APPROVED

THE HIGH COURT

[2023] IEHC 419

[2023 No. 93 M.C.A.]

IN THE MATTER OF SECTION 71 OF THE PROPERTY SERVICES (REGULATION) ACT 2011

AND IN THE MATTER OF A LICENSEE AND ON THE APPLICATION OF THE PROPERTY SERVICES REGULATORY AUTHORITY

BETWEEN

PROPERTY SERVICES REGULATORY AUTHORITY

APPLICANT

AND

GABRIEL DOOLEY

RESPONDENT

JUDGMENT of Mr. Justice David Barniville, President of the High Court, delivered on the 17th July, 2023

INDEX

NO REDACTION NEEDED

1. Introduction

1. This is my judgment on an application by the respondent, Mr. Dooley, for an order pursuant to O. 84C, r. 2(5)(b) of the Rules of the Superior Courts extending the time for Mr. Dooley to issue and file a notice of appeal from a decision made by the applicant, the Property Services Regulatory Authority (the "Authority"), in relation to Mr. Dooley on 28th October, 2022.

2. Relevant Factual Background

2. Briefly stated, the circumstances in which Mr. Dooley has brought this application are as follows. Mr. Dooley was registered on the Property Services Register maintained by the Authority under the Property Services (Regulation) Act 2011 (the "2011 Act"). Mr. Dooley was the holder of two licenses, the last of which expired in December 2021.

3. The Authority received a complaint against Mr. Dooley under the 2011 Act in 2019. Inspectors were appointed and they prepared an investigation report which was submitted to the Authority in February 2022. The inspectors reported that Mr. Dooley had engaged in improper conduct in two respects within the meaning of that term in subparagraphs (a) and (b) of the meaning of that term in s. 2(1) of the 2011 Act.

4. On 5th April, 2022, the Authority decided that "improper conduct" within the meaning of that term in subparagraph (b) of s. 2(1) had occurred. The Authority accepted the findings in the investigation report that Mr. Dooley withdrew money between 19 June 2014 and 20 April 2015 from a sum held in his client account as a booking deposit for the sale of land before contracts for the sale of the land were signed or finalised and further, that, despite Mr. Dooley stating that the vendors had consented to his keeping

the deposit as payment for his fees, Mr. Dooley had failed to provide any documentary evidence to support that claim, despite having been formally required to do so by the inspectors.

5. The Authority was not, however, satisfied that "improper conduct" within the meaning of subparagraph (a) of s. 2(1) of the 2011 Act had occurred. The Authority was not satisfied that Mr. Dooley's actions in respect of the giving of a particular undertaking and the contents of that undertaking rendered him no longer a fit and proper person to provide property services. The Authority, therefore, made one finding of improper conduct against Mr. Dooley.

6. Mr. Dooley was informed of the Authority's decision by letter dated 22 April 2022. He was informed that the Authority would convene a meeting on 9 May 2022 to consider the sanction to be imposed in respect of the finding of improper conduct pursuant to s. 68(4)(a) of the 2011 Act. Mr. Dooley was invited to attend that meeting for the purpose of making submissions in relation to sanction. He was also invited to make written submissions in relation to sanction. That meeting was postponed on a number of occasions and was ultimately rescheduled for 3 October 2022.

7. In the meantime, Mr. Dooley made a number of written submissions to the Authority setting out matters which he wished the Authority to take into account at the meeting on 3 October 2022. It was clear from those submissions that Mr. Dooley did not agree with the Authority's decision of 11 April 2022. Mr. Dooley attended the meeting of the Authority on 3 October 2022 and made submissions on his own behalf. Again, it was clear that Mr. Dooley did not accept the Authority's decision that he had engaged in "improper conduct" and contended that if a sanction was to be imposed it should be a "minor sanction" under the 2011 Act. Mr. Dooley made a number of further submissions to the Authority following the meeting on 3 October 2022, as a

result of which the Authority reconvened in private session on 20 October 2022 before reaching its decision on sanction.

8. The Authority made its decision on sanction on 25 October 2022. It was satisfied that, for the reasons set out in its decision, it was appropriate and proportionate that a major sanction be imposed on Mr. Dooley. Accordingly, the Authority directed Mr. Dooley to pay the sum of €10,000 to the Authority by way of financial penalty for the "improper conduct" committed by him and required that that payment be made within 90 days of the decision. Mr. Dooley was informed of the Authority's sanction decision by letter dated 28 October 2022. That letter was sent by recorded delivery and by email to Mr. Dooley. It informed him of the sanction imposed by the Authority and the reasons for that decision. At the conclusion of the letter under a bold heading "**Right of Appeal**", the letter stated:

> *"In accordance with section 70 of the Act you have 30 days from the date that you received this notice to appeal the decision of the Authority to impose a major sanction on you, to the High Court."*

9. The letter then quoted in full the provisions of s. 70(1) of the 2011 Act which provides that the licensee who is the subject of a decision under s. 68(4)(a) of the 2011 Act by the Authority to impose a major sanction on the licensee:

> *"may, not later than 30 days from the date the licensee received the notice under section 68(7) of the decision, appeal to the High Court against the decision".*

10. Mr. Dooley did not appeal to the High Court against the sanction decision within 30 days from the date on which he received notice of the decision under s. 68(7) of the 2011 Act. He has explained why that was so in two affidavits which he has sworn in the proceedings. In essence, he maintained that he was mistaken in not appealing

within that period and stated that he was *"not aware of the cut off point for an application to seek an appeal"*. He stated that he was *"expecting a formal notice"* from the Authority.

3. The Authority's Confirmation Application and Mr. Dooley's Application for Extension of Time

11. The Authority issued an originating notice of motion on 28 March 2023, returnable for 24 April 2023, seeking an order under s. 71(2) of the 2011 Act confirming the Authority's sanction decision made on 28 October 2022. On the return date of that motion on 24 April 2023, Mr. Dooley sought and obtained an adjournment to 15 May 2023 to file a replying affidavit in response to the Authority's confirmation application. Mr. Dooley filed his replying affidavit on 10 May 2023. In that affidavit, Mr. Dooley sought to appeal to the High Court from the Authority's sanction decision. On 15 May 2023 I informed Mr. Dooley, who at that time was still representing himself, that if he wished to appeal he would have to bring a motion seeking an extension of time to appeal and that the court would have to consider, in the context of any such motion, whether it was open to the court to extend the time in light of s. 70(1) of the 2011 Act, which provides that such an appeal had to be brought *"not later than 30 days"* from the date Mr. Dooley had received notice of the Authority's sanction decision. I gave directions for the bringing of that motion to be returnable to 19 June 2023. Mr. Dooley was unable to comply with those directions as he was seeking legal representation. I gave further directions for the bringing of that motion on 19 June 2023, and it was ultimately issued on 28 June 2023, and was heard earlier this week on 10 July 2023. Mr. Dooley was by that stage represented by solicitors and counsel.

12. I received written submissions and heard oral submissions from counsel for Mr. Dooley and from counsel for the Authority on 10 July 2023. It was submitted on behalf of Mr. Dooley that s. 70(1) of the 2011 Act did not preclude the court from granting an extension of time for Mr. Dooley to appeal and that such extension should be granted under O. 84C, r. 2(5) RSC. The Authority opposed Mr. Dooley's application and submitted that the court did not have jurisdiction to extend time for Mr. Dooley to appeal from the sanction decision and that, in the alternative, even if it did, the court should nonetheless refuse to grant such an extension.

13. Having considered the written submissions and having heard from counsel at the hearing of the application on 10 July 2023, I indicated I would give my judgment shortly on the application. I am now in a position to do so.

4. Summary of Decision

14. Having considered the applicable statutory provisions and the relevant case law as well as the helpful submissions from counsel for Mr. Dooley and counsel for the Authority, I have concluded that the proper interpretation of s. 70(1) of the 2011 Act is that if a licensee who is the subject of a decision imposing a major sanction upon him wishes to appeal to the High Court from that decision, that appeal must be brought *"not later than 30 days from receipt of notice of the decision"*. There is no provision for the court to grant an extension of time in which to bring such an appeal. The section, correctly interpreted in accordance with the relevant principles of statutory interpretation recently outlined by the Supreme Court, does not permit the court to grant an extension of time to appeal from such a decision. That conclusion is consistent with the relevant case law. I was not persuaded by counsel for Mr. Dooley's attempts to distinguish that case law, nor am I persuaded by any of the other arguments which he raised in support of the existence of a jurisdiction on the part of

the court to extend the time for a licensee to appeal a decision to impose a major sanction under s. 70(1) of the 2011 Act.

15. Having regard to my conclusion that the court does not have the power to grant such an extension, it is unnecessary for me to consider what the position would be if the court did have such power. However, for completeness, I should make clear that if I were satisfied that the court had the power to grant an extension of time, I would not be prepared to do so in this case in circumstances where I do not believe there is "good and sufficient reason" for extending the period to appeal for the purposes of O. 84C, r. 2(5). I have not been persuaded that Mr. Dooley would fulfil all of the criteria set out in *Eire Continental Trading Company Limited v. Clonmel Foods Limited* [1955] I.R. 170 ("*Eire Continental*"), or that such an extension should be granted having regard to all the circumstances of the case. I must, therefore, refuse Mr. Dooley's application to extend the time to appeal from the Authority's sanction decision of 28 October 2022.

16. I set out below in greater detail, the reasons for my decision to refuse Mr. Dooley's application.

5. Relevant Provisions of 2011 Act and RSC

17. Before considering further the arguments advanced by the parties in support of and against the contention that the court has power to extend the time for Mr. Dooley to appeal, I should identify and set out the relevant provisions of the 2011 Act and the Rules of the Superior Courts.

(a) O.84 C

18. I will start with the provisions of O. 84C RSC, since that is the provision relied upon by Mr. Dooley to obtain the extension of time to appeal which he seeks.

19. Order 84C RSC is headed *"Procedure in Statutory Appeals"*. O. 84C, r.1(2) RSC provides that where an enactment provides for an appeal to be made to the High Court or to a judge of the High Court from a decision or determination made, a direction given, or a requirement specified in a notice issued, by a person or body authorised under an enactment to do one of those things and the procedure applicable for such appeal is not set out in the enactment or in another provision of the rules, the provisions of O. 84C apply *"subject to any requirement of the relevant enactment"*.

20. The procedure is then set out in O. 84C, r. 2 RSC. The appeal is brought by way of originating notice of motion. Order 84C, r. 2(5) RSC provides in relation to the time period within which such motion has to be issued as follow:

> *"(5) Subject to any provision to the contrary in the relevant enactment, the notice of motion shall be issued:*
>
> *(a) 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, or*
>
> *(b) within such further period as the Court, on application made to it by the intending appellant, may allow where the Court is satisfied that there is good and sufficient reason 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)

21. Mr. Dooley contends that, while s. 70(1) of the 2011 Act provides for the bringing of an appeal from a decision by the Authority to impose a major sanction not later than 30 days from the date of receipt of notice of the decision, it is nonetheless open to the court to grant an extension of time for issuing a notice of motion appealing such a decision under O. 84C, r. 2(5) RSC. He contends that the court can allow a further

period to issue the relevant motion where the court is satisfied that there is *"good and sufficient reason"* for extending the period and that such an extension would not result in an *"injustice"* being done to any other relevant person. Key to that contention is Mr. Dooley's submission that s. 70(1) is not a *"provision to the contrary"* in s. 70(1) of the 2011 Act.

22. Mr. Dooley says that there is no *"provision to the contrary"* in s. 70(1) or elsewhere in the 2011 Act since the Act does not address the question of an extension of time at all. Mr. Dooley submits that that "gap" in the 2011 Act cannot amount to a *"provision to the contrary"*.

23. The Authority, on the other hand, contends that s. 70(1) is a *"provision to the contrary"* in that that provision lays down the time within which an appeal, if it is to be brought, must be brought *"not later than"* 30 days from receipt of the decision and that the provision does not allow for any extension of time. Section 70(1), it says, is, therefore, a *"provision to the contrary"*. The court does not, therefore, it contends have any power under O. 84C, r. 2(5) to extend the period within which an appeal can be brought from a decision by the Authority to impose a major sanction under the 2011 Act. That is the essential issue between the parties on this application.

(b) <u>The 2011 Act</u>

24. I now turn to consider the relevant provisions of the 2011 Act. It is unnecessary to refer in detail to the procedures set out in s. 70 leading up to the making by the Authority of a decision to impose a sanction under s. 68(4) of the 2011 Act. I understand that the approach taken by the Authority in this and other cases where, following the receipt of a complaint or of its own volition, it has caused an investigation to be carried out to identify any alleged "improper conduct" is, first, to decide on whether there has been such improper conduct and then to decide whether

to impose a minor sanction or a major sanction on the relevant licensee the subject of the finding of improper conduct. The terms "minor sanction", "major sanction" and "improper conduct" are defined in s. 2(1) of the 2011 Act.

25. This case is concerned with a major sanction. The particular major sanction at issue is that referred to in subparagraph (e) of the definition of major sanction in s. 2(1) as it involves a direction to Mr. Dooley that he pay a sum not exceeding €250,000 to the Authority by way of financial penalty. As noted earlier, the Authority decided that there was "improper conduct" on the part of Mr. Dooley in its decision of 11 April 2022. It then decided in a subsequent decision to impose that major sanction on Mr. Dooley in its sanctions decision of 25 October 2022, notice of which was furnished to Mr. Dooley for the purpose of s. 68(7) of the 2011 Act by the Authority's letter dated 28 October 2022. That decision is the decision of the Authority made under s. 68(4)(a) of the 2011 Act.

26. The entitlement of a licensee to appeal from a decision by the Authority to impose a major sanction is set out in s. 70(1). The relevant provisions of s. 70(1) are as follows:

> *"(1) A licensee the subject of a decision under section 68 (4)(a) by the Authority to impose a major sanction on the licensee may, not later than 30 days from the date the licensee received the notice under section 68 (7) of the decision, appeal to the High Court against the decision."*

27. The following subsections of s. 70 provide for the hearing of the appeal, the orders which the court may make on the appeal and the matters which the court must take into account in deciding on the appropriate orders to make on the appeal.

28. Section 71 imposes an obligation on the Authority to apply to the High Court to confirm a decision to impose a major sanction where the licensee does not bring an appeal to the court against such a decision. Section 71 provides as follows:

"(1) Where a licensee does not, within the period allowed under section 70 (1), appeal to the High Court against a decision under section 68 (4)(a) by the Authority to impose a major sanction on the licensee, the Authority shall, as soon as is practicable after the expiration of that period and on notice to the licensee, make an application in a summary manner to the High Court for confirmation of the decision.

(2) The High Court shall, on the hearing of an application under subsection (1), confirm the decision under section 68 (4) (a) the subject of the application unless the Court considers that there is good reason not to do so." (emphasis added)

29. It is notable that s. 71(1) imposes that obligation on the Authority to bring an application for confirmation of the decision to impose the major sanction where the licensee does *not "within the period allowed under s. 70(1)"* bring his appeal. Section 70(1) does not seem to envisage, or contain any reference to, the possibility of the licensee obtaining an extension to the 30-day period within which to bring his appeal. Section 71(1) does not seem to envisage an extension to that period in that it does not say that where a licensee does not bring his appeal to the High Court from the relevant decision *"within the period allowed under s. 70(1)"* or any extended period, the Authority must bring a confirmation application. It does not appear expressly, or by implication appear, to envisage the possibility of an extension of time. That is relevant to the correct interpretation of s. 70(1) and the issue as to whether, as Mr. Dooley contends, that section can be interpreted as not precluding the court from granting an extension of time to bring an appeal under O. 84C, r. 2(5) RSC.

30. Section 72 provides for supplementary provisions of ss. 70 and 71. Section 72(1) provides that the decision of the High Court on an appeal by a licensee under s. 70(1) or on a confirmation application by the Authority under s. 71(1) is final, save that the Authority or the licensee may appeal to the Court of Appeal on a specified point of law with leave of the High Court or the Court of Appeal.

31. Section 72(2) provides that where the court confirms the Authority's decision or gives a decision under ss. 70(3) or s. 71(2), the Authority must *"as soon as is practicable after the decision is confirmed or given"* give notice in writing of that decision to the licensee.

32. Those appear to be the relevant provisions of the 2011 Act. It can be seen, therefore, that s. 70(1) gives a right of appeal to the High Court to the licensee who is the subject of a decision under s. 68(4)(a) by the Authority to impose a major sanction on it and that, in order to exercise that right, the appeal must be brought *"not later than 30 days"* from the date on which the licensee received notice of the decision. That subsection does not expressly provide for the possibility that the 30-day time period could be extended. It does not refer to the question of an extension of time. Section 71(1) imposes an obligation on the Authority to make a confirmation application where the licensee does not appeal to the High Court against the relevant decision *"within the period allowed under s. 70(1)"*. Section 71(1) does not expressly envisage the possibility that the *"period allowed under s. 70(1)"* could be extended. It does not refer at all to the question of an extension of the period within which to appeal.

33. Section 71(1) imposes the obligation on the Authority to make the confirmation application and such a confirmation application must be brought by the Authority *"as soon as is practicable after the expiration of that period"*. The reference to *"that*

period" is clearly a reference to the *"period allowed under s. 70(1) referred to earlier in s. 71(1)"*. There is no reference in any of the provisions of the 2011 Act to the possibility of an application being made by the licensee who is the subject of a decision by the Authority to impose a major sanction to apply to extend the period within which an appeal from that decision may be brought to the court, nor is there any reference in the 2011 Act to the court having the power or jurisdiction to extend that period. That much is common case between the parties. What has to be determined is its significance.

6. Mr. Dooley's Position

34. In his replying affidavit sworn on 10 May 2023 in response to the Authority's confirmation application, Mr. Dooley indicated a desire to appeal to the court from the Authority's sanction decision of 25 October 2022. He noted that he had 30 days to appeal under s. 70 of the 2011 Act. He apologised to the court for his *"mistake"* in not appealing within that time. The reason he did not do so was that he *"was not aware of the cut off point for an application to seek an appeal"*. He stated that he was *"expecting a formal notice from the PSRA"*. Mr. Dooley stated that he had not received any communications from the Authority since October 2022. Mr. Dooley did not deny receiving the Authority's letter of 28 October 2022 in his replying affidavit of 10 May 2023 or in his affidavit sworn on 28 June 2023 for the purpose of grounding his application to extend the time to appeal from the Authority's sanction decision. At the hearing on 10 July 2023 Mr. Dooley confirmed through his counsel that he did receive the Authority's letter of 28 October 2022, but he nonetheless maintained that he was not aware of the *"cut off point"* to appeal.

35. In his affidavit of 28 June 2023 Mr. Dooley sought to address the conditions set out in the *Eire Continental* case. He maintained that he had formed the intention to appeal

the Authority's decision of 11 April 2022, the Authority's decision finding improper conduct on his part, and the decision which was yet to be taken on the question of sanction in his correspondence to the Authority of 1 May 2022 and 17 June 2022. He also referred in support of that intention to his letter of 9 October 2022 to the Chief Executive Officer of the Authority and to the Chief Executive Officer of AIB plc.

36. As regards the second condition in *Eire Continental*, Mr. Dooley asserted that he had made a mistake in relation to the time within which the appeal had to be brought. He noted that he was representing himself at the time of the Authority's decisions of 11 April 2022, and 25 October 2022 and repeated what he said in his earlier affidavit that he was *"not aware of the cut off point for an application to seek an appeal"*.

37. He then addressed the requirement to show arguable grounds of appeal and sought to demonstrate several such arguable grounds. He contended that the authority would not be prejudiced if the court were to grant him an extension of time to appeal and that the Authority was at all times aware, by virtue of the correspondence he had sent, of the grounds on which he was seeking to appeal the two decisions of the Authority dated 22 October 2022 and 25 October 2022.

38. In submissions made on behalf of Mr. Dooley it was contended that Mr. Dooley was entitled to rely on the provisions of O. 84C, r. 2(5)(b) RSC in order to obtain an extension of time to appeal. Counsel contended that the critical words for consideration by the court were the words *"subject to any provision to the contrary in the relevant enactment"* in O. 84C, r. 2(5) RSC. Mr. Dooley's case is that there is no *"provision to the contrary"* in the 2011 Act and that, therefore, the court has the power to extend the time to appeal under O. 84C, r. 2(5)(b) RSC.

39. Counsel relied on the most recent edition of Hogan and Morgan *Administrative Law in Ireland* (5th edn, Round Hall 2019) at paras. 11.46 – 11.47 for the unremarkable

proposition that, in the case of a statutory right of appeal, the nature and scope of the court's jurisdiction on such an appeal is governed by the provisions of the relevant statute and will be a matter of statutory construction. The authors also noted that, having created a right of appeal, it is presumed that the Oireachtas intended to vest the High Court with powers in addition to, and distinct from, the inherent powers of judicial review which the court enjoys at common law. Again there can be no dispute about that.

40. Mr. Dooley's submissions then addressed the three conditions or criteria set out in *Eire Continental*. It was submitted that those conditions or criteria were all satisfied in this case. Reliance was placed on *Good Concrete v. CRH plc* [2013] IESC 39 [2015] 3 I.R. 493 ("*Goode Concrete*"), *Tracey v. McCarthy* [2017] IESC 7 ("*Tracey*") and *Senior Money Mortgages (Ireland) DAC v. Gately* [2020] IESC 3 [2020] 2 I.R. 441 ("*Senior Money Mortgages*").

41. With reference to *Senior Money Mortgages*, reliance was placed on the fact that the Supreme Court reiterated in that case that the *Eire Continental* criteria are guidelines only and do not purport to constitute a checklist according to which a litigant will pass or fail. It was noted, however, that the rationale underpinning those guidelines will apply in the great majority of cases, but that, ultimately, all the circumstances of the case have to be taken into account in deciding whether or not to extend the time to appeal from the High Court to the Court of Appeal or Supreme Court.

42. Reliance was also placed on the fact that Mr. Dooley was a litigant in person who had been suffering from ill health during much of the relevant period. It was further submitted that the grant of an extension of time would not prejudice the Authority on the basis that *"much of the case against the applicant is based upon paperwork"* and the Authority would not be prejudiced were Mr. Dooley granted an extension of time

to appeal. Reference was made to a passage from the judgment of Clarke J. in *Tracey*, where he acknowledged, at para. 4.12, that it is not necessary for a respondent to establish prejudice in order to be able to successfully to resist an application for an extension of time and that, ordinarily, appeals must be brought in time and, if they are not, then the right to appeal will be lost *"irrespective of any question of prejudice"*. Clarke J. stated that prejudice could, however, be relevant where the presence of prejudice could make it unjust to extend time *"even in a case where the broad criteria might suggest that an extension should be granted"*. He stated, therefore, that *"the presence of prejudice is not…a necessary basing for opposing an extension of time"* but it *"may, however, quite properly be relied on by a party to suggest that an extension of time, which might otherwise be granted should be refused"*.

43. Counsel for Mr. Dooley sought in his written submissions and in oral submissions at the hearing to address the case law which considered the issue as to whether in the case of a statutory appeal which provides for a period within which the appeal has to be brought, the court can extend the time to bring the relevant appeal. A number of those cases concerned s. 123(3) and (9) of the Residential Tenancies Act 2004 (the "2004 Act"). Section 123(3) of the 2004 Act provides that, in relation to a determination order issued by the PTRB:

> *"Any of the parties concerned may appeal to the High Court, within the relevant period, from a determination of the Tribunal (as embodied in a determination order) on a point of law."*

Section 123(8) of the 2004 Act defines the *"relevant period"* as meaning

> *"the period of 21 days beginning on the date that the determination order concerned is issued to the parties"*.

44. The cases considered by counsel included *Keon v. Gibbs* [2015] IEHC 812 (High Court, Baker J.) and [2017] IECA 195, (Court of Appeal, July 2017) (both "*Keon*"), *Noone v. Residential Tenancies Board* [2017] IEHC 556 [2019] 1 I.R. 205, (High Court, Noonan J.) ("*Noone*"), *Dada v. Residential Tenancies Board* [2018] IEHC 378 (High Court, McDonald J.) ("*Dada*") and *Abeyneh v. Residential Tenancies Board* [2023] IEHC 81 (High Court, Bolger J.) ("*Abeyneh*").

45. In summary, counsel for Mr. Dooley noted the observations of Hogan J. in the Court of Appeal in *Keon* in which he expressed doubts about the entitlement of the court to extend the period to appeal under ss. 123(3) and 123(8) of the 2004 Act under O. 84C RSC. With respect to *Noone*, *Dada* and *Abeyneh,* in which the High Court in each case decided that the court did not have the power to extend that time period, those decisions could either be distinguished on the basis that they relied on the fact that a different section of the 2004 Act, s. 88, provided that the Board could extend the time for a referral of a dispute to it for resolution in support of their conclusion that there was no power to extend the time period to appeal and that the Oireachtas did not intend to confer such a right. Noonan J. in *Noone* was of the view that, had the Oireachtas wished to provide for a similar power to extend time on the part of the court in the case of an appeal to the High Court, it would presumably have done so in similar terms. Counsel for Mr. Dooley noted that McDonald J. had also referred to s. 88 in support of his decision to the same effect. Alternatively, counsel for Mr. Dooley argued that if those decisions could not be distinguished then I should not follow them, and reliance was placed on that alternative submission on *Worldport Ireland Limited (In Liquidation)* [2005] IEHC 189 (High Court, Clarke J.) ("*Worldport*").

46. Counsel for Mr. Dooley also addressed some of the other cases including *Law Society of Ireland v. Tobin* [2016] IECA 26 ("*Tobin"*), *Coleman v. Law Society* [2020] IEHC

162 (High Court, Simons J.) ("*Coleman*"), *Murphy v. Law Society* [2021] IECA 332 ("*Murphy*") and *Kirwan v. O'Leary & Anor* [2022] IEHC 152 (High Court, Irvine P.) ("*Kirwan*").

47. With respect to *Tobin*, counsel accepted that that case was not on all fours with the present case as the court was considering an application for an extension of time to appeal from the High Court to the Court of Appeal under s. 12 of the Solicitors (Amendment) Act 1960 (as amended) in circumstances where what was at issue was a constitutional right of appeal to the Court of Appeal against an order of the High Court to which s. 12 applied. However, nonetheless, counsel sought to rely on that case. He sought to distinguish *Coleman,* where Simons J. refused an application for an extension of time to appeal brought by a solicitor against whom findings of professional misconduct had been made by the Solicitors Disciplinary Tribunal. The relevant time in that case was set out in the Rules of the Superior Courts and not in the Solicitors Acts. Counsel sought to distinguish that case on other grounds which were not entirely clear from the written submissions or from oral submissions.

48. He asked me to follow the approach taken by the Court of Appeal in *Murphy*. That was a case in which the appellant appealed against the refusal of the High Court to extend the time for the bringing of an appeal against the determination of the Solicitors Disciplinary Tribunal. The time limit to bring an appeal from the Disciplinary Tribunal to the High Court is set out in s. 7(11) of the Solicitors (Amendment) Act 1960 (as amended) which provided at the relevant time that the solicitor *"may, within the period of 21 days beginning on the date of the service of a copy of the order… appeal to the High Court…"*.

49. In the High Court, before MacGrath J., the Society accepted that, in principle, the court had jurisdiction to extend the time and proceeded without determining the point,

on the basis that such jurisdiction did exist. Prior to the commencement of the appeal in the Court of Appeal, the court raised with the parties the issue of jurisdiction under s. 7(11) with particular reference to the decision of the High Court in *Noone*. However, the position of the Law Society in the High Court, and on appeal, was that while it was not clear that the court had jurisdiction to extend time, the Society was, for the purposes of the appeal, prepared to assume that the court would, in principle, have jurisdiction to extend time. In the circumstances, the Court of Appeal decided that the trial judge was correct to proceed as he did to determine the merits of the application without determining the jurisdiction issue and that it was appropriate for the Court of Appeal to proceed in a similar fashion and to adopt a similar approach to that taken by the court on appeal in *Keon*.

50. Counsel for Mr. Dooley submitted that I should adopt the same approach in this case. He further submitted that that was the appropriate approach to take in that it would be unfair for one type of case to proceed on the basis that the court would assume, without deciding, that it had jurisdiction and would then consider the merits of the application but in another, the court would proceed to determine the jurisdiction issue at the outset. Counsel described that as a *"twin track"* approach which he said, if applied in this case, would be unfair to Mr. Dooley and arguably in breach of his constitutional right to equality under Article 40.1 of the Constitution. He referred to a passage in **Mills *et al***, *Disciplinary Procedures in the Statutory Professions* (2nd edn, Bloomsbury 2023) at para. 10.44 where the authors noted that the question of an application for an extension of time by a registered professional who, for example, would otherwise be precluded from practising their profession in the absence of an appeal, had not yet been decided by the courts. He noted that cases such as *Kirwan*, *Keon,* and *Curran v. Solicitors Disciplinary Tribunal* [2017] IEHC 2 ("*Curran*"), did

not engage the fundamental issue of the right to pursue ones profession. Counsel argued, without really developing the point, that he could rely on a right enjoyed by Mr. Dooley to pursue his profession and that he will be precluded from citing that right in the absence of an appeal.

51. In summary, therefore, Mr. Dooley's case is that the court can and should make an order under O. 84C, r. 2(5)(b) RSC extending the time to appeal against the Authority's decision communicated to him on 28 October 2022. He says that that provision of O. 84C RSC applies and that there is no *"provision to the contrary in the relevant enactment"*, namely the 2011 Act. That is because while s. 70(1) contains a time limit in which to bring an appeal, neither that provision nor any other provision of the 2011 Act addresses the question of an extension of that time limit. He submits that there is a *"gap"* in the 2011 Act which cannot amount to a *"provision to the contrary"*. He maintains that the court should be satisfied that there is *"good and sufficient reason"* for extending the period and that an extension of time would not result in an injustice being done to the Authority or to any other person concerned in the matter. He seeks to demonstrate that there is *"good and sufficient reason"* for extending the time period by demonstrating compliance with the conditions or criteria set out in *Eire Continental*.

7. <u>The Authority's Position</u>

52. The Authority's position is that the court does not have the power under O. 84C, r. 2(5) RSC to extend the time for Mr. Dooley to appeal to the court from the Authority's sanction decision, or indeed its earlier decision of 11 April 2022, on the basis that s. 70(1) of the 2011 Act provides for a 30-day time limit within which to appeal and makes no provision for an extension of time. The Authority contends, therefore, that the absence of a provision for an extension of time in s. 70(1) is a

"provision to the contrary in the relevant enactment" for the purposes of O. 84C, r. 2(5) RSC. The Authority relies on the *obiter* comments of Hogan J. in the Court of Appeal in *Keon* which casts doubt on:

> (a) the existence of a possibility that time to appeal under s. 123 of the 2004 Act could be appealed; and
>
> (b) the power under O. 84C RSC to extend the time if the proper construction of s. 123(3) of the 2004 Act was that it provides for a strict 21-day time limit which is not capable of extension then that would amount to a *"provision to the contrary"* which would negative the potential operation of O. 84C, r. 2(5)(b) RSC.

It was, however, accepted by the Authority that those observations of Hogan J. were *obiter*.

53. The Authority placed reliance on the decision of Noonan J in the High Court in *Noone* which followed and applied the analysis of Hogan J. in relation to s. 123 in *Keon*. It noted that *Noone* was subsequently followed by McDonald J. in *Dada* and by Bolger J. in *Abeyneh* and was also approved by Irvine P. in *Kirwan*. The Authority also addressed in its submissions the approach taken in the Court of Appeal in *Murphy*. It pointed out that in that case the Society opted not to take the jurisdictional point in the High Court or on appeal.

54. The Authority's position was that *Keon*, *Noone* and the other cases which followed that approach apply squarely to s. 70(1) of the 2011 Act. It submitted that there is no material difference between s. 123(3) of the 2004 Act and s. 70(1) of the 2011 Act on the issue of whether time to appeal can be extended. Each provision imposes a time limit for the bringing of an appeal. Neither provision makes any allowance for an

extension of that time limit. Therefore, it says, the time limits provided for in the legislation ought to be strictly construed.

55. Counsel for the Authority contended that the rationale outlined by Hogan J. in his *obiter* comments in *Keon* which were subsequently adopted by Noonan J. in *Noone* apply directly to the present case. Counsel maintain that the 2011 Act makes no provision for an extension of time, which implies that the Oireachtas intended that the 30-day time limit provided for in s. 70(1) to be a strict one which could not be extended. Section 70(1) is, counsel submitted, a *"provision to the contrary"* for the purpose of O. 84C, r. 2(5) RSC so as to negative the operation of that provision. Counsel further submitted that the rules could not provide for the existence of a jurisdiction that is not provided for under statute.

56. Counsel for the Authority also relied on the principles set out by Clarke J. in the High Court in *Worldport* which were subsequently endorsed by the Supreme Court in *A, S and S and I v. Minister for Justice* [2020] IESC 70 (Supreme Court, Dunne J. & Charleton J.). A judge of first instance should, therefore, normally follow a decision of another judge of the same court unless there are *"substantial reasons for believing that the initial judgment was wrong"*. Such reasons might include where it was clear that the initial decision was one where significant relevant authorities were not taken into account in the first decision, where there is a *"clear error"* in the first judgment or where the first judgment was delivered sufficiently long ago such that the law in the relevant area might be said to have moved on in the intervening period. Relying on the principles set out in those cases, counsel for the Authority contended that no valid basis had been put before the court to justify a departure from *Keon* (albeit that it was accepted that the relevant comments there were *obiter*) and *Noone*.

57. Counsel made the additional submission that, in construing s. 70(1), it is necessary to look at other provisions of the 2011 Act, including s. 71(1). The fact that s. 71(1) imposes an obligation on the Authority to bring a confirmation application where the licensee does not *"within the period allowed under s. 70(1)"* appeal to the High Court and also that such a confirmation application must be brought *"as soon as is practicable after the expiration of that period"*, means that the Authority has to know when the time period for the licensee to appeal under s. 70(1) has expired so that it can know when its obligation to bring the confirmation application is triggered. This suggests that the Oireachtas must have intended that the 30-day time period should be strictly construed and should not be construed in a way which would allow for an extension of time on the application of the licensee at some time in the future. Counsel submitted that the Oireachtas could not have envisaged an entitlement to appeal after the expiration of the 30-day time period in light of the Authority's obligation to bring a confirmation application after the initial 30-day time period expired, as to provide otherwise would create the sort of *"procedural log jam"* which has arisen in this case.

58. The fundamental position of the Authority is that, correctly construed in accordance with the relevant principles of statutory interpretation and having regard to the line of cases including *Keon* and *Noone* and the other cases which adopted a similar approach, s. 70(1) cannot be interpreted as allowing for an extension of the 30-day period within which a licensee can appeal from a decision of the Authority to impose a major sanction on it. Insofar as it lays down that 30-day time limit within which to appeal, s. 70(1) amounts to a *"provision to the contrary in the relevant enactment"* for the purpose of O. 84C, r. 2(5) RSC which, therefore, precludes reliance on the

provisions of that subrule to obtain an extension of time to appeal from the Authority's decision in this case.

59. The Authority has an alternative fallback position in the event that I were to conclude that the court does nonetheless have the power under O. 84C, r. 2(5)(b) RSC to extend the time for Mr. Dooley to appeal from the Authority's decision to impose the major sanction upon him. If the court does have that power, counsel submitted that the court should not exercise that power on the ground that Mr. Dooley has not put forward any *"good and sufficient reason"* for granting an extension of time to appeal. The Authority disagreed with the contention made on behalf of Mr. Dooley that the appropriate test to be applied is that set out in *Eire Continental*. Rather, it maintained that the correct test is that set out in O. 84C, r. 2(5) RSC. The correct test, the Authority maintained is that Mr. Dooley must show that:

> (a) there is a *"good and sufficient reason"* to allow the extension; and
>
> (b) there would be no injustice to the Authority or to anyone else concerned if the extension were granted.

The Authority noted however that Baker J. in the High Court in *Keon* did suggest that the first part of this test might be informed by the principles set out in *Eire Continental*. The Authority contended that Mr. Dooley has not established any *"good and sufficient reason"* as to why the time period to appeal should be extended. It noted that notwithstanding the terms of the Authority's letter of 28 October 2022, to Mr. Dooley which expressly drew attention to the 30-day limit in s. 70(1), Mr. Dooley took no steps whatsoever to bring an appeal. Instead, he made a conscious decision not to take any steps until he received a *"formal notice"* from the Authority. Further, the Authority contended that an extension of time would result in an injustice to it on the basis that, if the extension were granted, it would have to defend a full

appeal against its decision of 25 October 2022, which could involve a plenary hearing which would involve significant costs being incurred as well as already having had to incur costs in bringing the confirmation application.

60. The Authority also argued, for completeness, that Mr. Dooley failed to satisfy the conditions or criteria set out in *Eire Continental*. It was submitted that Mr. Dooley put forward no evidence before the court to demonstrate the existence of an intention or desire to appeal within the 30-day time limit allowed under s. 70(1) of the 2011 Act. The Authority pointed out that Mr. Dooley has relied in support of his compliance with the first condition in *Eire Continental* on submissions he made to the Authority prior to the making of the decision of 25 October 2022 but has not provided evidence of the existence of an intention to appeal after that decision was made. Further, it contended that none of the documents relied on by Mr. Dooley stated that he would appeal any adverse decision made by the Authority to the High Court under s. 70 of the 2011 Act.

61. With respect to the second criteria or condition in *Eire Continental*, the Authority submitted that Mr. Dooley's reliance on the fact that he did not have legal representation at the relevant time, and that he was unaware of the time limit, was precisely the sort of error which does not amount to the sort of mistake which might satisfy that condition. It was also untenable in circumstances where the Authority's letter of 28 October 2022 specifically drew his attention to the relevant section and the time limit for appealing.

62. Finally, the Authority contended that Mr. Dooley had not advanced any arguable grounds of appeal. It contended, therefore, that Mr. Dooley had not satisfied that the *Eire Continental* conditions.

63. With respect to Mr. Dooley's reliance on the passage from **Mills *et al***, it was submitted that Mr. Dooley was seeking to rely on a hypothetical situation where a registered professional would otherwise be precluded from practising his or her profession in the absence of an appeal. Mr. Dooley was not in that position. The major sanction imposed by the Authority was a financial penalty and not the revocation of a license or the suspension of a license for a specified period. The fundamental issue of the right to pursue a profession did not, therefore, arise in this case.

64. In any event, it was submitted that the entitlement to appeal and the regulation of that entitlement in terms of the imposition of a time period were all part and parcel of the terms in which Mr. Dooley was entitled to pursue his profession as regulated by the Oireachtas in the 2011 Act.

65. In summary, therefore, the Authority contended that the 30-day time period within which to appeal set out in s. 70(1) of the 2011 Act is an absolute time period set out in statute which cannot be extended under O. 84C, r. 2(5) RSC. Section 70(1) as properly interpreted amounts to a *"provision to the contrary in the relevant enactment"* in the meaning of that term in O. 84C, r. 2(5) RSC. In the alternative, if the court does have a discretion to extend the time, the Authority contended that it should exercise its discretion to refuse to grant such an extension on the basis that Mr. Dooley has not satisfied the requirement that there be *"good and sufficient reason"* for extending the time period within which to appeal and also that an extension of the period would result in an injustice being done to the Authority.

8. Analysis and Decision

66. Having carefully considered the evidence provided to the court in respect of Mr. Dooley's application and the helpful written and oral submissions by counsel for Mr. Dooley and by counsel for the Authority, I am satisfied that s. 70(1), properly construed and interpreted in accordance with the applicable principles of statutory construction, clearly and unambiguously provides that if the licensee (or former licensee), such as Mr. Dooley, who is the subject of a decision under s. 68(4)(a) of the 2011 Act by the Authority to impose a major sanction on him chooses to exercise the statutory right to appeal to the High Court granted by s. 70(1), he must do so not later than 30 days from the date on which he received notice of the decision. There is no provision in s. 70(1) or elsewhere in the 2011 Act which would confer on the court a power to extend that time period.

67. Further, I am satisfied that s. 70(1) which imposes that time period within which to bring an appeal (which is longer than the 21-day period referred to in O. 84C, r. 2(5)(a) RSC) without expressly or in my view impliedly leaving open the possibility of an extension of that time period is a *"provision to the contrary in the relevant enactment"* for the purposes of O. 84C, r. 2(5) RSC. That provision of the Rules of the Superior Courts is not available to Mr. Dooley as a source on which to rely to obtain an extension of that time period.

68. I am satisfied, therefore that the proper construction of s. 70(1) of the 2011 Act is that it provides for a strict 30-day time period within which a licensee who is the subject of a decision by the Authority to impose a major sanction upon him, if he wishes to avail of the statutory right of appeal, must bring his appeal to the High Court.

69. It was expressly acknowledged on behalf of Mr. Dooley that the statutory right of appeal conferred on a licensee (or former licensee) in his position is different to the

right of appeal which was at issue in the *Tobin* case. The Court of Appeal in that case was considering the right of appeal from the High Court to the Court of Appeal, a constitutional right of appeal under Article 34.4.1 of the Constitution. The Court of Appeal, therefore, had to construe the provisions of the relevant statute in that case, s. 12 of the Solicitors (Amendment) Act 1960 (as amended) by reference to the provisions of Article 34.4.1 of the Constitution, under which the right of appeal from the High Court to the Court of Appeal is constitutionally guaranteed unless regulated or excepted by law.

70. In considering the constitutional nature of the right of appeal, the Court of Appeal was satisfied that, unless excluded by s. 12, the court had an inherent jurisdiction to consider an application to extend time to bring the relevant appeal and that such jurisdiction derived from the implied constitutional principles of basic fairness of procedures such that a person who, by mistake or other justifiable reason, misses the 21-day period, is not unfairly precluded from pursuing a constitutional right of appeal from the High Court to the Court of Appeal in a case to which s. 12 applies.

71. As was fairly acknowledged by counsel for Mr. Dooley, this case is different. We are not concerned here with the constitutional right of appeal from the High Court to the Court of Appeal, but rather a statutory right of appeal from the Authority's decision to impose a major sanction to the High Court. Unlike the constitutionally guaranteed right of appeal from the High Court to the Court of Appeal under Article 34.4.1 of the Constitution, there is no constitutionally guaranteed right of appeal from the decision of the Authority to the High Court. It is a right created purely by the relevant statutory provision, s. 70(1) of the 2011 Act. *Tobin* is, therefore, of no assistance to Mr. Dooley in this case.

72. The question as to whether s. 70(1) provides for or permits an extension of time to the 30-day time period within which to appeal provided for in that subsection is ultimately a question of statutory construction. That is the approach which Hogan J. took in his undoubtedly *obiter* comments in the Court of Appeal in *Keon*. That exercise of statutory construction must be conducted in accordance with the principles of statutory construction recently considered and outlined by the Supreme Court in *Heather Hill Management Company CLG & Anor v. An Bord Pleanála* [2022] IESC 43, [2022] 2 ILRM 313, and by the Supreme Court in *A.B. & C. (A Minor) v. Minister for Foreign Affairs & Trade* [2023] IESC 10 (Supreme Court, Murray J.). Delivering judgment for the Supreme Court in the *A.B. & C.* case, Murray J. stated that:

> *"…the cases…have put beyond doubt that language, context and purpose are potentially in play in every exercise in statutory interpretation, none ever operating to the complete exclusion of the other. The starting point in the construction of a statute is the language used in the provision under consideration, but the words used in that section must still be construed having regard to the relationship of the provision in question to the statute as a whole, the location of the statute in the legal context in which it was enacted, and the connection between those words, the whole Act, that context, and the discernible objective of the statute. The court must thus ascertain the meaning of the section by reference to its language, place, function and context, the plain and ordinary meaning of the language being the predominant factor in identifying the effect of the provision but the others always being potentially relevant to elucidating, expanding, contracting or contextualising the apparent meaning of those words."* (para. 73)

73. There is no dispute that those are the principles of statutory construction which I must apply in construing the terms of s. 70(1) of the 2011 Act in order to determine whether the subsection admits of the possibility of the time period within which to appeal being extended by the court.

74. The words used in s. 70(1) in terms of the plain and ordinary meaning of the language used are to my mind clear. A person who is the subject of a decision by the Authority to impose a major sanction *"may"* appeal from that decision to the High Court. The word *"may"* is used and not the word *"shall"*. That is surely because there could be no obligation on that person to appeal against the Authority's decision. The decision to appeal or not is a matter for the licensee the subject of the decision. However, if that licensee chooses to appeal then the words providing for the time period are immediately engaged. That appeal must be brought *"not later than 30 days"* from the date the person received notice of the decision. The words *"not later than"* are in my view very clear and leave no scope for any doubt about what the Oireachtas intended. If the appeal is to be brought, it must be brought *"not later than"* the 30 days referred to in the subsection. So construed, that does not admit of the possibility of an appeal being brought *"later"* than the 30 days referred to. I will consider below how the limiting words *"not later than"* the 30 days referred to compare with the words used in some of the other judgments in this area including *Noone*, *Murphy* and *Kirwan*. It will be seen, however, that in my view, the words used in s. 70(1) in prescribing the time limit within which to appeal are even stronger and clearer in terms of excluding the possibility of an appeal being brought outside the time period referred to than the statutory provisions at issue in those other cases.

75. Having looked at the words used in s. 70(1) itself, I must now look to any other relevant provisions of the Act which might have a bearing on the proper interpretation

of the relevant words in s. 70(1). I have referred earlier to two other relevant provisions, s. 71(1) and s. 72(1) and (2).

76. Section 71(1) imposes an obligation on the Authority to bring a confirmation application in respect of the decision to impose a major sanction on a licensee. That obligation arises where the licensee does not *"within the period allowed under s. 70(1)"* appeal to the High Court against that decision. The words *"within the period allowed under s. 70(1)"* provide strong support for the construction of s. 70(1) which emerges from the plain and ordinary meaning of the language used in that subsection. The *"period allowed"* is the period of 30 days referred to in s. 70(1). Section 71(1) clearly envisages that appeal being brought *"within"* that period, not within any extended period. That itself is supportive of the interpretation which emerges from the plain and ordinary meaning of the language used in s. 70(1).

77. Further support for that interpretation is derived from the fact that the absence of an appeal within that period triggers the obligation on the Authority to bring the confirmation application. The obligation on the Authority is to bring a confirmation application *"as soon as is practicable after the expiration of that period"*. The reference to *"that period"* is clearly a reference back to the *"period allowed"* under s. 70(1) which is the 30-day period. The obligation on the Authority is to move quickly — *"as soon as is practicable"* — after the expiration of that 30-day period. If the Oireachtas intended that there would be a possibility of extending that period, then it could easily have made provision for an extension of that period in ss. 70(1) and 71(1). It could have said, for example, that the appeal had to be brought *"not later than 30 days"* from the relevant date or such period as may be extended. Similarly, the Oireachtas could have said that the obligation on the Authority to bring the confirmation application would arise where the licensee had not brought the appeal

"within the period allowed" or within such extended period as may be allowed by the court. The Oireachtas did not do so. That was no doubt for good reason. If there was an entitlement to apply for an extension of the period in which to appeal and a power conferred on the court to grant such an extension, then there would be uncertainty as to the time at which the Authority's statutory obligation to bring the confirmation application arose. It would be subject to an obligation once the 30-day period expired and would, therefore, be obligated to bring the confirmation application, but might subsequently be relieved of that obligation if the licensee sought and obtained an extension of time to appeal. There is no reason to believe that the Oireachtas would have intended such uncertainty or potential *"administrative chaos"* as it was put by counsel for the Authority. The most straightforward and clear reading of the provisions of s. 70(1) together with s. 71(1) is that the appeal must be brought within the 30-day period, and if it is not then the Authority is under an obligation to move quickly to bring the confirmation application.

78. I note in passing that Mr. Dooley does make the point that the Authority did not move quickly in bringing its confirmation application in this case. I express no view on that argument save to say that it does not have a bearing on whether the time period for bringing an appeal may be extended. It may potentially have a bearing on how the court would consider a confirmation application but I express no view on that and will, if it is pursued at the hearing of the confirmation application, consider the point at that stage. In my view, therefore, the interpretation of s. 70(1) which emerges from the plain and ordinary meaning of the language used in that section is supported by the provisions of s. 71(1).

79. It is also supported by the provisions of s. 72(1) and (2). Section 72(1) provides for the finality of the decision of the High Court on an appeal under s. 70(1) or an

application under s. 71(1) save for the possibility of an appeal with leave of the court. The provision for finality is indicative of an intention on the part of Oireachtas to avoid protracted and long running litigation arising from an investigation and decision by the Authority to impose a major sanction. This objection would not be supported by the possibility of an entitlement to seek an extension of the time for appealing the decision of the Authority to the High Court. Similarly, the obligation in s. 72(2) which imposes an obligation on the Authority to give notice quickly — *"as soon as is practicable"* — to the licensee where the High Court confirms or gives a decision under s. 70(3) or s. 71(2). This subsection is again supportive of the interpretation of s. 70(1) which emerges from the plain and ordinary meaning of the language, in that it indicates an objective of the Oireachtas to ensure that matters are dealt with quickly and without delay. That objective would be undermined by the possibility of an extension of time within which to bring an appeal from the relevant decision of the Authority.

80. There is nothing elsewhere in the 2011 Act or in the context within which that legislation was enacted or in the objective of the statute which in my view undermines in any way this construction of the words used in s. 70(1) which derives from the plain and ordinary meaning of the language used in that provision. These other sources support the construction arrived at on the plain and ordinary meaning of the language used.

81. While the proper construction of the relevant words used in s. 70(1) of the 2011 Act must primarily be determined by reference to provisions of that section constructed in accordance with the principles of statutory interpretation referred to above, some assistance can be derived from other decisions of the Superior Courts. Caution must,

however, be exercised when considering those other decisions as they will tend to turn on the particular statutory provisions at issue in those cases.

82. A number of the decisions referred to by the parties concern s. 123 of the Residential Tenancies Act 2004. Those cases include *Keon*, *Noone*, *Dada* and *Abeyneh*. I have referred earlier to the *obiter* comments of Hogan J. in *Keon* in which he expressed some doubts as to whether the court had jurisdiction to extend the time to appeal from a decision of the PTRB to the court, but nonetheless and despite those reservations, the Court of Appeal nonetheless went on to consider the merits of the application to extend time and held that the High Court (Baker J.) had correctly held that time should not be extended on the basis that there were no arguable grounds of appeal.

83. In interpreting the same provisions of s. 123 of the 2004 Act, Noonan J. in the High Court in *Noone* held that the time in specified in s. 123 of the 2004 Act was an absolute one and that the court did not enjoy any jurisdiction to extend it. As the appeal in that case was not brought within the time limited for that purpose by s. 123, the appeal failed *in limine*. The relevant provisions of s. 123 of the 2004 Act are subsections (3) and (8). Section 123(3) provides that:

> *"Any of the parties concerned may appeal to the High Court, within the relevant period, from a determination of the Tribunal (as embodied in a determination order) on a point of law."*

Section 123(8) provides that the *"relevant period"* referred to in subsection (3) means *"the period of days beginning on the date that the determination order concerned is issued to the parties"*. Noonan J. was satisfied that the wording of s. 123(3) and (8) was clear on its face and that an appeal must be brought within 21 days from the date on which the determination order concerned is issued. He held that there was no ambiguity in the wording in the section which might leave open the possibility of the

court having a discretion to extend the time. He further held that, had the Oireachtas intended that such discretion be available to the court, it could have expressly so provided in the section. It is true that, in supporting his conclusion, Noonan J. made reference to s. 88 of the 2004 Act which provides that the Board can extend the time for a referral of a dispute for it for resolution and provides that time will not be extended by the Board unless there are *"good grounds"* for doing so. Noonan J. held that had the Oireachtas wished to provide for a similar power to extend the time to appeal from the Tribunal to the court, it could have done so in similar terms. The fact that the Oireachtas did not do so meant that the section in question amounted to "*a provision to the contrary"* within the meaning of O. 84C, r. 2(5)(b) RSC as suggested by Hogan J. in *Keon*.

84. While Noonan J. did draw on the fact that provision for an extension of time was contained in s. 88, it seems to me that in light of his view as to the clarity and lack of ambiguity in the wording used in s. 123(3) and (8), he would likely have reached the same decision without referring to s. 88. Nonetheless, the fact that there is another section in the 2004 Act allowing for an extension of time does mean that there is, at least, that distinguishing factor between *Noone* and the other cases which followed it, such as *Dada* and *Abeyneh*, and the present case. However, I do not believe that that distinction is a material one and it does not in any way affect my view as to the correct interpretation of the words used in s. 70(1).

85. Further, as noted earlier, in my view, the words used in s. 70(1) are even stronger and more definitive on the absence of an ability to extend time than the words used in ss. 123(3) and (8). This is because s. 70(1) provides that the appeal may be brought *"not later than"* 30 days from the day of notification of the decision. That is clear, stronger and more definitive than the provision in s. 123(3) that the parties concerned

may appeal to the High Court *"within the relevant period"*, that period being the 21-day period referred to in s. 123(8).

86. That is also the case in relation to the words used in s. 7(12A) and (12B) of the Solicitors (Amendment) Act 1960 (as amended) which was at issue in *Curran* and in *Kirwan*. Section 7(12A) conferred a right of appeal to the Law Society or to the other persons who referred to in the section to the High Court against a finding of the Disciplinary Tribunal of the type mentioned in the subparagraphs of that subsection. Section 7(12B) provided that such an appeal *"shall be made within 21 days"* of the receipt by the appellant of notification in writing of the finding. While the section uses the word *"shall"* rather than *"may"*, for the reasons outlined earlier, I do not believe that that is significant. The requirement for an appeal, if it is brought, to be made *"within"* the 21-day period is less definitive in its terms than the requirement in s. 70(1) for the appeal to be brought *"not later than"* the 20 days referred to in that subsection. Nonetheless, Eagar J. in *Curran* and Irvine P. in *Kirwan*, were satisfied that the court did not have the power to extend the time within which the relevant appeal had to be brought.

87. The words used in s. 70(1) are also arguably stronger than those used in s. 7(11) of the 1960 Act (as amended) which was considered by the High Court and by the Court of Appeal in *Murphy*. Section 7(11) provided that the respondent solicitor, in respect of whom an order has been made by the Disciplinary Tribunal, *"may, within the period of 21 days"* from the date of due service of the order appeal to the High Court. Like s. 70(1) the word *"may"* is used but again I do not believe that has any significant for present purposes. The time for bringing that appeal is *"within the period of 21 days"* from the date of service of the order. As with the provisions of s. 7(12A) and (12B) referred to above, the words used in s. 70(1) appear to me to be stronger and even

more definitive than those used in s. 7(11). As noted earlier, the Society did not press the jurisdiction issue before the High Court and, in its written submissions to the court, it said that it was not clear that the court had jurisdiction to extend the time, but the Society was, for the purposes of the relevant appeal, prepared to assume that the court would, in principle, have jurisdiction to extend time. The Court of Appeal held that the trial judge was correct to proceed to determine the merits of the application without determining the jurisdiction issue, and that it was appropriate for the Court of Appeal to proceed in a similar fashion. I agree that, in circumstances where the statutory body in question decided not to take the point, it was appropriate for the High Court and the Court of Appeal in that case to proceed as they did. The Authority has taken the point in this case and it is necessary for the court to decide the issue.

88. It does not seem to me that the decision in *Coleman* is of relevance in that, as explained by Irvine P. in *Kirwan*, the time limit for appealing in that case was governed not by a statutory provision but rather by the Rules of the Superior Courts. The appeal in question was from the Solicitors Disciplinary Tribunal to the High Court and was provided for in s. 7(3) of the 1960 Act (as amended). However, the 21-day time limit for the appeal was not contained in s. 7(3) but rather in O. 53, r. 12(b) RSC. Simons J. was, therefore, considering an application for the extension of time to appeal in circumstances where the time period for appealing was governed not by statute but by the provisions of the Rules of the Superior Courts. I agree with Irvine P. in *Kirwan* that the decision in *Coleman* is of no application where the time limit involved is provided for by statute as is the case here.

89. I am satisfied, therefore, that there is nothing in the authorities which in any way undermines what I believe to be the clear statutory construction of the words used in

s. 70(1), which requires a person who wishes to appeal from a decision of the Authority to impose a major sanction to do so *"not later than"* the 30-day time period referred to. That provision is inconsistent with the existence of a power or jurisdiction to extend the time period within which to appeal. It is also, in my view, clearly a *"provision to the contrary"* for the purposes of O. 84C, r. 2(5) RSC. Therefore, the court does not have jurisdiction under that provision of the Rules of the Superior Courts to grant the extension of time sought by Mr. Dooley.

90. I do not accept that there is anything unfair about what I believe to be the correct interpretation of s. 70(1) and the implications of that interpretation. The position in this case is, therefore, completely different to that which arose in *White v Dublin City Council* [2004] 1 I.R. 525, on which counsel for Mr. Dooley sought to rely, where the applicants were unaware of the facts giving rise to their claims until after the expiry of the time period provided for in the relevant statutory provision. Mr. Dooley accepts that he received the Authority's letter of 28 October 2022, which attached the decision of the Authority made on 25 October 2022. I have set out earlier the concluding section of that letter where the words "**Right of Appeal**" were highlighted in bold and where reference was made to s. 70 of the 2011 Act, and to the fact that under that section, Mr. Dooley had 30 days from the date on which he received the notice contained in the letter to appeal from the Authority's decision to the High Court. The letter then set out in full the provisions of s. 70(1). While Mr. Dooley states that he was *"not aware of the cut off point"* within which to appeal and was expecting a *"formal notice"* from the Authority, I cannot accept that Mr. Dooley could have failed to have regard to the clear terms of the concluding part of the Authority's letter dated 28 October 2022. If Mr. Dooley was not aware of the *"cut off point"* and if he was expecting a *"formal notice"* from the Authority, then that lack of awareness and

that expectation flew in the face of the clear terms of the Authority's letter. I am satisfied therefore, that Mr. Dooley was or most certainly ought to have been aware of the time period within which he could appeal. The position could not have been made any clearer to him by the Authority.

91. Nor do I believe that there is anything unfair about the Authority relying on Mr. Dooley's failure to bring the appeal within the statutory time period. The Authority is simply relying on the provisions of the governing legislation. The fact that other authorities operating under other statutory provisions (such as the Law Society in the case of *Murphy*) have chosen not to take a time point in a particular case is completely irrelevant. It does not, as was contended on behalf of Mr. Dooley, create a *"twin track"* approach. There may well have been very good reasons for the statutory body in *Murphy* to take the position it took but it does not require that other statutory bodies take the same approach in a different case operating under different statutory provisions. I do not accept, therefore, that the approach taken by the Authority or the construction of s. 70(1) which I have adopted is unfair or in breach of any right to equality enjoyed by Mr. Dooley under Article 40.1 of the Constitution.

92. There is, also in my view, no merit to the point made on behalf of Mr. Dooley in reliance on a passage in **Mills *et al***, that it is relevant to the question of an application for an extension time to appeal by a regulated professional that if he or she were not permitted to appeal, the professional would otherwise be precluded from practising his or her profession. I do not accept that the fundamental issue of Mr. Dooley's right to pursue his profession is engaged in this case. The major sanction imposed on Mr. Dooley was a financial penalty of €10,000 and not a revocation or suspension of his license or even a greater financial penalty. I agree with counsel for the Authority that

Mr. Dooley's case does not engage the fundamental issue of his right to pursue his profession.

93. Further, the statutory provision governing the time limit within which an appeal must be brought in the event that the licensee affected by the Authority's decision wishes to appeal is part and parcel of Mr. Dooley's membership (or former membership) of a regulated profession. Being a member of a regulated profession requires the professional to comply with the statutory provisions which govern membership of that profession. That principle applies just as much to the time limit within which to bring an appeal as to all of the other statutory provisions governing membership of that profession.

9. Conclusion

94. I am satisfied, therefore, that the construction of s. 70(1) of the 2011 Act which I have set out earlier is the correct construction and that the court does not have any power or jurisdiction to extend the time for Mr. Dooley to appeal to the court from the Authority's decision to impose a major sanction on him.

95. Since the court does not have the power to extend the time to appeal and, since s. 70(1) is, in my judgment, a *"provision to the contrary"* for the purpose of O. 84C, r. 2(5) RSC, the court has no power under that provision of the Rules of the Superior Courts to consider an application to extend the time to appeal.

96. It is unnecessary, therefore, to consider whether there is a *"good and sufficient reason"* for extending the time period within which to appeal. If it were necessary to so decide, I would not be satisfied that a *"good and sufficient reason"* exists to extend the time. I would base that decision primarily on the fact that the terms of the Authority's letter of 28 October 2022 were very clear as to Mr. Dooley's entitlement

to appeal and the time period within which he had to appeal if he chose to exercise that entitlement.

97. It is also unnecessary for me to decide the relationship between the *"good and sufficient reason"* test in O. 84C, r. 2(5)(b) RSC and the conditions or criteria set out in *Eire Continental* for seeking an extension of time of time to appeal from the High Court to the Court of Appeal or thereafter to the Supreme Court. Even if those conditions or criteria were to apply in this case (and I am not deciding that issue), I am not persuaded that Mr. Dooley satisfied those conditions or criteria. I do not believe that he has demonstrated a *bona fide* intention to appeal within the relevant time period. Nor do I believe that he has shown the existence of a relevant type of mistake as a reason why he did not appeal within the required period. Again, the Authority's letter of 28 October 2022 was, in my view, clear and unambiguous. Further, I would not be satisfied that in *"all the circumstances of the particular case"* it would be appropriate for the court to extend the time to appeal in accordance with the principles set out in *Eire Continental*.

98. For all of these reasons, I refuse Mr. Dooley's application for an order pursuant to O. 84C, r. 2(5)(b) RSC extending the time within which to appeal to the High Court from the Authority's decision of 25 October 2022, which was notified to Mr. Dooley on 28 October 2022.

99. As I am delivering this judgment electronically, I will list the matter on 31 July 2023 for final orders including orders as to costs. My provisional view is, however, that as Mr. Dooley brought an application to extend the time, and as he has been unsuccessful in that application, he should pay the Authority's costs of the application. However, I will hear any submissions advanced on that issue on 31 July 2023 and have not formed a concluded view on the issue.

100. The Authority's confirmation application is also listed for hearing on 31 July 2023. If time permits on that date, I will endeavour to hear and determine the Authority's confirmation application that day. However, I will also consider any application that might be made on behalf of the Authority or on behalf of Mr. Dooley for that application to be heard on another date.