurred was that counsel advised the solicitor to issue proceedings rather than let the limitation period expire thereby depriving the appellant entirely of her right of action. It was the solicitor who was responsible for the issue of proceedings, as is the norm (save in cases where litigants do so on their own behalf).

48. In any case, however, the position of the appellant is somewhat puzzling in circumstances where it appears that she was quite happy for Mr. Power to continue acting on her behalf and so informed the solicitor by email of 1st April 2021. According to the appellant, it was only on 22nd April 2021 that she discovered, through her own search of the High Court website, that proceedings had been initiated on her behalf on 16th February 2021, and it was as a consequence of that discovery that she decided to terminate the retainer of her solicitors and counsel. It would seem to follow from this that the appellant could not have had any difficulty with Mr. Power acting on her behalf in February 2021 in consulting with Mr. Wade; on her own case, it was only when she later discovered that proceedings had been issued without her authority that she considered that her legal advisors had exceeded their instructions.

49. The appellant submitted that she had instructed the firm of Bernard L. Gaughran & Co., and that upon the dissolution of that firm on 10th July 2020 that retainer was terminated, and the firm – or more accurately the former partners of the firm – had a duty to inform of her of the dissolution and although she did not say so expressly in her submissions, the

implication is that it would then have been a matter for her to decide for herself who she should instruct to act on her behalf. However, this is clearly a complaint about the conduct of the solicitor and not that of Mr. Wade. Accordingly, it is unnecessary to get into the precise obligations of solicitors upon the dissolution of a partnership, and in any case the choice of retainer of a solicitor is always a matter for the client. Moreover, and more fundamentally, as I have already mentioned above, Mr. Power sent an email to the appellant on 23rd December 2020 advising her of the dissolution of Bernard L. Gaughran & Co., and that she should now elect a new firm of solicitors. The appellant did not respond to this email and made the somewhat curious submission to the trial judge that there was no communication during the Covid lockdown, a period which, as everybody knows, there was an enormous surge in the use of internet communications.

50. When a partnership is dissolved, the principals will frequently agree on the distribution of work, but it always remains the entitlement of the client not to instruct the solicitor who takes over the business of the client, and to instruct any other solicitor or firm of solicitors, if the client sees fit. Counsel is a step removed from all of this, and is entitled to presume the authority of a solicitor to act on behalf of a client, if the solicitor seeks the advices of counsel on behalf of the client. Of course in this instance it was proving difficult to make contact with the client, but that did not mean that she had terminated Mr. Power's retainer, even if he was now acting on his own account, and Mr. Wade would have been incorrect to assume that any such termination had occurred, as was amply demonstrated by the fact that on 1st April 2021, the appellant instructed Power & Co. Solicitors to represent her in the personal injury proceedings. The appellant may argue that that was a new retainer, and while that may be correct in a technical sense, the fact of the matter is that solicitor and counsel had acted seamlessly on her behalf, and the duties and obligations they owed to the appellant

at any point in time would not have been altered by the dissolution of Bernard L. Gaughran & Co.

51. The failure on the part of the appellant to maintain contact with her solicitor for a period of approximately twelve months placed the solicitor in a difficult situation about which he quite properly consulted with counsel who gave advices that he considered to be in the best interests of the client. The circumstances required the appellant's legal advisors to make a judgment call between one of two choices; do nothing and run the risk that the appellant's entitlement to issue proceedings and recover compensation could be forever lost, or alternatively issue proceedings which at worst would protect the entitlement of the appellant who could, if she resumed contact (as she did), choose to discontinue the proceedings or amend them as she saw fit upon her return. I might add that if the appellant's proceedings had become statute barred, this would inevitably have exposed the solicitor and possibly also Mr. Wade, to proceedings in negligence by the appellant. Furthermore, while the appellant argued that Mr. Wade had miscalculated the statutory limitation period and that at all relevant times she had sufficient time left within which to issue proceedings, this argument cannot avail her. It is manifestly not good practice for legal practitioners to defer the issue of legal proceedings to the eleventh hour, and it is manifestly good practice to ensure, if at all possible, they are issued comfortably within any applicable time limit.

52. The allegation that Mr. Wade had provided incorrect advice regarding the date upon which the proceedings would become statute barred formed one of the grounds of complaint made by the appellant to the respondent. It will be recalled that the respondent concluded that it did not have authority to interfere with legal practitioners exercising their professional judgment. This issue was not raised by the appellant in her draft statement of grounds, and it did not therefore feature in the decision of the trial judge. Accordingly, while the appellant made submissions on this point, it does not properly arise on the appeal. Even if it did

however, in my view it is unlikely that the jurisdiction of the respondent could extend to arriving at conclusions on matters of law such as what is the last date for the issue of proceedings. While it is possible that there is some overlap between the provision of legal services of an inadequate standard to a “*substantial degree*” as is referred to in s. 50 of the 2015 Act and the negligent provision of legal services, it seems to me that any issue which requires a determination that a legal practitioner was wrong in advices provided is, in most cases, more properly a matter for assessment by a court within the context of professional negligence proceedings, and not a matter going to the conduct of the practitioner, and the decision of the respondent on this ground of complaint was correct. That said, this issue was not argued and it may in, in an appropriate case, benefit from detailed analysis and argument.

53. Within this ground of appeal the appellant also makes complaints about the contents of the personal injuries summons and the failure of the legal advisors to take up a copy of the Garda report and the apparent. Neither of these matters was raised by the draft statement of grounds. The first of them only was raised in the Complaint. It will be recalled that the respondent had concluded (in the Determination) that Mr. Wade had drafted the personal injuries summons based upon his instructions, and that he had not received any instructions from the appellant to make any amendments to the summons (at the time of issue of the proceedings) and he was unaware of the appellant’s dissatisfaction with the contents of the summons. Perhaps it is because this conclusion cannot be faulted that the appellant did not include it in her statement of grounds.

54. The final issue raised by the appellant within her first ground of appeal is that Mr. Wade failed to comply with his obligation under section 3.28 of the Code of Conduct for the Bar of Ireland to advise the appellant that a conflict of interest had arisen between the appellant and Mr. Power. No particulars at all of this alleged conflict are provided, and perhaps for this reason it is not addressed in the Determination. Similarly, no particulars

were provided to the trial judge as to the alleged conflict. Moreover, in spite of the trial judge having raised this in discussion with counsel for the respondent during the course of the hearing, the appellant did not take the opportunity to address the issue in reply. The trial judge appeared to be of the view that the alleged conflict relied upon by the appellant might be all the issues raised by the appellant concerning the transfer of her file following upon the dissolution of Bernard L. Gaughran & Co. To that extent, it is apparent that he addressed this issue, as already discussed above. In her grounds of appeal, the appellant purports to raise other issues under the heading of conflict of interest. These include: the lack of communication between the appellant and Mr. Power, the change of email address of Mr. Power which the appellant contends drew to the attention of Mr. Wade that the firm of Bernard L. Gaughran & Co. had been dissolved and were no longer acting for the appellant, and certain correspondence between Mr. Power and AXA insurance. This correspondence disclosed that AXA had indicated a willingness to enter into negotiations to resolve the appellant's claim, and Mr. Power had informed Mr. Wade of this development. Aside altogether from the fact that none of these matters had been relied upon by the appellant in the Complaint or in the hearing before the High Court, as being evidence of a conflict of interest, it is not apparent how any of these matters suggest any conflict of interest between the appellant and Mr. Power. The appellant has failed to explain in the Complaint, in her application for leave in the High Court and before this Court what interest Mr. Power had that was in conflict with her own interests, such as to have activated an obligation on Mr. Wade pursuant to s. 3.28 of the Code of Conduct of the Bar of Ireland. Accordingly, I would dismiss this ground of appeal also.

55. Before leaving the first ground of appeal, I would make one final general point. In ordinary circumstances, a person might well have a valid grievance if legal proceedings were issued in his or her name without his or her express authority, not least if the issue of the

proceedings gave rise to any form of prejudice, whether financial or personal. However, the circumstances giving rise to these proceedings were not ordinary and the actions of the appellant's legal advisors were taken in good faith, in her best interests and did not result in any prejudice to the appellant. They could not possibly give rise to a sustainable complaint of misconduct, and, as far as this heading of complaint is concerned, the appellant falls well short of meeting the test in *G v. DPP* and the trial judge was correct in so holding.

56. The second ground of appeal is of as general nature and does not arise out of the judgment of the High Court. By this ground the appellant claims that that the Determination (not the decision of the High Court) was not taken in accordance with proper procedures because Mr. Nolan did not have due regard to the facts and evidence presented, as required by s. 57(5) of the 2015 Act. Since this arises out of the Determination and not the judgment of the High Court it cannot properly form a ground of appeal but in any case it seems to me that the facts and evidence relied upon by the appellant within this ground of appeal, although not specified, are those related to the circumstances in which both Mr. Power and Mr. Wade continued to act on behalf of the appellant, and these matters have been addressed above.

57. By her third ground of appeal, the appellant raises an issue regarding the compatibility with the Constitution and the ECHR insofar as there is no appeal from a decision of the respondent that a complaint is not admissible. This issue formed no part of the application for leave and cannot now be raised on appeal for the first time.

58. By her fourth ground of appeal, the appellant raises a number of issues under the heading of fair procedures. The appellant appears to be suspicious about a number of issues. These include the decision of Hyland J. to put the respondent on notice of the application for leave, the assignment, on 3rd October 2023 of an early hearing date just one week later, the fact that the matter was not (apparently) listed in the legal diary and the manner in which the case was allocated for hearing by Barr J. None of these matters are indicative of any

deficiency in fair procedures and it seems to me that the appellant's suspicions are borne of a lack of familiarity with court procedures. Moreover, the transcript of the proceedings before Barr J. make it very plain that the appellant was treated with utmost courtesy by the trial judge and afforded every opportunity to advance her case and make any submission that she wished to make.

59. In so far as the appellant complains that it was unnecessary for Hyland J. to put the respondent on notice of the leave application, this is a matter falling within the exclusive discretion of the judge having seisin of the judicial review list, and is expressly provided for by O. 84, r. 24(1) of the Rules of the Superior Courts. An applicant for judicial review does not have the entitlement to have it dealt with on an *ex parte* basis, and it is commonplace for such applications to be put on notice. As in any other proceedings, the moving party takes any costs risks associated with their proceedings. There is no basis whatsoever for this ground of appeal, and it follows that it too must be dismissed.

60. This disposes of all of the appellant's grounds of appeal. I have considered all grounds advanced by the appellant and all submissions made by her, orally and in writing. Insofar as I may not have addressed any particular submission in detail or at all, this does not mean it was not considered, it means only that it was not necessary to address it or address it in any greater detail for the purpose of this judgment.

61. For all of the reasons discussed, I would therefore dismiss this appeal. Since the respondent has been entirely successful in this appeal, as that term is used in s. 169 of the 2015 Act, my preliminary view is that the respondent is entitled to an order for the costs incurred by it in resisting this appeal. If the appellant wishes to contend for a different order then she may do so by making submissions in writing not to exceed 1000 words. In such event, having regard to the time of year, I would allow longer than usual for the filing of submissions. Accordingly any such submission as the appellant may wish to make should

be made within 28 days from the date of delivery of this judgment. Any replying submissions of the respondent shall be delivered within a further period of 28 days.

62. Since this judgment is being delivered electronically, Faherty J. and Pilkington J. have authorised me to indicate their agreement with it.