APPROVED **[2024] IEHC 711**

THE HIGH COURT
JUDICIAL REVIEW

2024 982 JR

BETWEEN

B.

APPLICANT

AND

CHIEF APPEALS OFFICER
SOCIAL WELFARE APPEALS OFFICE
MINISTER FOR SOCIAL PROTECTION

RESPONDENTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 18 December 2024

INTRODUCTION

1. This judgment is delivered in respect of an *ex parte* application for leave to apply for judicial review. The principal issue addressed in the judgment is whether an extension of time should be granted pursuant to Order 84, rule 21 of the Rules of the Superior Courts.

2. The judgment also addresses the question of whether leave to apply should be refused by reason of the fact that there is an adequate alternative remedy available to the Applicant. More specifically, it is necessary to consider whether

the statutory right to seek a "*revision*" of the impugned appeals officer's decision, pursuant to section 317 of the Social Welfare Consolidation Act 2005, represents an adequate alternative remedy.

LEGISLATIVE FRAMEWORK

3. These judicial review proceedings concern a claim for a form of social welfare benefit known as "*domiciliary care allowance*". This benefit takes the form of a monthly payment to the carer of a child with a severe disability. The eligibility criteria are prescribed under Chapter 8A of the Social Welfare Consolidation Act 2005. The principal criteria are prescribed as follows under section 186C of the Act:

   (a) the child has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and

   (b) the level of disability caused by that severe disability is such that the child is likely to require full-time care and attention for at least 12 consecutive months.

4. The Supreme Court has held, in *Little v. Chief Appeals Officer* [2023] IESC 25, that eligibility must be assessed as of the date of the making of the application for domiciliary care allowance. This is so even in the case of an appeal or a revision of an appeals officer's decision. In each instance, the index date is the date of the making of the application for domiciliary care allowance (not the later date of the appeal or revision). The Supreme Court held (at paragraph 56) that a change in circumstances must now trigger a *new* claim for benefit rather than the revision of an earlier claim.

5. The practical consequence of this is that, in cases where the child has been diagnosed with a severe disability on the basis of an assessment carried out *subsequent* to the date of the application, the claimant should submit a *fresh* application rather than seek to pursue an appeal or revision or judicial review proceedings.

6. The Social Welfare Consolidation Act 2005 provides for the preparation of a written opinion by a medical assessor appointed by the Department of Social Protection. A medical assessor is required (a) to assess all information provided to him or her in respect of an application for domiciliary care allowance, and (b) to provide an opinion as to whether the child satisfies the principal eligibility criteria. It is expressly provided that a deciding officer shall "*have regard to*" the opinion of the medical assessor.

7. The decision-making procedures are prescribed under Part 10 of the Social Welfare Consolidation Act 2005. The legislation provides for two tiers of decision-making. The first-instance decision is made by a deciding officer. Thereafter, there is a right of appeal. Appeals are generally determined by appeals officers, but there is also a formal right to refer any particular appeal decision to the Chief Appeals Officer (section 318). The legislation also provides a right of appeal on a question of law to the High Court (section 327).

8. The striking feature of the legislation is that provision is made for the "*revision*" of both the first-instance decision and the decision of the appeals officer. In effect, a claimant who is dissatisfied with the decision can request same to be revisited. This has the practical consequence that a decision by an appeals officer is not necessarily an end of the matter. As discussed below, the Court of Appeal has held that a claimant may be required to exhaust their right to seek a

revision before having recourse to the High Court. See paragraphs 38 and onwards.

9. It may be helpful to the reader to highlight two further aspects of the appeals process as follows. The Social Welfare (Appeals) Regulations 1998 (S.I. No. 108 of 1998) (as amended) make provision for certain information to be furnished to the appeals officer. This is provided for under article 10 (as substituted by the Social Welfare (Appeals) (Amendment) Regulations 2011 (S.I. No. 505 of 2011)):

> "In the case of an appeal against the decision of a deciding officer or the determination of a designated person under section 311, the Chief Appeals Officer shall cause notice of the appeal to be sent to the Minister who shall, as soon as may be, furnish to the Chief Appeals Officer—
>
> (a) a statement from the deciding officer or the designated person or on his or her behalf showing the extent to which the facts and contentions advanced by the appellant are admitted or disputed, and
>
> (b) any information, document or item in the power or control of the deciding officer or the designated person, as the case may be, that is relevant to the appeal."

10. The Regulations also make provision for the possibility of an oral hearing as follows. Article 13 provides that where the appeals officer is of the opinion that the case is of such a nature that it can properly be determined without a hearing, he or she may determine the appeal summarily. (This is subject to a proviso that the Minister can direct an oral hearing).

PROCEDURAL HISTORY

11. The Applicant submitted a claim for domiciliary care allowance in relation to her son (hereinafter "*the child*" to preserve privacy). The application form is

dated 21 March 2023. As of that date, the child had been diagnosed with autism spectrum disorder ("*ASD*").

12. The first-instance decision was made on 27 April 2023. In brief, the decision was to refuse the application for domiciliary care allowance on the grounds that it had neither been established that the child required a level of care and attention substantially in excess of that normally required for a child of the same age nor that they were likely to require full-time care and attention for at least 12 consecutive months.

13. It is relevant to note, having regard to the submissions now made, that the deciding officer indicated that he had taken into account the opinion of the Department's medical assessor. (As explained below, a copy of the medical assessor's report has since been provided to the Applicant).

14. The Applicant submitted an appeal on 12 May 2023. The Social Welfare Appeals Office subsequently notified the social welfare services office of the appeal. This triggered a potential revision of the first-instance decision of 27 April 2023. A different deciding officer issued a decision on 12 July 2023 to the effect that a revision of the decision of 27 April 2023 was not warranted. The second deciding officer confirmed that he too had had regard to the opinion of the Department's medical assessor. A copy of the opinion had been attached to the decision-letter. This opinion has not, however, been exhibited as part of these judicial review proceedings.

15. The appeals officer issued a decision on 15 January 2024 refusing the appeal. The reasons for the decision are summarised as follows:

> "In relation to the evidence I note that at the time of the appellant's application for DCA her son [name redacted] is 6 years old. I note the medical report completed at time of application certifies that he is diagnosed with autism. I note

the evidence from the appellant in her application and appeal, outlining the challenges that [the child] experiences, and the impact his condition has on the household, the details of which are outlined above. I must also consider the contents of the ability profile completed by [the child's] GP, which indicate that on a scale of normal to profoundly affected, he is certified to be severely affected in the areas of social skills, sensory issues, feeding/diet, sleeping, washing, dressing, continence and balance/coordination, and to be moderately affected in the areas of behaviour, learning, and communication.

I have noted the eloquent description by the appellant of the impact her son's condition has on him. I note the restrictions he faces in the areas of dressing, hygiene, toileting, sleep, diet, and language and communication. I have noted the difficulties he faces with the outside world and his sensory issues.

In making a decision on this appeal, I must make my decision based upon the totality of the evidence in conjunction with the legislative qualifying conditions. The appellant must be cognisant that the legislation requires the child to have a 'severe disability' in order to meet the qualifying criteria for this payment. A departmental expert group reporting on the Domiciliary Care Allowance scheme advised as follows: *All children require a certain amount of care and attention but children with severe disabilities may require substantially more care and attention. In order to qualify for Domiciliary Care Allowance a child must have a disability so severe that it requires the child needing care and attention and/or supervision substantially in excess of another child of the same age. This care and attention must be given by another person, almost all of the time, so that the child can deal with the activities of daily living. This child must be likely to require this care and attention for at least 12 months*.

While I acknowledge that the appellant's son has been certified as being severely affected by his condition in a number of areas, I must conclude that although he undoubtedly presents with a condition that requires care and attention above that of another child, and indeed at times this level of care is significantly in excess of that required by another child, the evidence as presented does not suggest that the care and attention required is 'continual and continuously substantially in excess' of that required by a child without the condition. The evidence in its totality is found to fall short of the high evidential bar prescribed by legislation."

16. The Applicant instituted these judicial review proceedings on 30 July 2024, i.e. outside the three month time-limit. The two principal grounds of judicial review advanced are as follows. The first ground concerns the status of the medical assessor's opinion in the context of an appeal. It is contended that only a deciding officer may rely on a medical assessor's opinion and that an appeals officer is precluded from doing so. It is contended, in the alternative, that if an appeals officer is permitted to have regard to the medical assessor's opinion, then fair procedures require that the appellant be given notice of same, an opportunity to cross-examine the medical assessor, and an opportunity to arrange for the attendance of their own medical practitioner. It is then asserted that the Applicant had furnished medical evidence from her own clinician which effectively controverted the medical assessor's opinion. The Applicant has, however, failed to exhibit the medical assessor's opinion in support of this assertion.

17. The second ground concerns the duty to give reasons. It is submitted that where there is conflicting evidence, the decision-maker must state reasons for preferring certain evidence. The omission of the Applicant to exhibit the medical assessor's opinion makes it difficult to gauge whether the statement of reasons in the decision-letter is adequate or not.

18. The *ex parte* application for leave initially came on for hearing on 11 November 2024. The application was adjourned to allow for the filing of legible copies of certain of the exhibits. A supplemental affidavit was also filed in relation to the issue of delay.

19. Counsel made further oral submissions on 11 December 2024. In particular, counsel made reference to the judgment of Dunne J. in *I.G. v. Refugee Applications Commissioner* [2018] IESC 25.

LEGAL TEST GOVERNING LEAVE APPLICATION

20. The legal test governing an application for leave to apply for judicial review is as stated by the Supreme Court in *G. v. Director of Public Prosecutions* [1994] 1 IR 374. As explained there, an applicant must satisfy the court in a *prima facie* manner that the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review, or, if there be an alternative remedy, that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure.

21. The legal test has been considered more recently by the Supreme Court in *O'Doherty v. Minister for Health* [2022] IESC 32, [2023] 2 IR 488, [2022] 1 ILRM 421. The Chief Justice, O'Donnell C.J., explained at paragraph 39 of the judgment that the threshold to be met is that of arguability:

> "[…] The threshold is a familiar one in the law. It is, in essence, the same test which arises when proceedings are sought to be struck out on the grounds that they are bound to fail, or the test that is normally required in order to seek an interlocutory injunction. It must be a case that has a prospect of success (otherwise it would not be an arguable case) but does not require more than that. While, inevitably, individual judges may differ on the application of the test in individual cases at the margins, the test itself is clear. This test – it must be stressed – is solely one of arguability: it is emphatically not a test framed by reference to whether a case enjoys a reasonable prospect of success, still less a likelihood of success. Any such language obscures the nature of the test and may on occasion lead to misunderstanding, appeal and consequent delay."

22. The Chief Justice also confirmed (at paragraph 40) that the same threshold test pertains irrespective of whether the application for leave is made *ex parte* or is made on notice to the respondent.

23. It follows, therefore, that in assessing the merits of the grounds of judicial review pleaded, the High Court must do so by reference to the low threshold of arguability.

24. The approach to be taken in respect of time-limits is somewhat different. Order 84 of the Rules of the Superior Courts indicates that the question of whether the leave application has been made within the time-limit prescribed is a matter which should normally be decided at the leave stage. If it is obvious that the leave application is out of time, then the judge hearing the leave application may properly refuse leave on this basis. This is so notwithstanding that the grant of leave does not necessarily preclude these issues from being revisited at the full hearing. In a complex case, the judge subsequently hearing the substantive application for judicial review may be prepared to revisit the question of delay having had the benefit of arguments from the respondent.

25. Similarly, the judge hearing the leave application is required to consider whether there is an adequate alternative remedy available to an applicant. If it is obvious that such a remedy is available, then leave should be refused. It would defeat the filtering function of the leave stage to allow judicial review proceedings to be pursued in circumstances where same are not the appropriate remedy. Of course, if in any particular case the position is not clear-cut, the leave judge may prefer to reserve to the trial judge the question of whether there is an adequate alternative remedy available.

EXTENSION OF TIME

26. Order 84, rule 21 of the Rules of the Superior Courts provides that an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose. An application for leave is regarded as having been "*made*" once the statement of grounds and verifying affidavit are filed in the Central Office of the High Court: see Rules of the Superior Courts (Order 84) 2024.

27. Order 84, rule 21(3) and (4) confer discretion on the High Court to extend time as follows:

> "(3) Notwithstanding sub-rule (1), the Court may, on an application for that purpose, extend the period within which an application for leave to apply for judicial review may be made, but the Court shall only extend such period if it is satisfied that:
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> (a) there is good and sufficient reason for doing so, and
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> (b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either:
>
> (i) were outside the control of, or
>
> (ii) could not reasonably have been anticipated by the applicant for such extension.
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> (4) In considering whether good and sufficient reason exists for the purposes of sub-rule (3), the court may have regard to the effect which an extension of the period referred to in that sub-rule might have on a respondent or third party."

28. The obligations to be complied with by an applicant who seeks an extension of time are prescribed under Order 84, rule 21(5). This rule provides that an application for an extension of time shall be grounded upon an affidavit sworn by or on behalf of the applicant which shall set out the reasons for the applicant's

failure to make the application for leave within the period prescribed and shall verify any facts relied on in support of those reasons.

29. The Supreme Court in *M. O'S. v. Residential Institutions Redress Board* [2018] IESC 61, [2019] 1 ILRM 149 has confirmed that an applicant, who does not apply for leave to issue judicial review within the time specified, is required to furnish good reasons which explain and objectively justify the failure to make the application within the time-limit, and which would justify an extension of time up to the date of institution of the proceedings.

30. The principles governing the extension of time have been considered more recently by the Court of Appeal in *Arthropharm (Europe) Ltd v. Health Products Regulatory Authority* [2022] IECA 109. Relevantly, the Court of Appeal (*per* Murray J.) held that the factors of which account may be taken will include: the nature of the order or actions the subject of the application; the conduct of the applicant; the conduct of the respondent; the effect of the decision it is sought to challenge; any steps taken by the parties subsequent to that decision; and the public policy that proceedings relating to the domain of public law take place promptly except where good reason is furnished.

31. The Court of Appeal also emphasised (at paragraph 125) that in the vast majority of applications for an extension of time, the court has no role in assessing the strength of the underlying merits of the proceedings. This is subject to a possible exception where an applicant's case was extremely strong to the point that the only extant issue in the proceedings was whether time should be extended.

32. The judgment of the Court of Appeal in *Mocanu v. Chief Appeals Officer* [2023] IECA 176 is instructive in assessing delay in social welfare litigation. The judgment was delivered in respect of an application for an extension of time

in the context of a *statutory appeal* pursuant to section 327 of the Social Welfare Consolidation Act 2005. There is one aspect of the judgment which is directly relevant to an application for an extension of time in judicial review proceedings. This concerns the question of whether the delay caused prejudice to a third party or the respondent. The Court of Appeal rejected a suggestion that the absence of litigation prejudice to the Chief Appeals Officer is a factor that should be afforded such weight as to generally justify an extension of time. The Court of Appeal emphasised that the Chief Appeals Officer has a legitimate interest in upholding the statutory scheme and could properly be heard to say that an extension of time should not be granted in the absence of good and sufficient reason.

33. Turning to the facts of the present case, the issue of delay is addressed as follows in the grounding affidavit of 30 July 2024 and in a supplemental affidavit filed on 4 December 2024. It is averred that the Applicant was confused and upset at the outcome of the appeal and took some time to come to terms with the decision. Thereafter, the Applicant had contacted a local charity ("*Shine*") which provides support to people with a diagnosis of autism spectrum disorder and their families. The charity advised the Applicant to make a subsequent application for domiciliary care allowance in twelve months' time in order to measure whether there had been any reduction in the level of care required by the child. The Applicant had booked a telephone consultation with the charity but received no response on the appointed day. The Applicant avers that she did not hear from the charity again. The Applicant ultimately contacted her now solicitors at an undisclosed date and had a consultation on 25 July 2024, i.e. some six months after the date of the appeals officer's decision. More generally, the Applicant

makes the point that she is the primary carer of two little boys with special needs and that these caring obligations occasioned further delay on her part.

34. With respect, the explanation offered on behalf of the Applicant does not reach the threshold of a good and sufficient reason. The Applicant has not disclosed when she first made contact with her solicitors. Whereas it is understandable that the Applicant would have been disappointed with the outcome of the appeal process, this cannot justify a delay of some three months beyond the prescribed time-limit. Similarly, the fact that the Applicant has significant time commitments in caring for her children does not explain the delay.

35. There is no evidence that the Applicant had formed, within the currency of the three month time-limit, an intention to bring judicial review proceedings. Whereas the existence of such an intention is not a prerequisite to an extension of time, it is, by analogy with *Mocanu v. Chief Appeals Officer*, a factor to be considered. Weight has to be attached to the length of delay: here the delay is three months. Weight also has to be attached to the public interest in ensuring that any legal challenges to a decision of an appeals officer are pursued in a timely manner.

36. In all the circumstances, the Applicant has not established the threshold for granting an extension of time pursuant to Order 84, rule 21.

37. For completeness, it should be explained that the foregoing discussion is premised on the *assumption* that the Applicant's case has properly been brought by way of judicial review. As discussed at paragraphs 48 and 49 below, however, there is a respectable argument that the proceedings should have been brought by way of statutory appeal. The time-limit for the statutory appeal is twenty-one days.

ADEQUATE ALTERNATIVE REMEDY

38. Section 317 of the Social Welfare Consolidation Act 2005 (as amended by the Social Welfare and Pensions (No. 2) Act 2013) provides, in relevant part, as follows:

> "(1) An appeals officer may at any time revise any decision of an appeals officer—
>
> (a) where it appears to him or her that the decision was erroneous in the light of new evidence or new facts which have been brought to his or her notice since the date on which it was given, […]"

39. The nature of the statutory power of revision has been explained by the Court of Appeal in *F.D. v. Chief Appeals Officer* [2023] IECA 123 as follows (at paragraphs 42 and 43):

> "The breadth of the revision provisions is, possibly, unique in the field of the administration of public law. The Act provides extensive rights to seek to revise the decisions of both the deciding officers and the appeals officers. It is noted that s. 301 provides the deciding officer with not only the jurisdiction to, *inter alia*, revise on new facts or new evidence, but also to revise by reason of some mistake having been made in relation to the law or the facts. Section 317 only provides jurisdiction to the appeals officers to revise where new facts or new evidence are put before him or her. Lest it be thought that there was no power to revise an appeal decision for a mistake of law or facts, s. 318 provides that the Chief Appeals Officer has that jurisdiction. The respondents also pleaded the availability of the s. 318 mechanism in their statement of opposition but, in the High Court as in the appeal, they focused on s. 317. It also bears repetition that the power of revision includes the power to hold an oral hearing and the right to review a decision not to grant an oral hearing.
>
> The extent of the powers of revision and the remedial intent behind those powers distinguish these social welfare appeals from those concerning immigration, criminal procedures, and other areas of law. What is envisaged in the 2005 Act is as broad a scheme of review as possible of assessments and the entitlement to allowances/benefits. […]"

40. The Court of Appeal rejected an argument on behalf of the claimant in that case that the right to seek the revision of an appeals officer's decision did not represent an adequate alternative remedy to judicial review (at paragraphs 49 and 50):

> "[…] The reasons for imposing a requirement to exhaust alternative (adequate) remedies include that a statutory system of appeals will be more effective and convenient than an application for certiorari, that the Oireachtas has provided specialist bodies with specialist expertise and that issues of judicial resources may arise. For these reasons, it would not usually be appropriate for the court to engage in deciding the substantive issue as a precursor to deciding an alternative remedy exists.
>
> That said however, a court must have some regard to the underlying grounds upon which the substantive claim for relief is made. That may be the only way the court can assess whether the issue is one which would bring it within the exception to the rule of exhausting alternative remedies. For example, the court would have to assess whether the claim amounted to a fundamental denial of fair procedures or is one that is based on a lack of jurisdiction. If that were the case, then the discretion to refuse jurisdiction may not be exercised by the court hearing the application. As stated above however, the exercise of the court's discretion must be dependent on a wide range of factors. In the present case, the decision was made by the appeals officer on the basis that he was fully satisfied that he could properly determine and make a fair decision in the appeal summarily based upon the available evidence. The appellant had the opportunity, both before the appeal decision itself and after the decision by way of application for a revision, to put forward any further evidence that would support her contention that an appeal [*recte*, oral hearing] was required. The fact that she possessed the opportunity to request a revision so that she could have an oral hearing was, on the facts of this case and in the context of the scheme of the 2005 Act, an alternative remedy to which she ought to have had recourse."

41. As appears, in assessing whether the right to seek a revision would represent an adequate alternative remedy, it is necessary, to an extent, to have regard to the grounds upon which judicial review is sought. The purpose of this exercise is

not to attempt to determine the underlying merits but rather to assess whether, on the assumption that the grounds were well founded, same could be adequately addressed by way of the revision of the (initial) decision of the appeals officer.

42. I turn now to apply these principles to the circumstances of the present case. The grounds of judicial review have been summarised at paragraphs 16 and 17 above. The complaints which the Applicant seeks to pursue in these judicial review proceedings are ones which are capable of being fully addressed by way of revision pursuant to section 317 of the Social Welfare Consolidation Act 2005. The Applicant has had a copy of the medical assessor's opinion since July 2023. The Applicant can request that the appeals officer's decision not to convene an oral hearing be revised. In support of this request, the Applicant can articulate all of the points made in her statement of grounds as to why it is that she contends that an oral hearing and cross-examination is necessary. The Applicant can also seek to adduce evidence from the child's general medical practitioner. The Applicant can maintain her preliminary objection that only a deciding officer may rely on a medical assessor's opinion and that an appeals officer is precluded from doing so. All of these points will have to be considered by the appeals officer.

PRECEDENTIAL VALUE, IF ANY, OF EARLIER LEAVE APPLICATIONS

43. There was some discussion at the hearing before me on 11 December 2024 as to the precedential value, if any, of leave having been granted in other cases. More specifically, counsel on behalf of the Applicant submitted that leave to apply for judicial review has been granted in the past in other cases where an applicant had not first exhausted their right to seek a revision of an appeals officer's

decision. It was further submitted that judicial comity requires that—unless there is "*something radically different*" in the subsequent case—leave should be granted where leave has previously been granted in similar cases. Counsel cited the judgment of Dunne J. in *I.G. v. Refugee Applications Commissioner* [2018] IESC 25 (at paragraph 27).

44. This issue is addressed as follows in the concurring judgment of O'Donnell J. in the same case (at paragraphs 5 and 6):

> "[…] If it is said that a judge is obliged as a matter of law to follow a decision, even if unexplained, and that a failure to do so is a ground of appeal then the approach becomes an almost mechanical rule and comes close to the version of precedent so stigmatised by Jeremy Bentham and Jonathan Swift. There is in my view something wrong with an approach which would accord greater respect, and binding force to an unreasoned decision, than a fully reasoned judgment. I appreciate that the approach taken in the judgment of Dunne J. is more nuanced, but since there is an inevitable tendency towards oversimplification of decisions, and since it may be some time, if at all, before this issue is considered by this Court again, I consider there may be some benefit in adding these observations.
>
> It must also be recognised that there are areas of law where generic points are taken which apply if correct to all applications or decisions made in that area. Therefore, the effect of obtaining leave to seek judicial review in one case may rapidly generate a large number of applications seeking to piggy-back on the first decision. This in turn may mean that all cases are brought to a halt pending the resolution of the legal issue first raised. It does not appear to me unreasonable if a judge particularly familiar with the area, and feeling confident that on further argument his or her colleague would not have granted leave, should if necessary say so. Even then, considerations of judicial humility, prudence and practicality might indicate that the later judge might be wiser simply to grant leave while expressing strong reservations. Nevertheless, there must remain a capacity for a conscientious judge to depart even with reluctance from the course taken in the earlier case. That can itself be an important signal of the strength of the opposing view as occurred recently in the issue considered in *Permanent TSB v Langan and AG* [2017] IESC 71. Such differences of opinion may be an inevitable component of the necessary

> independence of the judiciary, which includes the independence of mind of the individual judge, tempered it is hoped, by the wisdom to recognise those instances where it is necessary to express a different view. […]."

45. For the reasons which follow, I am satisfied that it is appropriate to refuse leave to apply for judicial review in the present proceedings notwithstanding that leave may have been granted in similar cases in the past.

46. First, the entire issue of alternative remedies is the subject of a very recent judgment of the Court of Appeal: *F.D. v. Chief Appeals Officer* [2023] IECA 123. As discussed earlier, this judgment confirms that a party will, generally, be expected to seek a revision of an appeals officer's decision prior to having recourse to the High Court. The High Court is bound by, and must give effect to, this authoritative judgment; and cannot refuse to do so by reference to the fact that leave may have been granted by the High Court in other cases in the past.

47. Secondly, it cannot be inferred from the fact, if fact it be, that leave may have been granted in other cases that the relevant judge made a conclusive finding that the right to seek a statutory revision did not represent an adequate alternative remedy. It is more likely that the leave judge had decided, in the particular circumstances of the case, to reserve the question of the adequate alternative remedy to the trial judge. This may have been done against a background where the judgment in *F.D. v. Chief Appeals Officer* [2023] IECA 123 may not have been fully opened to the leave judge. This is different from the position in *I.G. v. Refugee Applications Commissioner* where each judge was required to make a conclusive finding on whether the leave threshold of "*substantial grounds*" had been met. It does not constitute inconsistency or lack of judicial comity for a subsequent judge, who unlike their colleague has had the benefit of oral

argument and detailed written submissions on the question of alternative remedies, to decide the point at the leave stage.

APPEAL TO HIGH COURT ON A QUESTION OF LAW

48. Section 327 of the Social Welfare Consolidation Act 2005 provides, in relevant part, that any person who is dissatisfied with the decision of an appeals officer on any question may appeal that decision to the High Court on any question of law. Absent some unusual limitation arising from the terms of the statute conferring the right of appeal, the presumption is that an appeal of this kind is intended to both supplant and enlarge the remedies provided for by way of an application for judicial review: *Chubb European Group SE v. Health Insurance Authority* [2020] IECA 91, [2022] 2 IR 686 (at paragraph 138).

49. Having regard to the findings (under the previous headings) in respect of delay and the existence of an adequate alternative remedy to judicial review, it is unnecessary to consider the separate issue of whether leave should be refused by reference to the right of appeal to the High Court. It is sufficient simply to note that there is a respectable argument that the circumstances in which it will be appropriate to invoke the High Court's general supervisory jurisdiction by way of judicial review, in preference to the appeal to the High Court on a question of law, will be limited if not ousted entirely.

CONCLUSION AND FORM OF ORDER

50. For the reasons explained, the *ex parte* application for leave to apply for judicial review is refused. First, the proceedings have been instituted outside the three month period prescribed under Order 84, rule 21 of the Rules of the Superior

Courts. The Applicant has failed to establish good and sufficient reason for granting an extension of time. Secondly, having regard to the grounds of challenge, the existence of a right to request a revision of the appeals officer's decision, pursuant to section 317 of the Social Welfare Consolidation Act 2005, represents an adequate alternative remedy to judicial review.

Appearances
Derek Shortall SC for the applicant instructed by KOD Lyons LLP