THE HIGH COURT

[2023] IEHC 143

[2022 214 MCA]

BETWEEN

CATHERINE (OTHERWISE MÁIRE) AHERNE

PLAINTIFF/APPLICANT

AND

THE NATIONAL COUNCIL FOR SPECIAL EDUCATION

DEFENDANT/RESPONDANT

JUDGMENT of Mr. Justice Mark Heslin delivered on the 16th day of March 2023

Introduction

1. By way of the relevant backdrop, the Labour Court made a decision on 10 June 2022, in respect of which the applicant had 42 days to appeal to this Court on a point of law (hereinafter the "Labour Court's decision" or the "decision").

2. It is common case that the relevant motion was not issued until 16 August 2022 (i.e. outside the statutorily mandated period). When the matter first came before this Court (Meenan J.), on 24 October 2022, a date was set for the hearing of a preliminary objection by the Defendant/Respondent (hereinafter the "respondent") arising from the foregoing.

3. The respondent initially relied on the applicant's failure either to reply to the respondent's correspondence or to serve an affidavit identifying the basis upon which the application to extend time was sought. Since then, the applicant served an affidavit, sworn on 28 November 2022.

4. On 17 February 2023, this Court heard an application, which was moved by Ms. Aherne (hereinafter the "applicant") who represented herself, seeking an extension of time pursuant to O. 84 C of the Rules of the Superior Courts (hereinafter the "RSC").

Affidavits

5. For the purposes of this judgment, I have carefully considered the contents of the following: -

(i) The applicant's originating notice of motion;

(ii) The applicant's grounding affidavit and the exhibits thereto (the last of which comprises a copy of the Labour Court's decision dated 10 June 2022);

(iii) The replying affidavit sworn by Mr. Tadgh O'Leary, personnel officer, on behalf of the respondent and the exhibits thereto;
(iv) The applicant's replying affidavit of 28 November 2022 and the exhibits thereto;
(v) Relevant statutory provisions.

6. Before proceeding further, it is appropriate to make reference to the legislative context in which the present issue falls to be determined.

Workplace Relations Act 2015

7. Section 46 of the Workplace Relations Act 2015 (as amended) (hereinafter the "2015 Act") lays down a 42–day time limit with respect to an appeal against a decision by the Labour Court, on a point of law, to this Court. The section is in the following terms: -

> "*Appeal to High Court on point of law*
> *46. A party to proceedings before the Labour Court under this Part may, not later than 42 days from the service on that party of notice of the decision of the Labour Court in those proceedings, appeal that decision to the High Court on a point of law, and the decision of the High Court in relation thereto shall be final and conclusive*". (emphasis added)

8. In light of the foregoing, the starting point for the analysis is that the will of the Irish people, as expressed through legislation enacted by the Oireachtas, is to impose a strict 42–day (i.e., six week) time limit within which to bring an appeal. Furthermore, such an appeal is not a re–hearing of the merits, rather, it is confined to a point of law.

9. The role of the court in a point of law appeal is something I referred to at para. 32 of my decision in *McLoughlin v. Murray* [2022] IEHC 537 wherein, at para. 32, I quoted from the decision of Gilligan J. in *ESB v. The Minister for Social, Community and Family Affairs & Ors*. [2006] IEHC 59, in which the learned judge set out the relevant law, in a passage which is useful to cite for present purposes:-

> "***The Law***
> *In (Deely v. Information Commissioner Unreported, High Court, 11th May, 2001) McKechnie J. noted at p. 17 that the remit of the Court in an appeal on a point of law encompassed the following:*
>
> *(a) it cannot set aside findings of primary fact unless there is no evidence to support such findings,*
> *(b) it ought not set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision making body could draw,*
> *(c) it can however reverse such inferences, if the same were based on the interpretation of documents and should do so if incorrect, and finally,*
> *(d) if the conclusion reached by such bodies shows that they have taken an erroneous view of the law, then that also is a ground for setting aside the resulting decision. See for example Mara (Inspector of Taxes) v Hummingbird Limited [1982] I.R.L.M. 421, Henry Denny and Sons (Ireland) Limited v Minister for Social Welfare [1998] 1 IR 34 and Premier Periclase v Valuation Tribunal HC 24th June, 1999 U/R*."

Order 106 RSC

10. Order 106 of the RSC concerns: -

> "*Proceedings under the Employment Equality Acts 1998 and 2004 and the Workplace Relations Act 2015*".

11. O. 106, r. 2 states that: -

> "*2. Any appeal to the High Court on a point of law from a determination on appeal of the Labour Court under section 90(1) of the Act (as substituted by section 46 of, and the Schedule to, the Act of 2004) shall be brought by originating notice of motion*".

12. Order 106, rr. 4 to 6 state the following: -

> "*4. In all cases the originating notice of motion referred to in rule 2 shall be served on all parties to the determination of the Labour Court and on the Minister for Business, Enterprise and Innovation.*
>
> *5. The originating notice of motion referred to in rule 2 shall be issued within 42 days of the date on which the determination of the Labour Court was given.* (emphasis added)
>
> *6. Any question referred to the High Court by the Labour Court pursuant to section 90(2) of the Act (as substituted by section 46 of, and the Schedule to, the Act of 2004) shall be brought by originating notice of motion, entitled in the matter of the Act, on the application of the Labour Court. The originating notice of motion shall state concisely the question referred for the decision of the High Court and shall be served on all parties to the appeal before the Labour Court*". (emphasis added)

Order 84 C, RSC

13. Order 84 C concerns the "*Procedure in Statutory Appeals*". Order 84 C r. 2 (1) states: -

> "*2. (1) The appeal shall be commenced by way of originating notice of motion (in this Order hereinafter called "the notice of motion"). The notice of motion shall be entitled in the matter of the provision of the enactment pursuant to which the appeal is made. The notice of motion shall name the person making the appeal as appellant and any person who the relevant enactment provides shall be a respondent to the appeal shall be named as a respondent*".

14. Order 84 C, r. 5 (a) provides that: -

> "*Subject to any provision to the contrary in the relevant enactment, the notice of motion shall be issued:*
>
> > *not later than twenty-one days following the giving by the deciding body to the intending appellant of notice of the deciding body's decision*"

15. However, as seen earlier, the relevant enactment lays down a 42–day time limit and it is common case that 42 days was the time limit which the applicant was required to comply with in the present case.

16. Order 84 C, r. 5(b) permits an application to be made for an extension of time in that it states that the notice of motion shall be issued: -

> "*(b) within such <u>further period</u> as the Court, on application made to it by the intending appellant, may allow <u>where the Court is satisfied that there is good and sufficient reason</u> for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter*". (emphasis added).

<u>Eire Continental</u>

17. There is no dispute between the parties that the appropriate approach for this Court to take was to have regard to the principles set out in the well–known decision in *Eire Continental Trading Co. Ltd. v. Clonmel Foods Ltd.* [1955] IR 170 (as reaffirmed in *Goode Concrete v. CRH plc.* [2013] IESC 39). In her oral submissions, the applicant made specific reference to the *Eire Continental* principles, and it is fair to say that the gravamen of her oral submissions is that her application satisfies all three conditions referred to in the Supreme Court's decision (Maguire CJ, Murnaghan, O'Byrne, Lavery and Kingsmill–Moore JJ.). It is appropriate to refer to the following extract from *Eire Continental*: -

> "*Mr. McGonigal submitted that three conditions must be satisfied before the Court would allow an extension of time. These conditions were: —*
>
> *1, The applicant must show that he had a bona fide intention to appeal formed within the permitted time.*
> *2, He must show the existence of something like mistake and that mistake as to procedure and in particular the mistake of counsel or solicitor as to the meaning of the relevant rule was not sufficient.*
> *3, He must establish that an arguable ground of appeal exists".*
>
> *In my opinion these three conditions are proper matters for the consideration of the Court in determining whether time should be extended but they must be considered in relation to all the circumstances of the particular case. In the words of Sir Wilfred Greene M.R., in Gatti v. Shoosmith (a case resembling the present in many ways): —'The discretion of the Court being, as I conceive it, a perfectly free one, the only question is whether, upon the facts of this particular case, that discretion should be exercised'."*

18. It is through the lens of the *Eire Continental* principles that this Court has come to the decision in respect of the present application. However, I want to make clear that this has not involved a slavish adherence to a three–part "test". This is in circumstances where the court is very conscious that underpinning the court's jurisdiction to extend time is the fundamental principle that the *interests of justice* comprise the determining factor. This was put in the following terms by O'Malley J. in the Supreme Court's decision in *Seniors Money Mortgages (Ireland) DAC v. Gately & Ors*. [2020] 2 ILRM 407: -

> "*It is common case that the starting point for the determination of this application is the analysis by Lavery J. in Eire Continental. It is also agreed that the court retains a discretion,*

having regard to the totality of the circumstances of the particular case before it, to extend or refuse to extend time, and that a court is not precluded from exercising its discretion to grant relief in a case where only some or none of the aspects of the Eire Continental test are satisfied, if the interests of justice so require". (emphasis added)

19. Guided by the foregoing principles, I now turn to their application in the present application.

***Bona fide* intention to appeal**

20. During the hearing before me, no issue was taken by the respondent with the proposition that the applicant formed a *bona fide* intention to appeal within the permitted time. This is in circumstances where the evidence before this Court allows for a finding that the applicant was, in fact, in Dublin on 22 July 2022, with the intention of appealing.

21. Among the documents exhibited is one described by the applicant as "*Receipt 22 July 2022 from stamp office Áras Ui Dhálaigh*". A copy can be seen behind Tab 14 of what the applicant describes as her "*Amended replying affidavit – book of exhibits*". It certainly allows for a finding that, as of 10:58 a.m. on 22 July (a Friday), stamp duty totalling €210 was paid in the stamp office of Áras Ui Dhálaigh. I accept, as a matter of fact, that this was paid by the applicant in the context of seeking, at that point, to lodge an appeal. Thus, the *first* of the Eire Continental conditions has been satisfied.

22. It is, however, an undisputed fact that the appeal was *not* lodged on 22 July 2022. A decision on the *second* of the three conditions laid down in *Eire Continental*, in the context of the applicant's necessity to satisfy this Court that there is good and sufficient reason for extending the time period, requires a close look at the particular facts.

23. It will be recalled that the Labour Court's decision was given on 10 June 2022. If one calculates 42 days from the date of the decision, the relevant time limit expired on 22 July 2022 (a Friday).

24. At para. 8 of the applicant's 28 November 2022 affidavit, she confirms that she received the Labour Court's decision "*at 9:56 a.m. on 13 June 2022*".

25. I am not convinced that the proper interpretation of s. 46 of the 2015 Act is that the 42 days only starts to run upon *receipt by* someone in the applicant's position. However, and lest I be wrong not to give to the applicant the most generous interpretation of the possible time limit, the analysis in this judgment has proceeded on the basis that that the 42–day time limit was calculable from 13 June 2022, and, thus, expired on 25 July 2022. Thus, even on the case made by the applicant, the very last day by which her appeal had to be made was 25 July 2022 (a Monday).

26. In the course of her submissions, the applicant laid particular emphasis on the fact that she had a medical appointment in Galway scheduled for 22 July 2022. Tab 3 of her replying affidavit – book of exhibits includes a letter from the HSE which begins in the following terms: -

"*Tuesday, July 5, 2022*
The date for your free breast mammogram (X – ray).
Dear Mrs. Ahearne,

This letter is to let you know that BreastCheck has arranged a time and location for your free breast mammogram (X – ray).

YOUR APPOINTMENT WILL TAKE PLACE ON:
Friday, July 22, 2022, at 14:45 PM in the Galway Static Unit
Located at: University Hospital Grounds, Newcastle Road, Galway.

Let us know if you cannot be there, if you cannot attend at this time or location, please phone us on 091 580 600 or email western@breastcheck.ie and we can give you a different appointment. If you need to make a change please let us know two days before this appointment. . ." (emphasis added)

27. In light of the foregoing, it can fairly be said that the 42–day statutory time limit began to run against the applicant (on 13 June) over three weeks *before* she received notification (on 5 July) with respect to the aforesaid medical appointment. It is also fair to say that the terms of this 5 July letter afforded the applicant enormous flexibility as regards when she availed of the appointment.

28. As is perfectly clear from the terms of the 5 July letter, it was open to the applicant to arrange a different appointment, should she so wish. Indeed, the letter specified that just two days' notice was needed if a change of appointment was required. Thus, the reality is that she was facing a fixed statutory deadline but, as regards the appointment, it was within her gift to arrange it for such alternative date as might suit her. In short, one date was fixed, but the other was moveable at her election.

29. The applicant did not seek to change this appointment, either (i) immediately on receipt of the 5 July letter or (ii) 2 days before the 22 July appointment. In circumstances where the applicant has given no details as to what she was or was not doing in the almost 6-week period prior to 22 July, there is no evidential basis for a finding that she encountered any difficulties whatsoever which delayed the preparation of her appeal papers. However, even if this Court were to assume that, say, on 19 July, the applicant did not have appeal papers ready, there remained open to her the option of re-scheduling her 22 July appointment (i.e. not missing it) in order to maximise the time available to her to ensure her appeal was lodged on time.

30. Despite the flexibility which the 5 July letter gave to the applicant with respect to the medical appointment, and for reasons unknown, she decided *against* changing the medical appointment (e.g. in favour of one which would post-date the statutory deadline of which she was aware before receiving notification of same).

31. Furthermore, it was not until the morning of Friday 22 July 2022 that the applicant contacted the Courts Service and asked for the very *first* time whether she could be facilitated with an appointment to lodge papers.

32. Tab 3 to the booklet of exhibits which accompanied the applicant's replying affidavit includes an exchange of emails between the applicant and the Court office on 22 July 2022.

22 July 2022 - 9:16 am

33. The first of those emails was sent by the applicant at 9:16 a.m., and the following is a *verbatim* quote from same: -

> "*Subject: Any possibility of a cancellation/walk – in appointment this morning?*
> *A chara,*
> *I am a lay litigant and need to file originating High Court documents today.*
> *I am currently on a train from Ballinasloe to file, and have just realised that:*
> *I need to book an appointment to file;*
> *I need to pay stamp fees first;*
> *There are no appointments available today before 2 p.m.*
> *I realise that my poor planning is not your emergency, but any assistance you can give me would be much appreciated with respect to:*
> *Where I pay the stamp fees*
> *Whether there is any possibility of a cancellation/walk – in appointment this morning.*
> *Best regards and thanks,*
> *Maire Aherne*". (emphasis added)

The applicant's "poor planning" and "emergency"

34. Insofar as the applicant stated "*my poor planning is not your emergency*" several comments seem appropriate, as follows:

(i) It is fair to say that the applicant left matters to the 'eleventh hour', in circumstances where the statutory deadline was going to expire the very next working day;

(ii) Other than the reference in this email to her "*poor planning*", the applicant has tendered no evidence or explanation whatsoever with respect to the five–week and six-day period up to and including 22 July;

(iii) This Court is, therefore, entitled to hold that it was, as a matter of fact, poor planning by the applicant which created the situation and no details which might comprise an explanation of excuse for this poor planning have been provided to the Court;

(iv) In circumstances where this was now an "*emergency*" from the applicant's perspective, it does not appear to be unfair to say that it was an emergency created by the applicant alone;

(v) The applicant's delay leading up to the morning of 22 June 2022 has simply not been explained.

22 July 2022 - 9:18 am

35. A very prompt response was sent to the applicant, by email, at 9:18 a.m. which stated: "*Please book an appointment using the link below. Walk ups cannot be facilitated*". The relevant link to book an appointment was attached.

'In person' appointment given

36. It is not in dispute that the applicant was, as a matter of fact, given an 'in–person' appointment for later the same day, i.e. 22 July 2022. Nor is it in dispute that the applicant made the decision *not* to take this appointment. Why this is so, is put in the following terms at para. 9 of the applicant's replying affidavit: -

> "*I learned while waiting for my appointment with the Central Offices of the High Court that I could remit the stamped, signed documents to the Central office of the High Court by prepaid post which would have them with the Central Office of the High Court before the expiration of the 42–day appeal period. This would allow me to travel to Galway that afternoon to keep a health appointment. I took this course of action*".

37. Several comments seem appropriate:

(i) In the manner examined earlier, it was open to the applicant to change her medical appointment at any point up to 19 July 2022, but she chose not to do this, for reasons which have not been explained;

(ii) Having received the 5 July 2022 letter from the HSE giving notice of the 22 July appointment and having decided to keep that appointment, it was open to the applicant to travel to the High Court Central Office during the (more than two–week) period between Wednesday 6 July and Thursday 21 July, inclusive (thereby avoiding any clash with the medical appointment);

(iii) The applicant has given no explanation as to why she did not take this course of action and why, instead, the one and only day she sought to lodge her appeal in person was the same day as a medical appointment on the other side of the country;

(iv) It was open to the applicant to contact the Central Office at all material times between 14 June 2022 and 21 July 2022, inclusive (as opposed to making such contact for the *first* time on an *urgent* basis after 9 a.m., whilst travelling to *Dublin* by train and, at the same time, knowing that she had a medical appointment at 2:45 p.m. in *Galway* the same day);

(v) No explanation has been given by the applicant in relation to why she did not make contact with the Central office *prior* to the morning of 22 July 2022 in order to obtain a convenient appointment (and there is certainly no evidence that there was any impediment in so doing);

(vi) Given that the case made by the applicant is that the statutory deadline did not expire until 25 July (and, as explained, I have used this date lest it be unfair not to), having decided against attending the in person appointment given to her on 22 July, it was open to the applicant to attend the Central Office on 25 July and there is no evidence that there was anything which prevented the applicant from doing so.

The applicant's decisions

38. It seems to me that the reasons for missing the statutory deadline were a range of decisions, freely made by the applicant, including: (a) not to travel to Dublin sooner, (b) not to contact the Central Office sooner; (c) not to attend the Central Office in person on 22 July, despite having been given an appointment; (d) not to attend in person on 25 July; as well as (e) those decisions which, collectively, amounted to what the applicant described on 22 July as her *"poor planning",* whereby she created what she referred to as an *"emergency"* .

39. In my view, these decisions do not constitute a good or sufficient reason to extend time. Nor do they disclose the existence of a mistake which would satisfy the second of the conditions in *Eire Continental.*

40. During the course of oral submissions, the applicant indicated that the appointment given to her by the Central Office was for 4:30 p.m. on 22 July. This is the appointment she elected *not* to keep. It seems to me that had the applicant decided to keep this appointment, it is entirely possible that her appeal would have been lodged on time. Thus, her decision not to keep the appointment she was offered seems to me to be the most important factor insofar as why she failed to lodge her appeal within the six–week statutory time limit.

41. I take this view even though it is also a matter of fact that when the Central Office processed the papers which she furnished by post, the Central Office responded, also by post, asking her to address corrections/omissions and to resubmit. In this regard, Tab 4 of the booklet of exhibits to the applicant's replying affidavit begins with a copy of a communication dated 27 July 2022 sent by the Central Office to the applicant. This stated the following: -

"*Dear Sir/Madam,*

Find enclosed herewith your original correspondence rejected for reasons described below:

First named plaintiff:	*Aherne, Catherine (ORSE Maire)*
First named defendant	*National Council for Special Education*
Document Type:	*Notice of motion*
Reason for rejection:	*Document content incorrect – jurat in affidavit is not clear in how the deponent is identified/known. Any information not applicable must be struck through and initiall[ed] by the practicing solicitor/Commissioner for Oaths this was sworn before. Also, document not addressed correctly – notice of motion is not addressed to the applicant.*
Record number:	*N/A*
Processed by:	*Rachel May, Wednesday 27 July, 2022*

Please address these corrections/omissions and resubmit to the address below.
The Central Office,
High Court,
East Wing,
Four Courts,
Dublin 7 . . ."

42. Precisely when the Central Office first *received* the applicant's papers is not clear from the evidence which was put before the court in this application. What is clear is that (i) the applicant could have, but declined to, hand her papers over to the Central Office on 22 July, and (ii) had omissions been pointed out to the applicant at that stage, she would have had the period up to and including close of business on Monday 25 July to address the deficiencies and lodge her papers (allowing, for the purposes of this judgment that 25 July was the date when the statutory time limit expired).

Exchanges with the Central Office

43. The exhibits to the present application include a series of exchanges between the applicant and the High Court Central Office, by post, which can be summarised as follows: -

(i) **Wednesday 3 August 2022** – Applicant re–submits papers which she describes in her covering letter as "*Amended as per letter of 27/07/2022*";

(ii) **Friday 05 August 2022** – Rejection letter from High Court Central Office which states inter alia: "*You must give your address on the notice of motion where it says 'Address' under where you have signed it. The motion should also be addressed to the defendant directly as well as their solicitors as they do not automatically bring their solicitors with them into this type of litigation. The affidavit can only have one means of knowledge/identification [i.e., it should not say that you were personally known to the oath taker if you identified by passport]. Section 46 appears to only allow 42 days to appeal – which have expired – you may need to ask the Court for an extension of time in which to bring the appeal".*

(iii) **Monday 08 August 2022** – Letter from Applicant to Central Office stating inter alia: "*As per letter of 05/08/2022 , I have also enclosed two copies of a signed sworn and stamped notice of motion seeking an extension of time to file the Appeal, and a copy of the Labour Court determination HSD 224 under appeal*".

(iv) **Wednesday 10 August 2022** - Letter from Central Office to the applicant stating inter alia: "*In order to seek an extension of time, rather than file an extension of time motion you should file your statutory appeal motion and affidavit, the first relief thereon should be an extension of time. Please have regard to O. 84 C".*

(v) **Friday 12 August 2022** – Letter from Central Office to applicant stating inter alia: *"I refer to your correspondence with Mr. Eoin Connell in the above matter (query sheet attached) as it was set out in the previous query sheet. Please make sure that the first relief listed in the notice of motion is an extension of time*".

44. The applicant represents herself, as is her absolute right. However, it does not seem to me that in setting a fixed 42-day deadline for appeals of this kind, the Oireachtas intended that it was a deadline which would only apply to those with legal representation, or that litigants-in-person were not subject to the same requirements as fellow-citizens who had instructed solicitors. Nothing of the sort is suggested in the legislation and, that being so, it does not seem to me to be open to the Court to 'import' into the Statute that which the Oireachtas did not intend.

45. What flows from the foregoing is that, to my mind, the applicant was under the same obligation as any other would-be appellant i.e. to ensure that her appeal papers were in order. They were not. Furthermore, by the choices she made, the applicant did not allow herself any time whatsoever to address any errors or queries as might be pointed out by the Central Office. Given that she chose to represent herself, this is surprising to say the least, but this choice does *not* amount in my view to the type of *mistake* contemplated by the second limb of *Eire Continental*. Rather, it seems to me to be something which comes under the heading of what the applicant called her *"poor planning".*

46. During the course of the hearing before me, the applicant very fairly acknowledged that there were a litany of mistakes with respect to her papers. She went on to emphasise that, by means of the correspondence between herself and the Central Office, she made every effort to rectify those mistakes promptly. I do not doubt that this is true but that effort on the applicant's part all relates to the period *after* the statutory deadline had expired.

47. In other words, the 'damage was already done', in that the applicant, through her choices, had permitted the 42–day time limit to expire *before* the mistakes in her papers were first pointed out to her (on 27 July 2022).

48. Things could, of course, have been otherwise e.g. (i) had the applicant made different choices during the preceding six weeks; or (ii) had the applicant kept the 'in person' appointment she was offered on 22 July or, for that matter, attended in person on 25 July. Speculation aside, what can be said with certainty is that when the applicant decided *against* lodging her papers in person on 22 July, she ruled out the possibility of having any time to deal with such queries as the Central Office raised.

49. It will be recalled that in my approach to calculating the 42 day statutory period for the purposes of this judgment, I calculated same in accordance with the stance adopted by the *applicant,* i.e. to say the period began only when she *received* the Labour Court's decision. To say that papers were posted on 22 July 2022 is not proof of when they were received. In the present case there is (i) no objective evidence as to when the papers were *received* in the Central office; (ii) clear evidence that they were not *processed* in the Central Office, for the first time, until 27 July 2022 (i.e. after the *expiry* of the statutory deadline); (iii) clear evidence that, irrespective of when they were posted or received, the applicant's papers were *not* in order; and (iv) the evidence allows for a finding that, by her choices, the applicant ruled out the possibility of ensuring that appeal papers, in the proper format, reached the Central Office before the 42 day deadline expired.

50. None of this is to criticise the applicant in a personal sense. It is, however, an analysis which the court is required to undertake because the 'default position' is a strict statutory deadline of six weeks laid down by the Oireachtas. Where the court exercises a discretion to permit a *late* appeal, such an extension of time very obviously 'jars' with the strict time limit laid down by the legislature. For this reason, for the court to grant an extension of time, justice must require it. In the present case, I am unable to find that there was a mistake (in the sense used in *Eire Continental*) and I am unable to hold that justice requires the extension of time.

No mistake

51. In short, the applicant knew the deadline she faced. She left matters to the 'eleventh hour'. Why this occurred has not been explained. She also rejected the opportunity to lodge papers 'in person', thereby ruling out any realistic chance of having her appeal made within time and in the proper form. In essence, the appeal was out of time as a result of choices made by the applicant, and I am satisfied that there is no good or sufficient reason for extending the period in these particular circumstances.

52. In her 28 November 2022 replying affidavit, the applicant makes *inter alia* the following averments: -

> "*10. A series of correspondences ensued from the Central Office of the High Court which I did not anticipate when I lodged the originating notice of motion and grounding affidavit. I dealt with each correspondence as promptly as possible, finally contacting the Central Office of the High Court for clearer direction as to what I was to do.*
>
> *11. The Central Office of the High Court filed the originating motion and grounding affidavit on 16 August 2022, some 23 days after these documents were first received in the Central Office of the High Court, and after an intense round of rejection correspondence which was not easily interpreted by a lay litigant. I would point out that the first rejection letter from the Central Office of the High Court dated 27 July 2022 does not find that the Appeal is out of time but refers to a mistake or mistakes in the jurat and refuses filing of the documents until the mistake is corrected.*
>
> *12. As soon as I received the filed originating notice of motion and grounding affidavit from the Central Office of the High Court, I contracted to have the larger documents externally printed for service on the relevant parties, as I do not have capability at home to print large documents. The printer undertook to print the documents as quickly as possible but indicated that there would be a lead time of a few days.*
>
> *13. On receipt of the printed documents, I served them by prepaid post on the parties. I was apprised in the replying affidavit of 13 September 2022 of my error in serving the representative of the respondent, and not the respondent. I rectified my error promptly on receipt of this information*".

After the expiry of the deadline

53. It is fair to say that the foregoing averments all concern the period *after* the 42–day statutory time limit had expired. Thus, insofar as the disclosed 'mistakes' made by the applicant, they are not mistakes which excuse or explain the failure to bring the appeal *within* the six–week time limit specified.

54. The applicant did not serve papers until 30 August 2022 and, as *per* her averments aforesaid, she effected service on Messrs. Eversheds Solicitors (i.e., the respondent's solicitors who had acted in the Workplace Relations Commission and Labour Court Appeal). This is averred to at para. 25 of Mr. O'Leary's 7 September 2022 affidavit, wherein he averred that, as of the swearing of same, the applicant had failed to serve the appeal on the respondent. Nothing turns on the foregoing as regards the outcome of this application.

55. Even though my findings, thus far, make it inappropriate for an extension of time to be granted, I propose to continue the analysis by looking at the third 'limb' of *Eire Continental*, lest I be entirely *wrong* in the view that the applicant has not demonstrated the existence of something like mistake (in the context of the second of the three *Eire Continental* conditions).

Arguable grounds of appeal?

56. Turning to the *third,* namely the requirement that an arguable ground of appeal exists. The significance of this condition was made clear by O'Malley J. in the Supreme Court's decision in *Seniors Money Mortgages (Ireland) DAC v. Gately &Ors.* [2020] 2 ILRM 407, wherein the learned judge stated, at para. 64, that:-

> *". . . it is difficult to envisage circumstances where it could be in the interests of justice to allow an appeal to be brought outside the time if the Court is not satisfied that there are arguable grounds, even if the intention was formed and there was a very good reason for the delay. To extend time in the absence of an arguable ground would simply waste the time of the litigants and the court".* (emphasis added)

57. To properly consider whether or not the Applicant's appeal discloses arguable grounds, it is necessary to say something of the relevant background; to look at the legislation which the Applicant invoked to make her substantive complaint; to refer to the Labour Court's decision against which she appeals; and to look closely at the relief sought in her Motion.

Background

58. It is not in dispute that the Respondent is a statutory body established to improve the delivery of education services to persons with special educational needs arising from disabilities, in particular, children. The Respondent's local service is delivered through a national network of Special Educational Needs Organisers ("SENOS") who interact with parents and schools and liaise with the Health Service Executive ("HSE"). The applicant has been employed by the Respondent as a SENO since 2004.

59. On 24 August 2020, the Respondent issued an instruction to SENOS, including the applicant, with respect to planning, preparation and attending for school visits. The applicant refused to carry out this instruction. The applicant was removed from a voluntary role as a 'Lead Worker Representative' on 31 August 2020. The Respondent initiated a Disciplinary hearing on 14 September 2020 and this ultimately resulted in the issuance of a final written warning to the Applicant, on 17 September, due to her failure to follow a reasonable instruction.

60. Both the WRC and the Labour Court held that the applicant was disciplined for unreasonably refusing to follow an instruction from the Respondent.

Safety Health and Welfare at Work Act, 2005

61. The applicant brought a claim to the Workplace Relations Commission ("WRC") and, subsequently, to the Labour Court, in which she asserted that she had been "*penalised*" within the meaning of section 27 of the Safety Health and Welfare at Work Act, 2005 (the "2005 Act"). The applicant was unsuccessful in the main aspects of her claim before both the WRC and the Labour Court.

Section 27 of the 2005 Act

62. Section 27 of the 2005 Act states the following:

> "***Protection against dismissal and penalisation***
>
> *27.-(1) In this section "penalisation" includes any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.*
>
> *(2) without prejudice to the generality of subsection (1), penalisation includes –*
>
> *(a) suspension, lay-off or dismissal (including a dismissal within the meaning of The Unfair Dismissals Act 1977 to 2001), or the threat of suspension, lay-off or dismissal,*
>
> *(b) demotion or loss of opportunity for promotion,*
>
> *(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,*
>
> *(d) imposition of any discipline, reprimand or other penalty (including a financial penalty), and*
>
> *(e) coercion or intimidation.*
>
> *(3) an employer shall not penalise or threaten penalisation against an employee for –*
>
> *(a) acting in compliance with the relevant statutory provisions,*
>
> *(b) performing any duty or exercising any right under the relevant statutory provisions,*
>
> *(c) making a complaint or representation to his or her safety representative or employer or the Authority, as regards any matter relating to safety, health or welfare at work,*
>
> *(d) giving evidence in proceedings in respect of the enforcement of the relevant statutory provisions,*

(e) being a safety representative or an employee designated under section 11 or appointed under section 18 to perform functions under this Act, or

(f) subject to subsection (6), in circumstances of danger which the employee reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, leaving (or proposing to leave) or, while the danger persisted, refusing to return to his or her place of work or any dangerous part of his or her place of work, or taking (or proposing to take) appropriate steps to protect himself or herself other persons from the danger.

(4) The dismissal of an employee shall be deemed, for the purposes of the Unfair Dismissals Acts 1977 to 2001, to be an unfair dismissal if it results wholly or mainly from penalisation as referred to in subsection (2)(a).

(5) If penalisation of an employee, in contravention of subsection (3), constitute a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2001, relief may not be granted to the employee in respect of that penalisation both under this Part and under those Acts.

(6) For the purposes of subsection (3)(f), in determining whether the steps which an employee took (or proposed to take) were appropriate, account shall be taken of all the circumstances and the means and advice available to him or her at the relevant time

(7) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in subsection (3)(f), the employee shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he or she took (or proposed to take) that a reasonable employer might have dismissed him or her for taking (or proposing to take) them." (emphasis added)

WRC Decision

63. The Applicant made a formal complaint, on 01 October 2020. On 15 January 2022, the WRC issued Decision ADJ-00029280, pursuant to s.28 of the 2005 Act. It found that the Applicant had not been penalised for raising a safety concern. The Applicant appealed this decision to the Labour Court pursuant to s.28 of the 2005 Act.

Labour Court Decision

64. The Labour Court's 10 June 2022 decision begins in the following terms (on internal page 6, of 8, under the heading *"Deliberation"):*

"It is important to note that the Court's function in respect of this Act is confined to the matters covered in s. 27. A range of other matters raised by the complainant regarding the Act and its application are outside of the jurisdiction of the Court.

The role of the Court in respect of the instant case is to determine if, in the 6 months, prior to 1 October 2020, the respondent acted in a manner contrary to the terms of s.27. In this regard, matters of concern to the complainant that arose subsequent to that date are outside of the scope of the Court's jurisdiction."

25 August 2020 to 17 September 2020

65. I pause at this juncture to note that, in dealing with the Applicant's complaint, not only was the Labour Courts' *role* very limited, having regard to its jurisdiction under s.27, the period of *time* concerned was a very narrow one (i.e. comprising of a small number of weeks in 2020). This is clear from the contents of the Applicant's 21 July 2022 affidavit, wherein, at para. 10.5, she avers *inter alia* that:

> *"The employer's actions in the WRC cognisable period (between 25 August 2020 and 01 October 2020) were directly penalising of me, in terms of multiple baseless disciplinary actions, resulting in a final written warning on 17 September 2020."* (emphasis added)

'Limited function'

66. Commenting on its limited role or function, the Labour Court's decision went on to state the following:

> *"The function of the court is to establish the following:*
>
> *If there was a protected act as per s.27(3)?*
>
> *If so, did the complainant suffer a detriment?*
>
> *If the answer to both of these questions is affirmative, then is there a causal link between the two?*
>
> *It is not necessary for the Court to determine if a safety concern or complaint was warranted. S.27(3) covers a complaint or representation on any matter regarding the health and safety in the workplace, whether such a complaint or representation is justified or not."* (emphasis added)

67. It seems to me that much of the relief sought in the Applicant's motion, and the averments made in support of same, is directed at demonstrating that her complaints or concerns *were* justified. That was not the Labour Court's role, nor is it an objective which can be pursued by means of an appeal on a point of law this Court.

Complaints came within s.27(3)(c)

68. The Labour Court took the view that "*in raising concerns about being asked to visit schools, the complainant was making a 'complaint or representation' regarding the health and safety of her workplace and, as such, she committed a protected act within the meaning of s. 27(3)(c)".*

69. The Labour Court was also satisfied that the Applicant had complained that her removal from the voluntary role of 'Lead Worker Representative' (or "LWR") amounted to penalisation and went on to state:

"The Court gave consideration as to whether this constituted 'penalisation' within the meaning of the Act. Again, the Court notes the very broad nature of the protections under s.27. In s.27 (2) (d) an employee is protected from 'reprimand' for having made a protected act."

LWR

70. The Labour Court went on to hold that removing the applicant from the role of LWR "*amounted to a reprimand*" and "*that it amounted to penalisation in a strict reading of the Act's provisions".* It went on to note *inter alia* that:

"…the role of LWR is not a paid role nor does it form any part of the Complainant's terms and conditions of employment. It is, in fact, no more than a set of duties which the Complainant undertook voluntarily to perform. As such, removing those duties from the Complainant had minimal impact on her."

de minimus

71. The removal of the LWR duties from the Applicant was confirmed in an email sent to her by the Respondent. This was copied to a small number of persons which the Respondent contended had an interest in knowing who the LWR was for the area. The Labour Court took the view that this had been "*unwise*" but went on to state that:

"…the detriment suffered by the Complainant is confined to disappointment at the Respondent's actions and, no doubt, bruised pride and some frustration. There is no reason to believe that there is any impact on the role of the complainant as a SENO. Accordingly, the Court accepts that 'de minimus' provisions are applicable and does not believe that compensation for this breach of the Act is warranted."

Disciplinary action

72. The Labour Court went on to analyse the applicant's complaint that the final written warning issued to her amounted to penalisation for raising safety concerns. That analysis and the Labour Court's conclusions appear on internal pages 7 and 8 of the decision and include, *inter alia,* the following:

"If the complainant can establish that 'but for' having committed a protected act, she would not been subject to disciplinary action within the cognisable period then she establishes that she was subject to what, by any standards, must be regarded as serious penalisation. If the respondent can show other, objective, reasons for the initiation of a disciplinary process unrelated to the fact that the Complainant raised safety concerns then the 'but for' test has not been met.

The question for the Court is whether the disciplinary process was initiated because safety concerns were raised or whether the process arose due to the failure to follow a reasonable instruction? In this regard, the complainant is not only entitled to have safety concerns, she is protected by law in raising them, whether or not the respondent regards them as reasonable.

The court does not regard the distinction drawn by the Complainant, in claiming that she had not refused an instruction but had been willing to accept it if certain matters were clarified to her satisfaction, as being of any great consequence to the matter under consideration. The fact is that the complainant did not do as she was instructed. The court's role is confined to considering if this refusal/conditional agreement is protected by the Act.

It seems clear to the Court ***<u>on the facts of the case</u>*** *that the Complainant was not penalised for having raised safety concerns but was disciplined because she would not attend school meetings, despite being instructed to do so. The complainant argued that, in declining to visit schools, she was acting in accordance with the statutory provisions elsewhere in the Act designed to protect employees' health and safety. This is covered by s.27(3)(a) of the Act. If this was her view, and the court does not doubt that, it was open to her to seek the opinion of the public health authorities as to whether she was correct, particularly given the Respondent's strong contention that they were operating in accordance with the relevant pandemic public health guidelines. It cannot be open to an employee to decide simply that they are acting in accordance with the protections of the Act and that their employer is, as a consequence, obliged automatically to accept that contention and, as a result, the employee is exempted automatically from any related instructions…*

…

In the absence of any clear directive from the appropriate authorities to the effect that the respondent was not entitled to do so, the respondent is entitled to issue instructions to employees that they believe to be in compliance with public health guidelines and to expect that their employees will comply. An employer is entitled to initiate disciplinary processes where an employee is not acting in accordance with a legitimate instruction. This is what occurred in the present case. The complainant cannot show any corroboration for her view that the instruction was in contravention of the protections afforded by the act to the health and safety of employees and, accordingly, her non-compliance with an instruction was a legitimate basis for the initiation of disciplinary action and as such does not constitute a breach of the Complainant's rights under s. 27 of the Act, so that aspect of the Complainant's appeal must fail.

In short, the court accepts that there was a breach of the Act in the removal of the complainant from the duties of a LWR but accepts that 'de minimus' provisions apply and declines to award compensation. The appeal by the complainant regarding disciplinary action taken against her fails as the court is satisfied that this arose due to the complainant's non-compliance with a legitimate instruction." (emphasis added)

<u>Facts</u>

73. In circumstances where the Labour Court made clear that its decision was based on the *facts* of the case before it, it is useful to recall the very limited role of the High Court, in respect to questions of fact, when dealing with a point of law appeal which I set out earlier in this judgment.

Merits

74. It is very clear that the Applicant remains unhappy with both her employer's actions and with the outcome of the Labour Court's decision. She articulates her position as follows in para 8.3 of her affidavit grounding the appeal:

> *"I believe the Respondent breached Section 27 of the Safety, Health and Welfare at Work Act 2005 by repeatedly penalising an employee through undermining the employee and through perverse use of the Civil Service Disciplinary Code."*

75. However, nowhere does the Applicant dispute any of the *facts* which underpinned the Labour Court's decision i.e. in seeking to bring an appeal, the Applicant's appeal neither challenges any findings of fact, nor suggests that the Labour Court's decision is other than an accurate setting out of relevant facts.

76. Furthermore, whilst the Applicant is plainly unhappy with the *merits* of the decision, her appeal discloses no error of law which the Labour Court is said to have made, nor does her appeal identify any facts found or inferences drawn by the Labour Court which would not have been made by a reasonable decision-maker. The Applicant is someone who represents herself and may not appreciate the point sufficiently but no appeal to this Court can concern itself with the merits.

Others

77. Central to the Applicant's oral submissions was what she perceived to be the effect on *others* if the Labour Court's findings were permitted to stand. At para. 10.3 of her grounding affidavit, the Applicant expressed this concern as follows:

> *"Whether or not it was intentional, I believe that the way in which I was treated by the employer subsequent to raising a safety concern had a chilling effect on my work colleagues and dissuaded them from putting their concerns about avoidable risks inherent in most school visits, after the initial period in which they raised them"*

78. Later, in her affidavit grounding the appeal, the Applicant expresses her dissatisfaction in the following terms:

> "*I believe that the use of the disciplinary policy on multiple occasions for the same alleged 'refusal' was intended to further reinforce a message that 'you don't take on the employer and expect to get away with it'. There is no basis for consultation, collaboration or cooperation in an enterprise where 'impartial and fair' human resource management policies and procedures are, in practice, freely co-opted to further the interests of management alone*."

79. Notwithstanding the sincerity with which the Applicant may hold her views, her complaint was made pursuant to s.27 of the 2005 Act and, as the Labour Court correctly stated, that section is not concerned with the effect on others, but with whether a specific employee (i.e. the Applicant)

suffered a detriment within a specific (i.e. the 'cognisable') period. This, too, may be a point which the applicant, as a litigant in person, may not appreciate sufficiently, but it speaks to the reality that, whereas the Applicant may wish to progress a merits-based appeal against the Labour Court's decision, that is not possible under the statute.

Subsequent to the cognisable period

80. It is also clear from the affidavit grounding the claimant's motion that a significant feature of her complaint relates to a period *subsequent* to the cognisable period, in particular, that she has been subjected "*disciplinary processes*" spanning some two years after raising a safety concern. This was put as follows at para 11.5 of her affidavit:

> *"I have described penalisations commencing with the immediate and public removal from me of the Lead Worker Representative role and continuing with the initiation of HR disciplinary processes by the Respondent which have still not concluded, 23 months after the first Disciplinary Action for raising a safety concern was initiated by the Respondent."* (emphasis added)

81. In the manner explained by the Labour Court, its function was confined to the cognisable period, which began on 25 August 2020 and ended on 01 October 2020 (when she filed her complaint), during which period the Applicant was issued with a final written warning, on 17 September 2020.

82. It will be recalled that in its decision, the Labour Court specifically stated that "*matters of concern to the complainant that arose subsequent to that date are outside of the scope of the Court's jurisdiction."* Regardless of how genuinely the Applicant may wish to ventilate such matters in an appeal to this Court, this is simply not possible in light of the terms of the 2005 Act. In short, the Labour Court had no jurisdiction to deal with them, nor does this Court.

Grounds

83. On the basis that the appeal which the Applicant wishes to advance is confined to what is pleaded in her motion (there having been no application to amend), I now turn to look at each of the pleaded "*Grounds for Appeal*" in para. 2 thereof:

2.1

84. Para 2.1 comprises a broad allegation that the Labour Court failed to have due regard to the evidence put forward by the applicant. However, it seems to me that the material referred to in para. 2.1 (a) and (b) was created outside the cognisable period and/or is of no relevance to the Labour Court's decision. The Labour Court was not concerned with whether the safety concerns raised by the Applicant were legitimate, or not. It will be recalled that the Labour Court's decision explicitly stated: "*It is not necessary for the Court to determine if a safety concern or complaint was warranted. S.27(3) covers a complaint or representation on any matter regarding the health and safety in the workplace, whether such a complaint or representation is justified or not."*

Despite this, the Applicant makes the following averment at para. 11.8 of her grounding affidavit:

> "*As the respondent refused to, I commissioned an expert desk review of NCSE's Covid-19 Response Plan by a 'competent person' under the Safety, Health and Welfare at Work Act 2005 to ascertain whether my safety concern was legitimate. While these were not financial penalisations imposed by NCSE, they were necessitated in the interest of safety and by NCSE's penalisation of me, and had a financial cost to me as an employee, contrary to the explicit aim of the Safety, Health and Welfare at Work Act 2005."* (emphasis added)

85. The central issue before the Labour Court was whether the complainant was disciplined for having raised safety concerns and, in the manner previously examined, the Labour Court determined the substantive issue decisively, on the facts, stating:

> *"It seems clear to the Court on the facts of the case that the Complainant was not penalised for having raised safety concerns but was disciplined because she would not attend school meetings, despite being instructed to do so…"* (emphasis added)

For these reasons, I take the view that this ground is unstateable.

2.2

86. Para 2.2 comprises an assertion that the Labour Court failed to "*observe fair procedures by applying different standards for evidence submitted by each of the parties".* Two comments seem appropriate. First, this comprises no more than a 'bald' assertion which is not underpinned by any facts said to support it. Second, the weight to be given to evidence is purely a matter for the decision-maker. Again, this ground seems to me to be unstateable.

2.3

87. Para. 2.3 comprises an assertion that the Labour Court "*lacked jurisdiction to disapply any section or sections of Legislation enacted by the Oireachtas*". Again, this is no more than a 'bald' assertion which seems to me to be unstateable, in light of the Labour Court's decision.

2.4

88. Para 2.4 constitutes an assertion that the Labour Court:

> *"lacked jurisdiction under the Industrial Relations Acts 1946 – 2015:*
>
> *a. to make a Determination, or*
>
> *b. to disregard pertinent findings of an External Investigator, or*
>
> *c. to overturn the Determination of an external appeals Officer*
>
> *in respect of disciplinary actions taken against a civil servant by the employer"*

89. This 'bald' assertion appears to me to be entirely misconceived, in circumstances where the Labour Court plainly did *not* purport to make a decision under the Industrial Relations Acts, as opposed to a decision within the jurisdiction conferred by the 2005 Act. A claim that the Labour Court disregarded pertinent findings seems to me to be, in substance, unhappiness with the

weight given to evidence and an attack on the *merits* of the decision. Nor is there any question of the Labour court having overturned any determination. Again, this ground is unstateable in my view.

2.5 – 2.7

90. Paras 2.5 to 2.7, inclusive, comprise pleas of a failure to have regard to the Applicant's "*legitimate expectation*". The doctrine of legitimate expectation had no role in the Labour Court's determination of the Applicant's statutory penalisation claim. The Labour Court lacked any jurisdiction to determine and did *not* determine any legitimate expectation claim. These are also, in my view, unstateable grounds of appeal.

2.8

91. At para. 2.8, the applicant claims that the Labour Court erred "*without submissions from the Respondent"* (emphasis added) in holding that 'de minimus' provisions applied with respect to the removal of the LWR role. This is also an unstateable ground, in circumstances where the Labour Court' decision explicitly recorded that the Responded did make such a submission. The top of internal p.7 of the Labour Court's decision states the following with respect to the LWR removal:

> *"The Respondent's representative argued to the Court that, if the Court was to accept that there had been penalisation, the 'de minimus' rule should apply"*

92. It is also worth repeating findings of *fact* (unchallenged in the Applicant's appeal) upon which the Labour Court based its conclusions on the '*de minimus'* issue, as well as the *decision* on the issue:

> *"…the role of LWR is not a paid role nor does it form any part of the Complainant's terms and conditions of employment. It is, in fact, no more than a set of duties which the Complainant undertook voluntarily to perform. As such, removing those duties from the Complainant had minimal impact on her*."
>
> *"…the detriment suffered by the Complainant is confined to disappointment at the Respondent's actions and, no doubt, bruised pride and some frustration. There is no reason to believe that there is any impact on the role of the complainant as a SENO. Accordingly, the Court accepts that 'de minimus' provisions are applicable and does not believe that compensation for this breach of the Act is warranted."*

In light of the foregoing, I take the view that the grounds pleaded at para.2.8 are unstateable.

2.9

93. The final ground comprises a plea that there was a failure "*to have regard to the Respondent's duty of care to*" the Applicant and "*to other employees and to the public".* Once more, this ground is simply unsustainable in the context of the statutory penalisation claim which the Labour Court decided.

Conclusion

94. In summary, as well as being satisfied that (i) there is no good or sufficient reason to extend time, I have also come to the view that (ii) the Applicant's appeal discloses no arguable ground and (iii) the Applicant has failed to state "*concisely the question referred for the decision of the High Court*" as required by Order 106 of the RSC. Quite apart from being satisfied that the *Eire Continental* principles have not been complied with, I am also satisfied that to extend time is not required by, or consistent with, the interests of justice in the particular circumstances of this case. Therefore, and for the reasons set out in this judgment, the Court declines to extend time.

95. On 24 March 2020 the following statement issued in respect of the delivery of judgments electronically: *"The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."*

96. Having regard to the foregoing, the parties should correspond with each other, forthwith, regarding the appropriate form of order including as to costs which should be made. My preliminary view is that there are no factors which would merit a departure from the 'normal rule' that 'costs' should 'follow the event' which, in this case, is the failure of the application to extend time. In default of agreement between the parties on any issue, short written submissions should be filed in the Central Office within 14 days.