



Neutral Citation Number: [2022] EWCA Civ 1605

Case No: CA-2021-003281

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**KING’S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**Mathew Gullick KC (Sitting as a Deputy High Court Judge)**  
**[2021] EWHC 3362 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 8 December 2022

**Before :**

**LORD JUSTICE MOYLAN**  
**LORD JUSTICE BAKER**  
and  
**LADY JUSTICE CARR**

**Between :**

**LARS STUEWE**

**Appellant**

**- and -**

**HEALTH AND CARE PROFESSIONS COUNCIL**

**Respondent**

**The Appellant appeared in person**

**Guy Micklewright (instructed by Blake Morgan LLP) for the Respondent**

Hearing date : 29 November 2022

**Approved Judgment**

This judgment was handed down remotely at 10am on Thursday 8 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## **Lady Justice Carr :**

### **Introduction**

1. The Appellant is and was at all material times a paramedic registered with the Respondent (“the HCPC”). On 7 January 2021 a Conduct and Competence Committee of the HCPC (“the CCC”) made a finding against him of impairment on the basis of misconduct, and imposed conditions of practice (“the Order”). Those conditions were that, whilst the Appellant was permitted to work as a paramedic, he was not permitted to work for a company that he owned, in whole or in part. He was also to inform employers and/or employment agencies of the Order. The duration of the Order was 18 months with review; it has now (since 4 August 2022) expired.
2. The Appellant sought to exercise his right of appeal against the Order under Articles 29 and 38 of the Health Professions Order 2001 (enacted by s. 60 of the Health Act 1999) (“the HPO”). Article 29(10) provides for a 28 day period from the date of service in which to appeal. The 28 day time limit expired on 5 February 2021. The Appellant failed to file an appeal notice until 7 April 2021.
3. The HCPC applied to strike out the appeal notice and the matter came before Mathew Gullick KC (sitting as a Deputy Judge of the High Court) (“the Judge”) on 17 November 2021. The Judge declined to grant an extension of time for service of the appeal notice outside the statutory time limit, ruling that the “exceptional circumstances” jurisdiction identified in *R (Adesina and Baines) v NMC* [2013] EWCA Civ 818; [2013] 1 WLR 3156 (“*Adesina*”) was not engaged on the facts. It is against that decision that the Appellant appeals.
4. The appeal affords the opportunity to provide some clarification as to the correct approach to be adopted when considering whether or not there is jurisdiction to extend time for an appeal outside a statutory time limit.

### **The proceedings before and decision of the CCC on 7 January 2021**

5. As set out above, the Appellant was a paramedic and registered with the HCPC. In August 2015, he became resident in Gibraltar. In October 2015, he was admitted to the Gibraltar Medical Registration Board and granted a licence to practise there. However, he retained his HCPC registration.
6. In November 2016 the HCPC received a referral relating to the Appellant’s conduct. The HCPC accepted the referral. There can be no complaint about this: it is registration status, not location of residence, that determines whether or not the HCPC has jurisdiction to bring fitness to practise proceedings (see Article 22(7) of the HPO).
7. The referral related to the Appellant’s work alongside a former colleague (“X”) over a period of approximately three years between 2012 and 2015. The Appellant and X worked for a private ambulance service through “CPNI”, an organisation involving two companies based in Northern Ireland: Concierge Practitioners NI Limited and CPNI Ambulance Services Limited. The Appellant set up CPNI with X with a view to providing private ambulance services, occupational health screening, first aid and ambulance training and private laboratory testing.

8. In May 2017, the HCPC served fitness to practise proceedings on the Appellant. It was said that, whilst working with X, the Appellant had directed homophobic language and gestures towards X; had referred to him as “gay-boy” (or words to that effect); had inappropriate discussions with other colleagues about X’s sexuality and made public comments about X being at increased risk of HIV infection. The Appellant denied all the allegations, amongst other things alleging a conspiracy against him between the witnesses.
9. Various hearings took place before the CCC between September 2019 and January 2021. In the early stages the Appellant was represented but he was acting in person by the conclusion of the proceedings. On 7 January 2021, the CCC found seven of the allegations proved, and seven not proved. Of the seven proven allegations, three were judged to amount to misconduct. The CCC found the Appellant’s fitness to practise to be impaired and imposed the Order. As set out above, the Order did not prevent the Appellant from working as a paramedic.
10. At a substantive review on 27 June 2022, the CCC considered that the Order should be permitted to lapse on its expiry. The Appellant is therefore no longer subject to any practising restrictions.

### **Summary of procedural history following the Order**

11. The result of the proceedings and the Order were notified to the Appellant at the conclusion of the proceedings on 7 January 2021. The decision was also sent to him by email on 8 January 2021. The email advised the Appellant in clear terms of his right to appeal, advised him to seek independent legal advice if he had any queries, and identified the statutory appeal period of 28 days. Transcripts were provided to him on 12 January 2021.
12. On the same day the Appellant sought funding for an appeal from his insurers. A consolidated version of the CCC’s decision was provided to the Appellant on 15 January 2021.
13. On 19 January 2021, the Appellant sent an email to the HCPC stating that he intended to appeal and repeating a request for there to be no publication of the result of the proceedings in the UK.
14. On or about 22 January 2021, the Appellant learned that, in the light of legal advice to the effect that an appeal did not stand any prospect of success, there would be no funding from his insurers for an appeal.
15. By email dated 21 January 2021 the Administrative Court Office (“the ACO”) advised the Appellant that he would need a postal address in the United Kingdom (“UK”) to undertake proceedings in the High Court. Gibraltar was a British Overseas Territory. The appellant replied stating that he did not have a UK address and could not travel to the UK due to the Covid pandemic. He asked for advice.
16. On 22 January 2021, he contacted Citizens Advice, but assistance was refused on the basis that he lived outside the UK. On 23 January 2021, Citizens Advice in Gibraltar also declined to help.

17. The Appellant also attempted to file a notice of appeal on or about 22 January 2021; it was returned because he had not provided an address for service in the UK, only an address in Gibraltar.
18. By this stage the Appellant was contacting both a member of Parliament and the EU Commission about what he saw as a jurisdictional issue.
19. By email sent on 26 January 2021 the ACO responded to the Appellant's email of 21 January 2021 as follows:

“I refer to your enquiry below and confirm that you may make an application to appeal out of jurisdiction.

You will need to either provide a consent order (if you can agree this with your professional body) or even a draft order. Either way you are asking either by consent or through an application to be allowed to apply out of jurisdiction. This application/consent will need to be incorporated into your appeal, but will have to be considered first...”
20. On the same day, the Appellant wrote to the HCPC stating that he had “now for the last few days” tried to file an appeal in the “Administrative High Courts” of London. He stated that he had been advised that a filing in the High Court in London using a Gibraltar address was not possible. He was “addressed, registered and domiciled in Gibraltar”. He stated that he was advised that a consent order was necessary. He asked the HCPC to issue such an order and for advice as a matter of urgency.
21. The Appellant emailed the HCPC again the following day, 27 January 2021, stating that, in the absence of a response from the HCPC, he intended to file an appeal with the Supreme Court in Gibraltar. The HCPC indicated that it was looking into the contents of his emails to establish its position. In an email dated 29 January to the HCPC, the Appellant stated that he could not pursue matters in Gibraltar, since the Supreme Court there had no jurisdiction over the HCPC.
22. The Appellant attempted to file an appeal notice in the High Court for a second time on 29 January 2021, but again without a UK (and only with a Gibraltar) address for service.
23. On 1 February 2021, the Appellant wrote a lengthy letter to the HCPC's Chief Executive stating, amongst other things, that the HCPC should have agreed a consent order with him on jurisdiction, but had chosen not to.
24. Time for filing an appeal expired at 4pm on 5 February 2021, and the Order came into force.
25. On 9 February 2021, the Appellant attempted to file an appeal notice for a third time, again without a UK (and only with a Gibraltar) address for service.
26. On 12 February 2021 the HCPC wrote to the Appellant stating that it had looked into the matters raised by him and received advice from the High Court that there was nothing to prevent him from filing his appeal whilst resident in Gibraltar. What was required was an address for service in the UK, meaning that the Appellant would need to instruct solicitors in the UK to accept service on his behalf. Thus, it considered that

he had had the opportunity to bring an appeal in the High Court but was now out of time to do so. The HCPC stated that it would not agree to a consent order in circumstances where the Appellant had had an opportunity to appeal in time but had failed to do so.

27. In a lengthy email dated 14 February 2021, the Appellant repeated his position that the HCPC should have consented to his use of a Gibraltar address for the purpose of the appeal.
28. On 21 February 2021, the Appellant sought legal representation from the Law Centre NI, which was refused on 3 March 2021, since only employment law services were available.
29. On 5 March 2021, the Head of Fitness to Practise at the HCPC emailed the Appellant (“the 5 March email”). She set out the history of the matter and went on:

“Therefore it has always been open to you to make an application to the Court to file out of the jurisdiction – you would not need the consent of the HCPC to make this application – and therefore there is no requirement on the HCPC to provide a consent order and, as such, we will not be issuing one. However, if you still wish to proceed with the appeal and you do make an application to the Court to file out of the jurisdiction, we would not oppose any such application.

Secondly, you point out that you are now out of time to bring the appeal as the 28 day time limit has been exceeded. I appreciate that you have not been able to proceed as quickly as you might have wished in this regard and, if you do intend to proceed with the appeal, we would not seek to make any point about it being out of time.”

30. By email dated 7 March 2021, the Appellant informed the HCPC that he had submitted his appeal. The HCPC responded to say that it awaited service. The Appellant stated again that an appeal had already been submitted.
31. On 23 March 2021 the Appellant emailed the HCPC indicating that he had received correspondence from the court stating that he had to file an application for permission to bring the proceedings, due to his residence abroad, and that he was struggling to make the necessary payment for the appeal. (The system for payment by telephone was not working and he was attempting to arrange a cheque.) In response, the HCPC repeated that it would respond once served.
32. A notice of appeal was filed on 7 April and sealed on 9 April 2021. It contained an application for an extension of time and for permission to be served in Gibraltar:

“I am a litigant in person with no address in the United Kingdom (mainland) or the EEA. I am a resident of Gibraltar (UK) since August 2015. I don’t have access to legal aid in the UK or in Gibraltar with this case and appeal and I therefore wish to apply

for permission of the court that my postal and residence address is used for correspondence with the Court...”

33. The HCPC issued an application to strike out the appeal notice on 11 May 2021. In her evidence in support the Head of Fitness to Practise said this in relation to the 5 March email:

“41. The HCPC seeks an order from the Court to strike out the whole of the appeal notice, notwithstanding the contrary indication I gave the Appellant in the [5 March email].

42. The indication that the HCPC would not oppose any application for leave to appeal out of time was based on legal advice. Since then, the HCPC has received further legal advice and now appreciates the very limited discretion that the Court has to extend the time for filing a statutory appeal where the legislation in question does not provide for a time limit to be extended.

43. In any event, the indication given in [the 5 March email] was provided on the expectation that the Appellant would file his appeal as soon as practicable following my email, expected to be within the next working week. It was not intended to provide the Appellant with an unlimited extension to file his appeal.

44. It is submitted that the filing of the appeal on 7 April 2021, two months after the statutory deadline and one month after my email to the [Appellant] was unreasonable, even if made on the basis of my indication [in the 5 March email].”

### **The judgment below**

34. The Judge identified the relevant legal principles from the authorities, and rehearsed the facts and chronology in some detail. He accepted the submission for the HCPC that the 5 March email could not “clothe the court with jurisdiction that it [did] not have”. It was open to the HCPC to resile from its position: the 5 March email was sent several weeks after the time limit had expired, and so could not have affected the Appellant’s ability to file within time; further, it was written on the basis of incorrect legal advice.
35. Despite his “very considerable sympathy for the position in which the Appellant [found] himself”, the Judge concluded that the circumstances were not exceptional as defined by the authorities. At [34] he stated:

“The Appellant’s error was, in my judgment, to let the 28 day deadline expire without filing an appellant’s notice in this court, as he in due course did, with an application to be permitted to rely on an address in Gibraltar – either because he was waiting for a consent order or because (see his email of 27 January) he believed that he could not file an appellant’s notice in this court in the absence of a consent order. I appreciate that the Appellant may have wished to agree a consent order on the point, or that

he may have been under the mistaken belief that he needed a consent order (which is not what the court office's email of 26 January said) but that does not, in my judgment, result in there being exceptional circumstances for the purposes of extending time for the appellant's notice which he in due course filed after the 28 day time limit."

36. In those circumstances, none of the other arguments assisted the Appellant: for example, the fact that he was a litigant in person, or the 5 March email, or the now repealed European Communities Act 1972.

### **Grounds of appeal**

37. On appeal the Appellant has made wide-ranging written submissions, many of which focus on the question of whether or not Gibraltar is properly to be treated as part of the UK for the purpose of service under CPR 6.23. The suggestion is that Gibraltar is part of the UK, with the result that an address in Gibraltar is adequate. This is not an issue on which it appears that permission to appeal was granted. I propose to address it nevertheless, albeit shortly.
38. The ground for which permission was granted is as follows: in applying the *Adesina* approach to "the unusual facts" of this case, the Judge adopted too strict an approach.
39. In his written submissions on this ground, the Appellant relied on the 5 March email; the fact that he did not have the benefit of legal aid due to his residence in Gibraltar; and postal delays. In his clear and helpful oral submissions he emphasised that, in his view, he had done everything that he reasonably could have done from Gibraltar in order to file a valid appeal notice within time. He had engaged actively throughout; he had proof of posting; he had done everything within his power but everything was a struggle and no-one wanted to help him. He had not understood from the ACO's email on 26 January 2021 that he could file an appeal notice alongside an application seeking permission for service on him to be effected in Gibraltar. The 5 March email was, he submitted, an agreement like a "bond". In short, it is said that the Judge was wrong not to extend time so as to allow him to appeal the Order.

### **Statutory appeals under the HPO**

40. Article 38(1) of the HPO provides that an appeal from any order of the CCC other than an interim order lies to "the appropriate court". By Article 38(4), "the appropriate court" for present purposes is the High Court of Justice in England and Wales.
41. Under Article 29(10) of the HPO, the time limit for an appeal against an order of the CCC is 28 days from service. Article 29 provides materially as follows:
- “(3) if, having considered an allegation...the [CCC]  
...concludes that it is well founded...
- (5) ...the [CCC] shall-
- ...(c) make an order imposing conditions with which the person concerned must comply for a specified period which shall not exceed three years (a "conditions of practice" order);...

(9) The person concerned may appeal to the appropriate court against an order made under paragraph (5) and article 38 shall apply to the appeal.

(10) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which the notice of the order or decision appealed against is served on the person concerned.”

42. Where, as here, a statute prescribes the period in which an appeal must be brought, unless the statute provides otherwise, the appellate court may not extend that period (see CPD 52D paragraph 3.5). The HPO does not provide for any power to extend the 28 day time limit in Article 29(10).

43. Early authority regarded CPD 52D as an absolute bar to extending time in circumstances where the time for bringing an appeal was prescribed by statute: see *Mucelli v Government of Albania* [2009] UKHL 2; [2009] 1 WLR 276; *Mitchell v The Nursing and Midwifery Council* [2009] EWHC 1045 (Admin); *Reddy v General Medical Council* [2012] EWCA Civ 310; and *Massan v Secretary of State for the Home Department* [2011] EWCA Civ 686.

44. However, the position changed in the light of the decision in *Tolstoy Miloslavsky v United Kingdom* [1995] ECHR 18139/91; [1996] EMLR 152 (“*Tolstoy*”). There the European Court of Human Rights considered, amongst other things, whether a requirement to provide security for costs as a condition of pursuing an appeal violated an appellant’s right of access to a court under Article 6(1) of the ECHR (“Article 6”). It concluded that it did not. In the course of so deciding the court stated as follows:

“59. The Court reiterates that the right of access to the courts secured by Article 6(1) may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. **However, the Court must be satisfied, firstly, that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Secondly, a restriction must pursue a legitimate aim and there must be a reasonable relationship between the means employed and the aim sought to be achieved...**” (emphasis added)

45. This decision led the Supreme Court in *Pomiechowski v Poland* [2012] UKSC 20; [2012] 1 WLR 1604 (“*Pomiechowski*”) to depart from the earlier line of domestic authorities. In the context of extending the time limit for appeal as prescribed in s. 26(4) of the Extradition Act 2003, Lord Mance, giving the majority judgment, stated:

“33...In so far as the proceedings involve under the statute a right of appeal against any extradition decision, article 6.1 also requires that it be free from limitations impairing “the very essence” of the right, pursue a legitimate aim and involve a “reasonable relationship of proportionality between the means



employed and the aim sought to be achieved” in accordance with the standard identified in *Tolstoy*...

39. ...there is no reason to believe that Parliament either foresaw or intended the potential injustice which can result from absolute and inflexible time limits for appeals. It intended short and firm time limits, but can only have done so on the basis that this would in practice suffice to enable anyone wishing to appeal to do so without difficulty in time. In these circumstances, I consider that, in the case of a citizen of the United Kingdom like Mr Halligen, **the statutory provisions concerning appeals can and should all be read subject to the qualification that the court must have a discretion in exceptional circumstances to extend time for both filing and service, where such statutory provisions would otherwise operate to prevent an appeal in a manner conflicting with the right of access to an appeal process held to exist under Article 6(1) in Tolstoy Miloslavsky. The High Court must have power in any individual case to determine whether the operation of the time limits would have this effect. If and to the extent it would do so, it must have power to permit and hear an out of time appeal which a litigant personally has done all he can to bring and notify timeously.**”  
(emphasis added)

46. The Supreme Court went on to “read down” the relevant time limit, in accordance with s. 3 of the Human Rights Act 1998.
47. In *Adesina*, the Court of Appeal held that the same approach should be adopted in professional disciplinary matters. Maurice Kay LJ stated:

“14...The context, exclusion from a profession, is still one of great importance to an appellant. There is good reason for there to be time limits with a high degree of strictness. However, one only has to consider hypothetical cases to appreciate that, without some margin for discretion, circumstances may cause absolute time limits to impair “the very essence” of the right of appeal conferred by statute. Take, for example, a case in which a person, having received a decision removing him or her from the Register, immediately succumbs to serious illness and remains in intensive care; or a case in which notice of the disciplinary decision has been sent by post but never arrives and time begins to run by reason of deemed service on the day after it was sent (Nursing and Midwifery Council (Fitness to Practise) Rules 2004, rule 34(4)). In such cases, the nurse or midwife in question might remain in blameless ignorance of the fact that time was running for the whole of the 28 day period. It seems to me that to take the absolute approach in such circumstances would be to allow the time limit to impair the very essence of the statutory right of appeal.

15. The real difficulty is where to draw the line...**If Article 6 and section 3 of the Human Rights Act require Article 29(10) of the Order to be read down, it must be to the minimum extent necessary to secure ECHR compliance. In my judgment, this requires adoption of the same approach as that of Lord Mance in Pomiechowski. A discretion must only arise “in exceptional circumstances” and where the appellant “personally has done all he can to bring [the appeal] timeously” (paragraph 39). I do not believe that the discretion would arise save in a very small number of cases.**” (emphasis added)

48. Both courts in *Pomiechowski* and *Adesina* spoke in terms of the court’s “discretion” or “power”. It may, as Fordham J pointed out in *Rakoczy v General Medical Council* [2022] EWHC 890 (Admin) (“*Rakoczy*”) at [21(ix)], be more accurate to speak in terms of the court’s duty, not discretion or power, given the positive obligation of the domestic court under s. 3 of the Human Rights Act 1988 (so far as possible) to read and give effect to legislation in a way which is compatible with Convention rights. The difference may not matter in real terms, not least since the courts in *Pomiechowski* and *Adesina* were at pains to emphasise that they were not speaking of a general discretion to extend time, but only a narrow discretion that arises in exceptional circumstances (see for example *Adesina* at [15]).
49. Thus, there is a discretion (or duty) to extend time for the bringing of a statutory appeal but only in exceptional circumstances, namely where to deny a power to extend time would impair the very essence of the right of appeal. That is the key question. Once the discretion (or duty) arises, it must then be exercised to the minimum extent necessary to secure ECHR compliance.
50. As set out above, Lord Mance at [39] in *Pomieschowski* identified the power to permit and hear an out of time appeal if statutory provisions would otherwise operate to prevent an appeal in a manner conflicting with the right of access under Article 6 as identified in *Tolstoy*. He went on (in the same sentence) to add that the appeal would be one “which a litigant personally has done all he can to bring and notify timeously.” Maurice Kay LJ adopted this sentence in *Adesina* at [15], as have other courts subsequently (see for example *Anixter Ltd v Secretary of State for Transport* [2020] EWCA Civ 43; [2020] 1 WLR 2547 at [67]).
51. Care needs to be taken in relation to this additional statement. The reference to a litigant doing all that they personally could to bring and notify timeously appears to have been treated in some of the cases as an independent requirement for the discretion (or duty) to arise (see for example *Gupta v General Medical Council* [2020] EWHC 38 (Admin) (“*Gupta*”) at [58] to [60]). Fordham J in *Rakoczy* [21(ii)], on the other hand, appears to have doubted that it was. There he stated that it was not “laying down a test, in the nature of a legal litmus test” (albeit that he also described it as an “expected essential characteristic”). He stated that it was instead “intended to be a valuable encapsulation”, “a guide as to what, in essence, the [court] could expect to be looking for”. He also stated at [13] that the obligation on the appellant (to do all that they could to bring and notify timeously) would have to be tempered by reference to reasonableness.

52. I do not consider that Lord Mance in [39] of *Pomiechowski*, having referred to the relevant test by reference to *Tolstoy*, was then imposing an additional condition (beyond the need for the existence of “exceptional circumstances”) by reference to the efforts made (or not) by an appellant to appeal in time. Rather, he was simply identifying the type of situation in which exceptional circumstances sufficient to give rise to the discretion (or duty) may arise. Put simply, and without being in any way prescriptive, exceptional circumstances are unlikely to arise where an appellant has not personally done all that they could to bring the appeal in time. There is no independent jurisdictional requirement that a litigant must have done personally all that he could.
53. The need to import the notion of reasonableness, as suggested in *Rakoczy*, underscores the importance of adhering to the approach identified above. It is both undesirable and counter-intuitive for there to be potentially intricate and nuanced debate as to the reasonableness of a litigant’s conduct in the context of an examination of whether the “exceptional circumstances” jurisdiction exists.
54. As set out above, therefore, the central and only question for the court is whether or not “exceptional circumstances” exist, namely where to deny a power to extend time would impair the very essence of the right of appeal. Any gloss is unhelpful. Answering the question may or may not include consideration of whether or not the litigant has done everything possible to serve within time, depending on the facts of the case. Once the discretion (or duty) arises, it must then be exercised to the minimum extent necessary to secure compliance with Article 6 rights.
55. There are several examples of the approach laid down in *Adesina* being deployed on the facts of individual cases: *Pinto v Nursing and Midwifery Council* [2014] EWHC 403 (Admin) (some ill health and stress and attending court office with insufficient funds to pay the court fee); *Nursing and Midwifery Council v Daniels* [2015] EWCA Civ 225 (three day delay arising out of an inability to find funds to pay the court fee); *Darfoor v General Dental Council* [2016] EWHC 2715 (Admin) (one working day late in filing, having attended on the final day of the time limit without correct documentation); *Gupta* (almost a week’s delay in circumstances where a litigant in person attempted to file notice of appeal on the final day of the appeal period by email when filing was required by post or in person). In none of these cases was it held that the high threshold triggering the jurisdiction had been met. However, ultimately, each case will turn on its own facts and the assistance to be drawn from the outcomes on the facts of other cases may be limited.

### **Requirement for an address for service in the UK**

56. CPR Part 6.23 provides (under the heading “Address for service to be given after proceedings are started”):

“(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode unless the court orders otherwise....

(2) Except where any other rule or practice direction makes different provision, a party’s address for service must be –

(a) the business address within the United Kingdom of a solicitor acting for the party to be served;...

(c) where there is no solicitor acting for the party –

(i) an address within the United Kingdom at which the party resides or carries on business;...

(3) Where none of sub-paragraphs 2(a) or (c) applies, the party must give an address for service within the United Kingdom...

(8) This rule does not apply where an order made by the court under rule 6.27 (service by an alternative method or at an alternative place) specifies where a document may be served..."

57. Where a litigant in person does not have a residential or business address in the UK for the purpose of CPR 6.23(2)(c) and cannot give an address for service within the UK, their remedy is thus to file (in this case an appeal notice) accompanied by an application for leave to provide an address for service that is outside the jurisdiction.

### Discussion and analysis

#### Ground 1: the status of Gibraltar

58. The Appellant seeks to argue that Gibraltar is considered to be part of the UK for the purpose of CPR Part 6.23. However, there is nothing to indicate that the definition of the "United Kingdom" in the CPR is intended to, or does, cover Gibraltar. On the contrary, CPR Part 6 section IV (service out of the jurisdiction) expressly identifies Gibraltar as a British Overseas Territory: see CPD 6B at para. 5.2 and Schedule 6 of the British Nationality Act 1981. S. 50 of the British Nationality Act 1981 defines the UK as "Great Britain, Northern Ireland and the Islands, taken together". Likewise, schedule 1 of the Interpretation Act 1978 defines the UK as "Great Britain and Northern Ireland". None of the matters relied upon by the Appellant, including the repealed European Communities Act 1972 or the Constitution of Gibraltar 2006, affects this conclusion.
59. Thus, the Appellant failed to file a valid appeal notice within the statutory 28 day period under Article 29(10).

#### Ground 2: discretion to extend time

60. As set out above, whether or not to extend time was not a question of general discretion for the Judge. The question is whether the Judge was wrong to conclude that the circumstances were not exceptional in the sense that the enforcement of an absolute 28 day time limit would impair the very essence of the Appellant's statutory right of appeal.
61. It is in my judgment clear that the Judge was right to conclude that such exceptional circumstances did not exist.

62. First, it was open to the Appellant to file an appeal notice whilst awaiting the outcome of his insurers' decision on funding. Instead, he appears to have waited almost two weeks – half of the full period of time for appeal - before attempting to file.
63. Secondly, on 26 January 2021 he was informed by the ACO in writing that his options were to provide a consent order or to apply “to be allowed to apply out of jurisdiction”.
64. Between 26 January 2021 and expiry of the time for filing, the Appellant was therefore aware of the reason why his notice of appeal had been rejected and was aware of (or had been told) what he needed to do: either to provide a UK address, a consent order agreeing that he could use an address in Gibraltar, or, independently, to make an application to the court to use an address in Gibraltar.
65. Thus, unlike a litigant who is in a coma throughout the relevant period, or a litigant who never receives the decision to be impugned within that period, the Appellant had a meaningful opportunity to file an appeal notice within time. None of the matters relied on by the Appellant, such as difficulties in finding legal representation, funding, or postal delays, alters this fact. This was not a case of “blameless ignorance”, as contemplated in *Adesina* (at [14]). Equally, as the Judge correctly analysed, the 5 March email could not create a jurisdiction that did not otherwise exist (and in any event it post-dated the expiry of the relevant time limit).
66. I would add that, even if there had been a discretion (or duty) to extend time in principle, by reading down Article 29(10) of the HPO, it is not by any means clear that there would be a proper basis for extending time up to 7 April 2021 (as would be necessary in order for the appeal notice to survive). As set out above, any extension must be limited to the minimum extent necessary to secure compliance with Article 6. 7 April was over two months after time for appealing had lapsed. It took the Appellant a month from the 5 March email to file validly. Whilst the Appellant stated that he had filed an appeal notice again on 7 March 2021, it is clear from his email on 23 March 2021 that he had not done so effectively. In that email he stated that he had been advised that he had to file a separate application to address his residence outside the UK and that he had not yet managed to effect payment for issue. So the further delay between 5/6 March and 7 April 2021 cannot be explained away entirely by reference to (what are in any event unparticularised) postal delays.

### **Conclusion**

67. For these reasons, I do not consider that the Judge adopted too strict an approach on the facts of this case. This is not a case where a refusal to extend time impaired the very essence of the Appellant's statutory right of appeal.
68. I would therefore dismiss the appeal.

### **Lord Justice Baker :**

69. I agree.

### **Lord Justice Moylan :**

70. I also agree.