



UNAPPROVED

THE COURT OF APPEAL

Appeal Number: 2023/60

Judicial Review: 2022 No. 252 (JR)

Neutral Citation Number [2023] IECA 252

**Costello J.
Noonan J.
Faherty J.**

BETWEEN/

JOHN CONNOLLY

**APPLICANT/
APPELLANT**

- AND -

LEGAL SERVICES REGULATORY AUTHORITY

RESPONDENT

JUDGMENT of Ms. Justice Faherty delivered on the 19th day of October 2023

1. This is Mr. Connolly’s (hereinafter “the applicant”) appeal against the Order of High Court (Meenan J.) of 13 February 2023 refusing him leave to apply for judicial review. The applicant was seeking leave to judicially review two determinations of the Legal Services Regulatory Authority (“LSRA”).

2. As this is an appeal of an *ex parte* matter, the within appeal hearing proceeded before this Court on 24 July 2023 on the basis of the applicant seeking to persuade the Court that his grounds met the requisite test for leave for judicial review to be granted. The Court was not persuaded that the requisite threshold had been met and on 24 July the Court indicated that it was refusing the leave application for the reasons it set out on the day. This judgment now sets out the background to the application and the reasons for refusing leave as communicated to the applicant on 24 July 2023.

Background

3. In September 2020, the applicant brought a complaint against a named solicitor (hereinafter “the Legal Practitioner”) in respect of the latter’s handling of the administration of the estate of the applicant’s late mother who died on 1 June 2019 testate. The executors appointed under her Will were the applicant and another family member (hereinafter “the co-executor”)

4. The applicant’s “Overview of Complaint” as set out in his letter of 2 September 2020 referred to inadequate service, excessive costs and allegations of misconduct on the part of the Legal Practitioner.

5. Complaints against legal practitioners are dealt with under Part VI of the Legal Services Regulation Act 2015 (“the 2015 Act”). There are effectively three categories of complaints. Section 51(1)(a) provides for the making of complaints to the Authority by the client of a legal practitioner, where the client considers that “*the legal services provided to the client by the legal practitioner were or are of an inadequate standard*”. Section 51(1)(b) provides for the making of complaints where the client considers that “*an amount of costs sought by the legal practitioner in respect of legal services provided to the client by the legal practitioner was or is excessive*”.

6. The third category of complaint is one made pursuant to s.51(2), which permits any person to make a complaint to the Authority in respect of a legal practitioner where the person “*considers that an act or omission of the legal practitioner constitutes misconduct*”.

The term “misconduct” is defined by s.50 of the 2015 Act.

7. The applicant wrote again to the LSRA on 22 September 2020. The “Schedule of Complaints” attached to this letter detailed some 44 matters in respect of which the applicant complains against the Legal Practitioner.

8. The letter of 22 September 2020 claimed that because of the Legal Practitioner’s alleged mismanagement and misconduct, the administration of the applicant’s late mother’s estate, begun in June 2019, had failed to progress. The applicant also alleged that unknown legal costs had accrued, which he estimated would be approximately between €45,000 - €50,000. He also alleged that an “incomplete/inaccurate/misleading CA24” had been sworn by one executor, no grant of probate had been extracted and that the beneficiaries of the estate had not received their inheritances. He estimated the material lost income to the estate/beneficiaries at €40,000 and continuing and accruing costs at €10,000 to date. His estimate for the total loss to the estate/beneficiaries as of 31 August 2020 was €100,000.

9. The applicant’s proposed solutions were that the Legal Practitioner would be immediately removed from the administration of the estate pending the outcome of an investigation by the LSRA and the Law Society, that the Legal Practitioner would hold the Will until the executors were able to progress matters, with all outstanding and unresolved queries to be answered and addressed satisfactorily by all parties to the administration of the estate, that the original Will would then be transferred to a party agreed by the executors and that to resolve outstanding queries and progress the administration of the

estate, the executors would seek independent representation to administer the estate and be responsible for their own costs.

10. As an appropriate sanction for the Legal Practitioner, the applicant recommended that the solicitors firm in question would remove themselves from the administration of the estate, provide a full written apology to the executors and beneficiaries, cancel all fees or charge all fees to the one executor the Legal Practitioner had acted for, that the LSRA and the Law Society conduct a thorough investigation the results of which would be publicised and the Legal Practitioner to compensate the applicant at a rate of €300 per hour charged to the estate account and that he be compensated in the sum of €7,000 for the actions and omissions which had necessitated him engaging another firm of solicitors.

11. On 9 October 2020, in accordance with s.50(2) of the 2015 Act, the LSRA wrote to the Legal Practitioner advising that it had received a complaint from the applicant and requesting that the Legal Practitioner respond with 21 days.

12. The Legal Practitioner responded by letter dated 20 October 2020. Therein, he referred to the applicant's failure to mention in his complaint to the LSRA that he was a co-executor to the estate of his late father who died on 24 May 2018, testate. The Legal Practitioner stated that despite having been requested (at a time when the applicant's late mother was still alive) to attend the solicitors' office to complete the necessary documentation to extract a Grant of Probate to his late father's estate, the applicant had failed to do so. The Legal Practitioner advised that the applicant's mother was the sole beneficiary of her late husband's (the applicant's father) estate.

13. The Legal Practitioner stated that there were a number of beneficiaries to the estate of the applicant's mother, including certain beneficiaries who were the beneficiaries under her Will of a [named] property, and that one of those beneficiaries had written to the Legal Practitioner requesting that the executors of the estate administer the estate expeditiously.

The Legal Practitioner stated that to facilitate that request, the applicant had been requested by an estate agent to complete a statutory PRSA form so that the property in question could be marketed for sale, but that the applicant had not done so.

14. The Legal Practitioner goes on to state that the issue was that the applicant had not completed the requisite documentation in either estate to extract a grant of probate, in circumstances where his co-executor had completed such documentation. It was said that the applicant's failure to do so meant that the estates could not be administered, and the beneficiaries were being prejudiced accordingly. The writer referred to the applicant having been advised on many occasions that the solution was for him to complete the necessary documentation to extract the grants of probate and that insofar as any dispute arose between the applicant and the co-executor, that could be dealt with by the bequests to them not being administered to them until any such dispute had been dealt with.

Alternatively, the applicant could renounce his obligations as an executor and permit the co-executor to extract grants of probate in both estates and administer the estates in accordance with the Wills, but with no distribution to either the applicant or the co-executor until all matters between them have been dealt with.

15. The letter also referred to the applicant having sought independent legal advice, as set out in his complaint. The Legal Practitioner's understanding was that the legal firm the applicant had retained no longer acted for him. It would appear the applicant had retained other solicitors at an earlier point.

16. In his letter of 13 November 2020 to the LSRA addressing the Legal Practitioner's response, the applicant alleged that the Legal Practitioner had failed to address complaints which, the applicant stated, was the very trait on the part of the Legal Practitioner in respect of which the applicant had made complaint to the LSRA.

17. He stated that:

- He never instructed the Legal Practitioner in the administration of his late father's estate.
- He never received a request from his mother to attend at the Legal Practitioner's offices.
- He never received a request to attend at the Legal Practitioner's office to complete a grant of probate in respect of the estate of his late father.

18. The applicant stated that he had been advised by the solicitor he had retained not to sign the CA24 drafted by the Legal Practitioner. He further stated that he had on many occasions proposed a solution to achieve the "honest, transparent and timely" administration of the estates.

19. On 1 December 2020, the applicant wrote to the LSRA stating that the Legal Practitioner continued to send him what he described as misleading, inappropriate and unprofessional e-mails alleging that he had not provided the Legal Practitioner with information, which, the applicant said, was not the case and which had been confirmed to the Legal Practitioner by the applicant's solicitors. He described the Legal Practitioner's "incessant and needless" repetition as "harassment" and he requested that the LSRA add this complaint to his original list of complaints for investigation.

20. On 9 December 2020, the Legal Practitioner wrote to Mr. David Smyth, Complaints Resolution Officer with the LSRA, replying to the applicant's letter of 13 November 2020. Insofar as the applicant maintained that he never instructed the Legal Practitioner in the administration of the estate of his late father, the Legal Practitioner explained that the instructions had initially been received from the applicant's mother who was the sole beneficiary of her husband's estate. Insofar as the applicant had stated that he never received a request from his mother to attend the Legal Practitioner's offices to sign necessary documentation pertaining to his late father's estate, the Legal Practitioner

referred to an e-mail which, he said, evidenced communications between the family members in this regard. The Legal Practitioner also referred to e-mails which he said evidenced the request made to the applicant to attend at his offices.

21. The Legal Practitioner observed that the applicant had not set out why he had been advised not to sign the two CA24 Forms.

22. The Legal Practitioner referred to requests made to the applicant to act in accordance with the wishes of his late parents. This would involve selling certain properties, gathering in bank accounts and the proceeds of pension policies and the discharge of funeral and testamentary expenses. He repeated his contention that insofar as there were issues between the applicant and the co-executor, it had been suggested to the applicant that distribution to him and the co-executor could be delayed until such issues were resolved, but that this should not mean that other beneficiaries could not receive their testamentary bequests.

23. Insofar as issues arose in relation to claimed advancements to the co-executor, the Legal Practitioner stated that such issue fell to be considered after the extraction of the grants of probate and that in any event, the co-executor had sworn a CA24 to the effect that the co-executor had not received any gifts from either parent during their lifetimes which exceeded the small gifts allowance.

24. On 5 January 2021, the applicant responded to the Legal Practitioner's letter taking issue with its contents and, again, maintaining that the Legal Practitioner had not responded to his Schedule of Complaints as attached to his 22 September 2020 letter.

25. In correspondence dated 7 January 2021 from the Legal Practitioner to the applicant and his co-executor, the Legal Practitioner referred to having prepared the necessary CA24 affidavits in the estates of their deceased parents but that matters had not come to fruition. He proposed mediation as between the executors.

26. In a letter to the LSRA on 14 January 2021, the applicant repeated his assertion that the Legal Practitioner had failed to address his specific complaints and complained about the fact that the Legal Practitioner had corresponded with him directly including about a proposal that a mediator would be appointed in respect of the issues between him and the co-executor in circumstances where, the applicant said, he himself had proposed mediation on multiple occasions.

27. As of February 2021, the Legal Practitioner's position (in his letter to the LSRA) remained that there was no excuse for the estate of the applicant's late father not to be administered and, as regards the estate of his mother, that the applicant, in correspondence extending to approximately 44 pages, had introduced new matters to the LSRA concerning alleged advancements and had raised issues about the preparation of the Wills of his deceased parents, matters, the Legal Practitioner said, which were for the High Court. He referred again to the applicant's indication that he would not cooperate to enable the extractions of grants of probate in either estate despite the options that had previously been given to him.

28. In a letter of 21 February 2021 to the LSRA, the applicant noted that almost five months had elapsed since his complaint was lodged and that the Legal Practitioner had failed to acknowledge or address those complaints. On 7 March 2021, he complained to the LSRA that it was unacceptable that the Legal Practitioner had not responded to his complaints (as he saw it) and he requested the LSRA to furnish him with a progress report as regards the Legal Practitioner's response to his complaints.

29. On 12 March 2021, the Legal Practitioner apprised the LSRA of the applicant's alleged non-cooperation in relation to the estates of his deceased parents.

30. On 23 March 2021, the applicant wrote to the LSRA enquiring whether it was in a position to make a determination on his complaints. On 24 March 2021, he wrote advising

that he regarded the Legal Practitioner's communications as harassment. He wrote again on 31 March 2021 stating that the Legal Practitioner had failed to co-operate with the LSRA's complaint process, and that this non-cooperation was increasing the already significant losses to the estates and beneficiaries. He reiterated that two independent and specialist solicitors' firms had advised him that the Legal Practitioner should not act for both executors and that he, in his capacity as a co-executor, should not act on the advice of the Legal Practitioner. The LSRA was requested to confirm what actions it had taken since September 2020, beyond acknowledging the applicant's communications and forwarding his e-mails to the Legal Practitioner and *vice versa*. It was also asked whether the Legal Practitioner had co-operated with the complaints process in a meaningful and solutions-oriented way and to confirm the precise stage of the process and whether the applicant's complaint was admissible and, if not, why not.

31. On 12 April 2021, the applicant wrote to the LSRA advising of his intention to lodge a formal complaint with the Gardaí regarding the Legal Practitioner's conduct and he queried whether such complaint would interfere with the complaint he had lodged with the LSRA in September 2020.

32. On 14 April 2021, he advised the LSRA that the Legal Practitioner had obtained an Opinion of a named senior counsel without the authority of either executor. The following day, he communicated with the LSRA quoting from that Opinion, including counsel's advice to the Legal Practitioner to "strongly consider stepping down..." and that each executor should instruct their own solicitors to address outstanding issues between them.

33. On 26 April 2021, the Legal Practitioner wrote to the LSRA advising that the senior counsel had been briefed by him in relation to the impasse between the applicant and his co-executor and that both have been furnished with counsel's Opinion and that their instructions had been requested. The Legal Practitioner confirmed that he had received

instructions from the co-executor in relation to an application to the High Court. He further stated that his status in the matter was now “a matter for the High Court to consider” having regard to the Opinion furnished by counsel.

34. In respect of the applicant’s allegations of harassment, the Legal Practitioner stated that communications from him to the applicant had arisen only in response to the latter’s own e-mails.

35. On 8 May 2021, the applicant wrote to Mr. Smyth repeating his assertion that the Legal Practitioner had failed to engage with the complaints process in any meaningful way and alleging that on a date unknown the Legal Practitioner had engaged the services of counsel without authorisation from the co-executors. He stated that the Legal Practitioner had then rejected the advices that counsel had given to recuse himself from the administration and had instead chosen to embark on an application to the High Court for directions.

36. On 26 May 2021, the Legal Practitioner wrote to the LSRA advising that the co-executor had fully co-operated with him in his request for information in relation to both estates and that the applicant had not co-operated. With reference to the assets of the estates, the Legal Practitioner stated that whilst the applicant had had the benefit of a [named] property which had been bequeathed to him by his late mother, he had interfered with the use and enjoyment of a [named] property which had been bequeathed to the co-executor. It was also stated that the applicant had not executed the necessary documentation to allow for the property which had been bequeathed certain beneficiaries to be sold. The Legal Practitioner again stated that he was left with no option but to apply to the High Court for directions.

37. The Legal Practitioner addressed the complaint that he had not provided the applicant with the documentation sent to counsel for the purposes of the Opinion by stating

that an exact copy of that documentation would be furnished to the applicant once he agreed to discharge the scrivenerly fee, as previously advised in correspondence.

38. On 23 June 2021, Miss Martina Price of the LSRA wrote to the applicant advising that a preliminary review had been conducted which determined his complaint admissible. The rationale for that determination was in the following terms:

“The Complainant has alleged that the Legal Practitioner has engaged in inadequate service and excessive fees in the provision of Probate services as set out in his complaint and submissions. This has been strenuously denied by the Legal Practitioner. As there is a conflict of evidence between the complainant and the Legal Practitioner as to the Estate and the cause of these delays, I find the Complainant has raised a prima facie case under S. 51(1)(a) of the Act of 2015, that of inadequate service and the matter be referred for Informal Resolution.”

39. On 27 July 2021, the applicant wrote to the LSRA, advising *inter alia* that the Legal Practitioner would not step down and was not communicating or co-operating with either of the executors in any meaningful way. Nor, he said, would the Legal Practitioner release the administration of the estate to the applicant, all of which, it was said, continued to cause considerable losses to the estates and the beneficiaries. He appealed to the LSRA and the Law Society to direct and/or encourage the Legal Practitioner to put the estate and the beneficiaries before the Legal Practitioner’s “personal and outrageous conduct”.

40. On 2 August 2021, the applicant sought clarification from the LSRA as to whether his misconduct complaint had been deemed admissible. He stated that once that was clarified he would respond to the LSRA’s letter of 27 July 2021 inviting the parties to informal resolution.

41. On 6 August 2021, the applicant was advised by Mr. Smyth of the LSRA that his complaint had been deemed admissible at the preliminary stage as a complaint of inadequate

service and excessive costs. He was also advised that if the proposed informal resolution process was unsuccessful, he could raise all points he had made before the Complaints Committee. The applicant replied on 7 August 2021 stating that before he could accept the invitation to mediate, there was a need to process the Legal Practitioner's conduct and lack of co-operation during the complaints process and he repeated his assertion that the Legal Practitioner had failed to address his 40 plus complaints. He requested that the LSRA confirm that that was the case or provide a workable alternative.

42. The LSRA replied on 9 August 2021 advising, *inter alia*, that as matters were at the pre-screening stage it could not compel the Legal Practitioner to do anything or make any submission or observation or address each point made by a complainant. The letter pointed out that the complaint was admitted as a complaint of inadequate service and excessive costs. Whilst the LSRA could make a complaint admissible under three headings, excessive costs, inadequate service or misconduct, it was solely for the Complaints Resolution Officer to determine the category of allegation the matter fell into. The writer went on to advise that the LSRA were constrained from engaging with the applicant's argument to the extent he sought because the complaint might, if found proven by the Complaints Committee, be returned to the Complaints Resolution Officer to decide on the determination, which might involve a legally binding direction to the Legal Practitioner. Accordingly, given the need for impartiality in the decision-making process, the matter could not be commented on further at this stage.

43. In his email of 9 August 2021, the applicant described the LSRA's response as failing to address in any cogent or direct or meaningful answers to the majority of his very clearly laid out questions and/concerns. He took issue with what he described as Mr. Smyth's unilateral decision not to deem his misconduct complaint admissible. His email

repeated many of the issues he had raised in prior correspondence. The email also requested that the LSRA move immediately to a formal resolution of his complaints.

44. The LSRA did so and by letter of 12 August 2021 Ms. Price of the LSRA invited the applicant, if he was not satisfied that the LSRA had all the necessary information, within 21 days to send the LSRA a statement setting out his position. On the same date, the applicant advised the LSRA that he was satisfied that he had provided the LSRA with all the information they required.

45. The Legal Practitioner provided his statement on 26 August 2021. Therein, he reiterated his claim of the applicant's non-cooperation with the administration of the estates of his late parents despite his having been invited six times to attend the Legal Practitioner's office. Insofar as the applicant complained that there were omissions and inaccuracies in the CA24 Forms which had been prepared, he stated that the applicant had been requested to set out details of such omissions and inaccuracies, but he had not done so. In this regard, the Legal Practitioner pointed to approximately 325 e-mails to and from the applicant from October 2018 to 18 August 2021. He stated that whilst the applicant had raised queries regarding certain expenditure, that was not relevant to the extraction of a grant of probate. The Legal Practitioner stated that the co-executor had confirmed that no gifts had been received from the parents other than the small gifts allowance exception. He referred to the applicant's refusal to process the sale of the property bequeathed to certain beneficiaries, which he described as a breach of the applicant's fiduciary duty as a trustee.

46. The Legal Practitioner's belief was that the executors were not on good terms evidenced, he said, by the fact that the applicant had changed the locks on the premises that had been bequeathed to him under his mother's Will and would not permit entry to his co-executor.

47. The Legal Practitioner stated that the applicant had been furnished with a draft affidavit in relation to the execution of the CA24 Forms for his approval, for him to swear in relation to his knowledge as to what his co-executor had received from the deceased in during their lifetimes.

48. The Legal Practitioner's statement also referred to the proposal which had been made to allow grants of probate to be extracted with the estates thereafter to be partly administered by (i) selling certain property, (ii) selling the property bequeathed to certain beneficiaries and distributing those proceeds to those beneficiaries, (iii) gathering in the estates but not distributing funds other than the discharge funeral expenses and testamentary dispositions to the residuary beneficiaries.

49. The Legal Practitioner next addressed the Opinion received from senior counsel and which had been furnished to the executors. He stated that the co-executor had instructed a [named] firm of solicitors who requested the original Wills. The Legal Practitioner had sought instructions from the applicant to enable him to deliver the original Wills to those solicitors. The applicant had declined that request and had directed the Legal Practitioner to send the Wills to solicitors the applicant had instructed. The Legal Practitioner had contacted the Probate Office in relation to the matter and was instructed to send the Wills by registered post to the Probate Officer. He stated that he was very reluctant to do so but that on 16 August 2021 he was served with a subpoena to deliver the original Wills to the Probate Office which he did personally on the same day.

50. The Legal Practitioner repeated his explanation (previously set out above) as to why he had not provided the applicant with all the correspondence that had passed between him and the senior counsel who prepared the Opinion.

51. The Legal Practitioner addressed the applicant's complaint of excessive charging by stating that e-mails of the charges had been furnished to both executors, and that no fees, outlays or VAT had been received by the Legal Practitioner from the estates.

52. The complaint of inadequate service was addressed by reference to the substantial correspondence (in excess of 325 e-mails) that had passed between the Legal Practitioner and the applicant, including queries which the Legal Practitioner had addressed in January 2020 while outside of the jurisdiction. He stated that "at all stages the Complainant was communicated with and requested to co-operate in the extraction of the Grants of Probates. He was further requested to attend the office for the completion of the necessary documentation to extract a Grant of Probate to both estates."

53. In respect of the allegation of misconduct, the Legal Practitioner stated that he had conducted himself in accordance with his professional duty. He refuted the allegation and that he facilitated perjury. His requests to the applicant to withdraw allegations of professional impropriety on his part had fallen on deaf ears.

54. The Legal Practitioner went on to state that his instructions ceased as of 16 August 2021 when he was served with a subpoena to deliver the original Wills to the Probate Office.

The LSRA Determination

55. The Determination (made on 3 November 2021) pursuant to s.60(6) and s.61(6) of the 2015 Act issued on 4 November 2023. The decision-maker, Mr. Smyth, did not uphold the applicant's complaints. He determined that the services were of an adequate standard and that the costs were not excessive.

56. The Determination commenced by reference to the appropriately 40-45 matters of complaint contained in the applicant's Schedule, which were categorised broadly in the

Determination as complaints of inadequate service and excessive costs against the Legal Practitioner, summarised as follows:

- The Legal Practitioner failed to communicate or answer questions.
- The CA24 form was misleading.
- There were mix-ups on the assets of the estates.
- There was failure to publish attendance notes.
- The Legal Practitioner paid three party invoices but failed to pay the complainant's expenses.
- The Legal Practitioner repeatedly failed to act on or over-ruled the complainant's instructions and facilitated one executor over another.
- There was a conflict of interest between the executors and as such the Legal Practitioner could not act for both executors.
- The Legal Practitioner failed to issue a Section 68/150 letter.
- The hourly rate of €367 was excessive.
- The Legal Practitioner failed to bring s.63 advancements to the complainant's attention.
- There may have been undeclared income from assets.
- The Legal Practitioner did not follow the complainant's instructions to redraft the Will (post mortem).
- The Will did not to make sufficient provision for a household pet.
- The Legal Practitioner did not acknowledge complaints against the estate.
- The Legal Practitioner threatened legal proceedings,
- The Legal practitioner sought opinion of counsel on the of progression of the grant of probate.

57. The Determination noted that the applicant sought the removal of the Legal Practitioner from the estate, to be provided with the full copy of the file, the cancellation of all legal fees, admonishment and publication of the outcome and compensation of €300 per hour on a one-for-one basis with the hours the Legal Practitioner had spent on the file.

58. It went on to note that the LSRA had invited the parties to make efforts to resolve the matter and that the parties had been invited to submit a statement pursuant to s.60(5) and 61(5) of the 2015 Act.

59. The decision maker then stated:

“In making this determination I have considered the statements furnished to the LSRA. I do not consider that the legal services provided by the Legal Practitioner were of an inadequate standard because the Legal Practitioner in his detailed submissions of the 3rd of February 2021, 12th of March 2021, 26th of May 2021 and in his statement of 26 August 2021 has addressed and/or rebutted the assertions of the complainant and has set out the following:

1. The Legal Practitioner has furnished a s.68 letter on the 27/8/2019 which was issued as soon as reasonably practicable which is allowed for in s.68(1) of the Solicitors Amendment Act 1994.
2. The Legal Practitioner has alleged he has received in excess of 325 e-mails from the complainant and has endeavoured to answer all reasonable queries and the progress of the administration of the estate, the submissions suggest that all reasonable communications have been dealt with.
3. Submissions from the Legal Practitioner demonstrate that he has kept the Complainant informed of the progress of administration.
4. The Legal Practitioner has furnished an explanation showing the work done in the administration of the estate which include writing to all financial

institutions in an effort to identify such accounts as may be in being, ascertain the financial liabilities of the estates, the gathering of the assets and the liabilities of the respective estates and has engaged with [the applicant's late father's] accountant regarding home and overseas assets. Such works appear reasonable in all the circumstances.

5. The Legal Practitioner has also set out that he attempted to place on the market the property...which is to be distributed amongst [certain beneficiaries].
6. The Legal Practitioner has also set out that he has advanced reasonable solutions to progress the estate to grant of probate, including an offer to go to mediation in an attempt to advance the estates.
7. The rate per hour would be in keeping with the average rate for services of such complexity.”

60. The decision maker found that no evidence been submitted to support the complaints that the CA24 Form was misleading and could not be signed or that there might be missing income from one or more properties or that an income stream was ever generated by another named property.

61. Insofar as the applicant had asserted that the issue of s.63 advancement was not probed, the decision maker noted that the Legal Practitioner had said that such enquiries were in fact made and that he was specifically instructed by the other executor that no such advancements were identified, and no such calculations needed to be factored into the probate. The decision maker found that the applicant had not put forward evidence that any s.63 advancements were made and stated that, in any event, “such calculation of a s.63 advancement is a matter for the distribution of assets post the granting of Probate and should not of itself lead to a delay in Probate”.

62. Insofar as the applicant made allegations of conflict of interest, the decision maker found that those allegations not supported by the evidence submitted and found that the issue raised regarding potential alteration of the Will “would not be possible after the death of a testator”.

63. In its covering letter of 4 November 2021 to the applicant, the LSRA advised that he could seek a review of the Determination within 30 days.

64. The applicant duly sought a review by e-mail dated 4 November 2021. His e-mail referred to the LSRA having failed to take account of his “Schedule of Complaints, Legalisation, Law Society Codes of Conduct, Administration of Estates Guidelines, evidence submitted...”. He sought copies of the “Detailed Submissions” referred to in the “Rationale of Determination” because he, the applicant, did not receive any submission from the Legal Practitioner that addressed any of the complaints he raised. He described the LSRA’s covering letter and rationale as “inaccurate, incomplete and misleading”.

65. On 8 November 2021, the complaint was assigned to the Review Committee, as confirmed to the applicant on 15 November 2021. A division of the Review Committee met on 22 February 2022.

66. On 8 March 2022, the Review Committee wrote to the Legal Practitioner advising, *inter alia*, that the Review Committee had met on 25 February 2022. The letter went on to say that the Review Committee fully considered all of the submissions made by the parties and the documentation provided by the Authority (LSRA). It stated that the Review Committee had considered “if the Determination made by Mr. David Smyth on behalf of the Authority, dated 03 November 2021, was incorrect or unjust.” The Review Committee’s determination is thereafter set out as follows:

“Rationale of Determination pursuant to Section 60(6) and/or Section 61(6) of the Act.:

The Review Committee had a full and frank discussion about this case. The Committee noted the considerable amount of inter-parties correspondence on file and the complex sequence of events contained therein. The Committee, having read the correspondence on file, and having noted the full details of the Complaint, considered if the Determination, dated **03 November 2021**, made on behalf of the Authority, was incorrect or unjust.

The Review Committee, having considered all of the documentation and the statements submitted to it, and having given full consideration as to whether the Determination was incorrect or unjust, determined the review by confirming the Determination of the Authority, pursuant to Section 62(5)(a) of the Legal Services Regulation Act 2015.

The Review Committee instructed the Committee Secretariat to notify both parties of the outcome of the Committee's Review." (Emphasis in original)

67. On 8 March 2022, the Review Committee also wrote to the applicant advising him that they had met on 25 February 2022 and attaching a copy of the correspondence which issued to the Legal Practitioner on 8 March 2022. The applicant was asked to note s.63(1) of the 2015 Act which provides:

“Where a Review Committee determines a review under section 62, the client or the legal practitioner concerned may, within a period of 21 days of the notification of such determination or direction to him or her, apply to the High Court for an Order directing the Review Committee to rescind or to vary such determination and on hearing such application the Court may make such Order as it thinks fit.”

68. The applicant made an application *ex parte* to the High Court for leave to apply for judicial review seeking relief by way of *certiorari*. The application was grounded on his affidavit sworn 28 March 2022 and a statement of grounds. The application was adjourned

to 13 February 2023 during which time the applicant filed a Supplemental Summary Submission in the High Court dated 13 November 2022.

69. In summary, the statement of grounds alleges, *inter alia*, that the LSRA:

1. Failed in their statutory functions to investigate the applicant's Schedule of 45 fully identified and fully supported complaints as submitted on 22 September 2020.
2. Failed over a period of eighteen months to employ any of the rudimentary standards or controls required to carry out a credible and legally compliant investigation service.
3. Demonstrates an acute level of bigotry and/or incompetence and/or disregard for proper procedures when they published their initial Determination and their supporting Rationale for Determination on 4 November 2021 and subsequently their Review Committee Determination on 8 March 2022 which, the applicant, alleges, was based on the Legal Practitioner's hearsay only and without regard to (i) the applicant's fully itemised 45 complaints; (ii) the evidence; (iii) relevant legislation; (iv) the requirements of the Inland Revenue affidavit; (v) the relevant legal artefacts; (vi) the advice of three legal practitioners, and (vii) the advice of a tax advisor.

It is claimed that in arriving at their Determination, the LSRA acted unlawfully and without regard to do due diligence, fair procedures and the public interest.

70. Notably, the statement of grounds states that the application for leave to seek judicial review is grounded in s.63(1) of the 2015 Act and, under "Relief Sought: Order of Certiorari", the applicant seeks an Order pursuant to s.63 directing the LSRA to rescind in full, their determinations and rationales dated 4 November 2021 and 8 March 2022 "because these Determinations and Rationales are not based in fact or law on any legal

artefact, and because no proper standards or controls existed to legitimise the LSRA Determinations or Rationales.” He further seeks an order directing a qualified and independent and impartial body to conduct a credible and legal oversight of the investigation. Damages are also sought.

71. I would observe at this juncture that s.63(1) of the 2015 Act provides for an application by the client or the legal practitioner to vary or rescind the determination of the review committee. Pursuant to O.84B/O.84C of the RSC (which governs procedures in statutory applications), such applications are to be initiated by originating notice of motion. Moreover, the statutory remedy is effectively an *appeal* against the determination of the review committee. Thus, in so far as the applicant seeks to import the statutory appeal process into his application for leave for judicial review, he is misguided in this endeavour. I will however return to the statutory remedy in due course.

72. I turn now to the basis upon which the applicant says leave should be granted to him to seek judicial review by way of an order of *certiorari* of the two Determinations in issue here.

73. The applicant’s grounding affidavit sets out in exhaustive detail his interaction with the Legal Practitioner between June 2018 and September 2020. The balance of his affidavit addresses the claims he makes in relation to the LSRA and the Determinations in issue here. He avers, *inter alia*, that the LSRA failed to request the Legal Practitioner to address his 45 individually numbered complaints and failed to base their investigation on either fact or law or on the Law Society Codes of Conduct. He further avers that “ironically”, not only did the LSRA fail to address his complaints against the Legal Practitioner, but it also never addressed his complaints regarding the LSRA’s “plainly unprofessional and clearly bigoted conduct”.

74. He avers that key to his application for leave for judicial review is that the LSRA stated in its Rationale that its findings were based on the Legal Practitioner's statements which, the applicant says, confirms that the LSRA's findings failed to consider the facts, the law, the evidence or relevant Law Society guidelines or codes, and further failed to take account of the views expressed by three legal professionals and a tax advisor. The applicant says that the Determination favouring the Legal Practitioner was based on merely hearsay without the Legal Practitioner having addressed any of the applicant's individually numbered complaints. He avers that the Legal Practitioner never submitted any evidence to support his "mere unconfirmed reports". He says that it must follow that the LSRA Determination, and the Determination of the Review Committee were based on hearsay and not on fact or law.

75. The *ex parte* application came on for hearing before Meenan J. on 13 February 2023. In an *ex tempore* judgment delivered on that date, Meenan J. refused leave. In the course of his judgment, the Judge noted the applicant's further submissions of 15 November 2022 wherein it was submitted, *inter alia*, as follows:

"3. The Legal Practitioner...is unquestionably responsible for multiple and intentional and sustained episodes of unlawful and gross professional misconduct pursuant to the Solicitors Act 1954...LSRA Act 2015...the Succession Act 1965...and the Non Fatal Offences Against the Person Act 1997...

4. The only conceivable outcome of any credible investigation employing lawful and fair procedures could only amount to a finding of gross professional misconduct on the part of the [Legal Practitioner].

5. The content of the Authority's *Determination* published on 4/11/21 and their subsequent *Review Committee Determination* published on 8/3/22 irrefutably

demonstrate the Authority abused their jurisdiction and employed patently unlawful and unfair procedures during their alleged complaints investigation.

...”

76. The Judge noted that as per his November 2022 submissions the applicant was requesting leave to proceed to judicial review on the basis that:

“(a) The Authority acted in violation of the Constitution of Ireland,

(b) The Authority abused their jurisdiction,

(c) The Authority employed patently unfair and clandestine procedures in what was a profoundly biased and fundamentally flawed complaints investigation process.”

He noted that the applicant described his complaints to the LSRA as based on “irrefutable facts”.

77. In the view of Meenan J., the applicant was effectively contesting findings of fact made by the LSRA. While the Judge understood that the applicant did not accept those facts, it seemed to the Judge that the LSRA were entitled to find those facts. That did not, the Judge said, mean that there was a lack of fair procedures.

78. Meenan J. went on to refer to what was set out at paras. 24 and 36 of the 15 November 2022 submissions, which the Judge considered to be the applicant’s request that the Court look at the evidence and substitute its opinion for that of the LSRA which, the Judge stated, was not the point of judicial review proceedings. For those reasons, the Judge did not see any grounds upon which he could grant the applicant leave by way of judicial review.

79. In his appeal submissions to this Court, the applicant asserts, *inter alia*, that the LSRA abused their jurisdiction and employed unfair procedures. He also asserts that the Judge mistakenly interpreted para. 36 of his 15 November 2022 submissions as a request that the High Court would consider and review the facts contained in his complaints to the

LSRA when, in fact, paras. 36 of the 15 November 2022 submissions, and indeed paras. 34 and 35 of those submissions, were based entirely on the contention that the LSRA abused their jurisdiction and employed unfair procedures.

80. The applicant also submits, effectively, that the Judge erred in not determining that the evidence in the possession of the LSRA and the Legal Practitioner “irrefutably demonstrate” that the Rationale of the Determination was inaccurate, incomplete and misleading because:

“(a) It is based entirely on the [Legal Practitioner’s] statements and ‘*observations*’ only.

(b) [The applicant’s] fact and evidence-based submissions were disregarded in their entirety by the Authority to arrive at their *Determination*.

(c) Several of the [Legal Practitioner’s] ‘*observations*’ relied on by the Authority had no relevance whatsoever to the complaints submitted.

(d) The Authority failed in their ‘*duty to protect the public interest*’ when they failed to employ any due diligence to check the truthfulness and/or accuracy and/or completeness and/or relevance of the [Legal Practitioner’s] ‘*observations*’.”

Discussion and Decision

The criteria for granting leave for judicial review

81. The criteria for granting leave are those set out by the Supreme Court in *G.v DPP* [1994] 1 IR 374. They include:

- (a) a requirement that the applicant has sufficient interest in the matter;
- (b) that the facts averred in the affidavit sworn in the application for leave would be sufficient to support a stateable ground for the form of relief sought by way of judicial review;
- (c) that on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks;

- (d) that the application is made within time; and
- (e) that the judicial review is the only effective remedy or the more effective remedy and the more appropriate remedy in the event that some alternative remedy is available.

82. Criteria (b) and (c) together are frequently and not inaccurately compressed as a single requirement for arguable grounds to be shown.

83. The court must be satisfied on the material presented by the applicant that all the criteria are satisfied in order for leave to be granted.

84. Clearly, the applicant meets criterion (a).

85. As for the “arguable grounds” threshold (criteria (b) and (c)), undeniably, it is a low threshold, but the arguable grounds threshold is nonetheless a real threshold which an applicant for leave must surmount. The question here is whether it is surmounted. I am not satisfied that it is.

86. Clearly, in determining the applicant’s complaints, the LSRA preferred the account of events furnished by the Legal Practitioner. What permeates the applicant’s grounding affidavit and submissions (both in the High Court and to this Court) is his strong disagreement with the LRSA’s findings both in its Determination of 4 November 2021 and the Determination of the Review Committee of 8 March 2022 upholding the earlier Determination. This disagreement is encapsulated in the applicant’s submissions to this Court, to which I have earlier referred. He clearly wants a different outcome for his 45 complaints.

87. To obtain leave, however, he must establish he has an arguable case that the LRSA employed unfair procedures such that the Determinations cannot be allowed to stand, or that he has an arguable case that the decisions reached by the adjudicators are vitiated by unreasonableness or irrationality in the *Keegan/O’Keefe* sense.

88. Here, the applicant certainly alleges unfair, unconstitutional and unlawful procedures on the part of the LSRA and, indeed, he takes issue with the Judge’s characterisation of para. 36 of his 15 November 2022 submissions as a request that the High Court review the facts contained in his submissions to the LSRA when what the applicant says he wanted was that the High Court would review the LSRA’s own conduct and how it conducted its procedures. He says that this is clear from paras. 34 and 35 of his November 2022 submissions where he refers to the LSRA having “abused their jurisdiction and employed unfair procedures”, which, effectively, was the applicant’s core argument before this Court.

89. Taking the applicant’s submission in this regard at its height, I turn, therefore, to the claim that the LSRA engaged in unfair procedures. In his submissions to this Court, the applicant says that the LSRA’s Rationale of Determination was based on the Legal Practitioner’s statements and “*observations*” only and that his (the applicant’s) “evidence based submissions” were disregarded. That is not the case, in my view. On its face, the 4 November 2021 Determination clearly states that both parties were invited to provide a statement pursuant to s.60(5) and s.61(5) of the 2015 Act. On 12 August 2021, after his statement was sought, the applicant effectively requested that the LSRA consider the information and material he had theretofore provided as his statement, as he was entitled to do, in my view.

90. The Legal Practitioner provided a statement to the LSRA on 26 August 2021. As of the end of August 2021, therefore, the LSRA had the statements of both parties.

91. The applicant’s complaints are summarised on the face of the 4 November 2021 Determination, as are the responses of the Legal Practitioner to those complaints. The procedure by which the LSRA procured the information (by way of statement from the relevant parties) for the purposes of arriving at a determination is clearly prescribed by the

2015 Act (s.60(5) and (6)). The fact that the LSRA did not request a word-for-word response from the Legal Practitioner to the applicant's 44 complaints does not lead to the conclusion that, arguably, the applicant has raised an arguable basis that the Determinations are vitiated by the failure of the LRSA to request a word-for-word response from the Legal Practitioner to the applicant's 44 complaints. It is apparent from the face of the 4 November 2021 Determination, and the 8 March 2022 Determination, that the substance of the applicant's complaints, and the Legal Practitioner's response thereto, were duly considered by the LSRA. I perceive no arguable basis for the applicant's complaint of procedural unfairness regarding the quality of the information upon which the LSRA based their Determinations. What the applicant seeks to do is have the LSRA accord to the information he supplied a more elevated status than that provided by the Legal Practitioner. The reality however is that both parties provided statements (as prescribed by statute) which were in due course considered and adjudicated on by the decision makers, as required by statute.

92. Notwithstanding the applicant's written and oral submissions to this Court, I am satisfied that the decision-makers were clearly acting within jurisdiction in the manner in which they determined the complaints. There is nothing to suggest, even arguably, that they exceeded their jurisdiction or that they failed to exercise their jurisdiction. In his oral submissions, the applicant sought to argue that the LSRA did not employ any procedures let alone fair procedures. That is palpably not the case, as both the correspondence and the Determinations evidence. On the face of it, the LSRA's procedures accorded with the provisions set out in the 2015 Act for the consideration of complaints.

93. Much of the applicant's oral submissions at the appeal hearing concerned his complaint that the 2015 Act is not fit for purpose. He cannot maintain that complaint in the format he has chosen. He has not sought or evinced any intention to challenge the

constitutionality of the 2015 Act by joining the State and the Attorney General as parties to his intended judicial review proceedings.

94. Turning again to the Determinations in respect of which leave is sought for judicial review; the “Rationale of Determination” in the 4 November 2021 Determination clearly sets out the reasoning employed by the decision-maker. Nothing I have heard from the applicant persuades me that, arguably, the “Rationale of Determination” is vitiated by a lack of fair procedures or irrationality such that leave should be granted. The same applies to the 8 March 2022 Determination of the Review Committee.

95. Insofar as the applicant says that the Determinations are impugned because of a failure to address his complaints of misconduct, in my view, that complaint cannot be maintained at this stage. Albeit that the applicant queried the basis upon which his complaints were admitted, notably, thereafter, he engaged with the complaints process as evidenced by his August 2021 correspondence. The manner of the applicant’s engagement clearly invited the LSRA to continue with their assessment of his complaints. Thus, insofar as the applicant now seeks leave to impugn the Determinations because they do not address his allegations of misconduct, it is too late to do so, in the absence of the applicant having sought a remedy by way of judicial review at the relevant time (which at the very latest would have been within three months of Mr. Smyth’s letter of 6 August 2021). That horse has bolted in that regard, in my view.

96. I turn now to the question whether the applicant has satisfied criterion (e) of the test in *G v. DPP*, namely that the only effective or appropriate remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review.

97. As is evident from the applicant’s submissions both to the High Court and this Court, the whole tenor of the applicant’s case is that the weight of evidence was in his favour and

not that of the Legal Practitioner and that the LSRA erred in not so finding. The issue of the weight of evidence is not a matter for the court on judicial review, rather it is a matter for the decision-maker. Thus, insofar as the applicant wishes to argue that the weight of evidence was in his favour, then the more appropriate mechanism for him to pursue was to have applied on notice to the High Court pursuant to s.63(1) of the 2015 Act and argue that the Determinations should be rescinded or varied by reason of serious and significant error or a series of such errors on the part of the LSRA. He did not do so. Rather, he has instead applied for leave to seek judicial review. Albeit, as I have said, the threshold for leave is a low one, the applicant has not surmounted that threshold.

98. For the reasons set out, I would refuse the application for leave to seek judicial review.

99. As this judgment is being delivered electronically, Costello J. and Noonan J. have indicated their agreement therewith and with the order I have proposed.