



Neutral Citation Number: [2022] EWHC 1263 (Admin)

Case No: CO/1606/2022

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LEEDS

1 Oxford Row,
Leeds LS1 3BG
25th May 2022

Before:
MR JUSTICE FORDHAM

Between:

THE QUEEN (on the application of FAJR ELLIS)	<u>Claimant</u>
- and -	
(1) SECRETARY OF STATE FOR EDUCATION	<u>Defendants</u>
(2) SECRETARY OF STATE FOR JUSTICE	
- and -	
STUDENT LOANS COMPANY	<u>Interested Party</u>

Kesar & Co Solicitors for the Claimant

Determination as to Venue

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: a non-confidential version of this judgment was released on 25th May 2022,
for finalisation (correction of typos) and formal hand-down on 27th May 2022.

MR JUSTICE FORDHAM:

Introduction

1. This is a judicial determination on the papers, but where it is, in my judgment, appropriate to give reasons by way of a short judgment. This is a claim for judicial review filed on 5 May 2022, in which a minded to transfer order (“MTTO”) was made on 6 May 2022 for transfer to Leeds. The Claimant’s team had filed his claim in London answering “yes” to this question in Form N461: “Have you issued this claim in the region with which the claim is most closely connected?” As “additional reasons for wanting it to be dealt with in [the London] region” they said:

The Claimant attends a university in London which is the focus of this claim. Both defendants are in London. Claimant counsel and solicitors are in London/inside the M25 (office and residence). The Defendant’s representative is in London.

The MTTO mechanism allows the parties to file representations “to indicate opposition to transfer”. The Defendants and Interested Party do not resist transfer to Leeds. The Claimant’s solicitors by email said:

We would object to transfer and respectfully suggest that the current residence of the Claimant is but one factor in identifying the region with the connection, before indeed considering the other factors of relevance. We note “This will be determined having regard to the subject matter of the claim, the region in which the claimant resides in the region in which the defendant or any relevant office or department of the defendant is based”. Arguably two of three of these are London, where the University he attends is.

The Claimant’s solicitors also said this:

We would wish to have the opportunity to make further submissions once further public funding is in place but we are not immediately in a position to do so whilst an extension application is under process. Could you please consider not transferring this application to the court in Leeds until the issue of funding is resolved?

Timing of the Venue Determination

2. The Claimant’s solicitors have requested that consideration be given for not transferring this case until the issue of funding is resolved, so that they have the opportunity to make further submissions. In my judgment there has been a full and fair opportunity for them to draw the Court’s attention to the key factors on which they rely, as they have done. This is a case which has a 34 page grounds for judicial review document settled by Counsel. Consideration needed to be given, and was given, to venue when the claim form and grounds were prepared. The key points felt relevant to venue were identified.
3. In my judgment there are powerful reasons why it can be appropriate to determine venue promptly at the start of a judicial review case. If the claim has been started in the wrong place, without convincing reasons, it can be appropriate to nip that in the bud. It is appropriate that the parties – all of them – should, if possible, know where they stand. The Claimant’s decisions as to legal representation, and the decisions as to Counsel, are likely to have been made. Those who are acting or approached to act are aware of the importance of venue and regionalisation. It can assist Defendants and Interested Parties to have, if possible, speedy clarity. Conversely, the Claimant’s representatives’ choice of a venue – wherever it is – may lead to Defendants and Interested Parties making decisions as to lawyers who are to be instructed in the case, including Counsel

local to a venue. If the geography of those decisions follows the lead of venue chosen by the Claimant and the Claimant's representatives, what can develop is a 'momentum', and which may then be relied on to 'anchor' the case in the venue which was first chosen, even if it was not the venue with which the claim has the closest connection.

4. It may be, in an appropriate case where the Claimant's representatives' choice of venue appears to them to be fragile, that the Defendants and Interested Parties or their solicitors could properly approach the Administrative Court and the Claimant's representatives, to have venue determined promptly – if that is possible – while putting on hold the timeframe for Acknowledgements of Service, if that can be done promptly and without undermining any necessary expedition in any urgent case. That is for another day.
5. In the present case, in my judgment the Administrative Court Office lawyer who identified the venue issue and made the MTTTO has rightly acted promptly. The papers have properly been referred for venue determination now. The Defendants and Interested Party have had an opportunity to raise any objection to the proposed transfer. Any further key point which the Claimant's representatives wished to make could and should have been identified. It is appropriate to act now. Delay is unnecessary and inappropriate.

Discussion

6. As has been seen above, strong emphasis has been placed on facts that (i) the Claimant, although resident in Hull, attends university in London; and (ii) the focus of the case is on that attendance at that university. These points need to be seen in context. The Claimant is a prisoner serving a life sentence at HMP Hull. He is continuing, from prison, with his Masters' degree at a London University. The judicial review claim concerns the arrangements relating to his student loan and other arrangements, regarding the manner in which he can – from prison in Hull – access his higher education. The judicial review claim impugns what is said to be an ongoing breach of the right to access education or unlawful discrimination including unlawful restriction of access to funding for educational purposes by the Secretary of State for Education. It impugns what is said to be an unlawful failure by the Secretary of State for Justice to support the Claimant's education. A decision specifically impugned is a decision of 6 April 2022, said to have been to restrict the Claimant's access to facilities including computer and materials. The Claimant is in Hull. The impacts are felt by him in Hull. The arrangements take effect in prison in Hull. In my judgment this is a clear case in which the claim is most closely connected with the North-East region and that is where it belongs.
7. I have had regard to the facts and circumstances. The Claimant's solicitors are in Bromley (within the M25) and the Claimant's chosen Counsel is a London-based barrister (albeit practising from a Chambers which I have seen promotes itself as providing a nationwide, across-the-board service throughout the UK). The Defendants and their solicitors are based in London (it remains to be seen who they would instruct as Counsel). The Interested Party is based in Darlington and may or may not participate, with or without legal representation (based wherever). I accept that there will be time implications, and some cost implications, of Bromley- and London- based persons and representatives travelling to Leeds for any hearing which takes place in this case and is in-person. But in my judgment, in all the circumstances, this claim has a "specific

connection” to the North-East region for which Leeds is the regional Administrative Court. The claim has its “closest connection” to the North-East region (and no “closer” connection to the London region). It should, in my judgment, “if at all possible” be administered and determined at the Administrative Court in Leeds (“ACL”). It is “possible” to administer and determine the claim at ACL. Stepping back – and having regard to the volume of claims issued and the capacity, resources and workload at the various Administrative Courts – it is, in my judgment, desirable to administer and determine this claim in the region with which, in my judgment, it has its closest connection. In all the circumstances, having regard to the criteria in the Practice Direction, the appropriate venue for this case was and is ACL and that is where the case will now be transferred.

25.5.22