IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Case No. KB-2023-001133

[2024] EWHC 3521 (KB)

Courtroom No. 73

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 18th April 2024

Before:
MASTER DAVISON

B E T W E E N:

MUHAMMAD IBRAHIM

and

MINISTRY OF JUSTICE

The Claimant appeared In Person
MS SARAN appeared on behalf of the Defendant

JUDGMENT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

MASTER DAVISON:

1. The claimant is a 45-year-old man. On 15 October 2004, at the Nottingham Crown Court, he was convicted of four offences of rape and two offences of attempted rape. He was given a discretionary life sentence with a tariff of three years and seven months before he could be considered for parole. Remarkably, he has been in prison ever since, a period of almost 20 years, which is, of course, far in excess of his tariff and a matter of concern for all those involved or having responsibility for him, including the Parole Board, the prison authorities, and Probation Services.
2. The principal explanation for this melancholy state of affairs is that from about 2011 his relationship with Probation Services broke down. The last time a probation officer was able to visit him, that is to say, the last time he consented to be visited by a probation officer, was on 19 May 2011.
3. On 24 April 2013, he wrote to Probation, stating categorically that he wanted nothing further to do with them.
4. Notwithstanding that letter, between about 2014 and 2018, as the claimant told me, he did make some attempt to re-engage with Probation, but, from his perspective, Probation did not do sufficient to rectify or make amends for the complaints he had against them and on 9 August 2018, he wrote again, terminating all contact.
5. That did not, of course, mean that Probation were no longer obliged to prepare reports on the claimant. Three reports, or categories of report, are in issue. A post-tariff parole custody report, dated 5 October 2022, a post-tariff parole assessment report, offender manager, dated 19 October 2022, and an OASys assessment, dated 20 October 2022. OASys stands for Offender Assessment System.
6. The first of those documents was prepared by Mr Junichi King and the second and third by Mr Charles Peak, both probation officers employed by the Ministry of Justice.
7. As Mr Peak has said at paragraphs 10 and 11 of his witness statement:

> "Drafting these documents, is a mandatory annual requirement for prisoners who have gone past their tariff date, which the claimant has done, as the claimant is now serving a life sentence of imprisonment for an offence of rape. As a probation officer, it is an important requirement of mine to regularly update the NPS documents [NPS, I think stands for National Probation Service] whether or not a prisoner cooperates with the requirements, as the OGRS, OVP, and OGP scores required in the report can only come from these reports and these will often inform the decision of the parole board with respect to the statistical likelihood of reoffending posed by the prisoner. Closely related to this is the fact that the likely response of the prisoner to probation supervision, if released on license is fairly central to the whole process and, therefore, an assessment does need to be provided in this respect, regardless of whether or not the prisoner is prepared to cooperate with the assessment".

8. In addition, Mr Junichi King, at paragraph 15, in the same vein, has said this:

> "The Court is kindly informed that, as a probation officer, it was important to keep a record of the claimant's criminal history, with any changes to his circumstances in custody, to allow the parole board to review the prisoner's needs, to progress within the community. Hence the documents are continuously reviewed and updated, whether or not the prisoner engages with the process".

9. Both Mr King and Mr Peak have described their sources of information - Mr King in these terms:

> "When drafting the document, I focused predominantly on the information from the case notes on the prison case management system, digital prison services/NOMIS. Other than that, I used information from (a) his security file, (b) parole dossier (c) wing reports and IEP scheme".

10. Mr Peak looked at the NDelius entries. NDelius is the probation case management system which captures information about offenders. He looked at various email exchanges between the prison psychology department and the prison offender management. In addition, in paragraph 21 to 23 of his witness statement, he describes the other sources of information as follows:

> "In preparing the reports, I reviewed other sources of information such a previous OASys reports drafted by other team members. Since the claimant has not engaged with probation officers for many years, I had to rely on other sources of information. Other sources of information I reviewed, when preparing the reports included:
> (a) The member case assessment, dated 19 May
> (b) A psychological report, prepared in 2016
> (c) The report done by the prison offender manager, dated October 2022
> (d) A letter addressed to the claimant from the parole board, dated June 2020
> (e) A presentence report, prepared by his probation officer, dated 19 November 2004
> (f) Feedback concerning the claimant's response to the sex offender treatment programme, which he completed at HM Prison Albany from October 2006 to March 2007
> (g) The Deed Poll document, dated 18 April 2013, which officially confirmed that he had changed his name from Karl Lowe to Mohammad Ibrahim.
>
> Similarly, when preparing the reports, I always take note of the previous reports, as the documents are a continuous reflection of the prisoner's position. If there is nothing of significance, then it is just a straightforward review, and I would usually read and obtain information from the previous reports to assist me when preparing the current report".

11. On 6 February 2023, the claimant issued a claim form. The brief details of claim said this:

> "The claim is brought to obtain a compliance order under the Data Protection Act, 2018. The order is sought in respect of the data held by the defendant. The contested data held by the defendant does not comply with the requirements of the Data Protection principles for the reasons stated in the detailed particulars of claim. The defendant, as a data controller, has a statutory duty to ensure that information held in respect of the claimant is accurate, up to date, and captured or retained only for the relevant purpose specified. The claimant avers that the defendant is in breach of this statutory duty".

12. The particulars of claim identify a total of 101 inaccuracies, or alleged inaccuracies, in the three reports or assessments that I have referred to. These are variously described as:

factually inaccurate, misleading and false, not justifiable, subjective, without a foundational basis, speculative, not up to date", and so on.

13. Although not specifically pleaded, it is apparent that the claimant seeks orders rectifying or erasing the allegedly inaccurate data pursuant to sections 46 and 47 and 167 of the Data Protection Act.

14. The claim arises under Part 3 of the Act, which applies to data processing by a competent authority for the purposes of law enforcement. Both the Ministry of Justice, which is the defendant, and Probation Services are designated in schedule 7 of the Act, as competent authorities.

15. The key section, for present purposes is section 38 which, in material part says this:

> "(1) The fourth data protection principle is that—
> (a) personal data processed for any of the law enforcement purposes must be accurate and, where necessary, kept up to date, and
> (b) every reasonable step must be taken to ensure that personal data that is inaccurate, having regard to the law enforcement purpose for which it is processed, is erased or rectified without delay.
> (2) In processing personal data for any of the law enforcement purposes, personal data based on facts must, so far as possible, be distinguished from personal data based on personal assessments.
> (4) All reasonable steps must be taken to ensure that personal data which is inaccurate, incomplete or no longer up to date is not transmitted or made available for any of the law enforcement purposes".

16. The Act is accompanied by guidance, which is not part of the Act itself, but which is of some aid to interpretation of the Act and concepts in the Act.

17. The guidance at paragraph 187 says this:

> "The fourth principle (section 38) requires personal data held by a controller to be accurate and kept up to date. In the law enforcement context, the principle of accuracy of data must take account of the circumstances in which data is being processed. It is accepted that, for example, statements by victims and witnesses containing personal data will be based on the subjective perceptions of the person making the statement. Such statements are not always verifiable and are subject to challenge during the legal process. In such cases, the requirement for accuracy would not apply to the content of the statement but to the fact that a specific statement has been made.
> Section 38 (2) recognises the distinction between personal data based on facts, for example, the details relating to an individual's conviction for an offence and data based on personal assessments such as a witness statement. The requirement to keep personal data up to date must also be viewed in this context, if an individual's conviction is overturned on appeal, police records must be amended to reflect that fact. However, this principle would not require the retrospective alteration of a witness statement, which the appellant court found to be unreliable".

18. To put the nub of that guidance into slightly different language, where the data consists of statements of witnesses, or intelligence reports, or expert opinions, including previous Probation reports, the requirement for accuracy applies to the fact of the statements having been made or opinion expressed, not to the content of the statement. I would add that the

duty to keep data up to date does not require the erasure of historic data. In the context of Probation reports, the historic data are obviously important, as a measure of progress or lack of progress, as the case may be.

19. The approach to data set out in paragraph 187 of the guidance, led the Scottish Court of Session and the English High Court to refuse orders for erasure or rectification in respect of a witness statement (the Scottish case) and an occurrence summary report (the English case) on the ground that neither document required accuracy in the sense of truth of the contents as a record of what actually happened in the underlying incidents in question (see *Robert Bartosik (Petitioner)* [2022] CSOH 55 and *AB v Chief Constable of British Transport Police* [2022] EWHC 2749 (KB)).
20. The difficulty with the claimant's claim is that this is exactly the ground on which he seeks to impugn the reports. He does not say that the material referred to is not accurately reflected in the reports, or that the assessments and the reports do not accurately reflect the writers' views. He says that the content of the source material is inaccurate, which is a different thing.
21. However, even that content, to quote from paragraph 187 of the explanatory notes "will be based on the subjective perceptions of the person making the statement" and is, therefore, not susceptible to a section 38 challenge.
22. Three examples from the claimant's schedule to his particulars of claim will suffice to illustrate the claimant's approach.
23. The first example is (2). The passage with which the claimant takes issue is as follows:

> "Mr Ibrahim still has some issues with not getting his own way and not understanding other's views. This was evident on 16 June 2022, when Mr Ibrahim wanted to return an Xbox to a company called Chips (IW) and when this was not possible and he didn't get his own way, he displayed a disrespectful attitude towards Governor Coulthard by calling him a liar, which was not expected behaviour of an enhanced prisoner".

24. The complaint in the particulars of claim is phrased as follows:

> "The event was reported as a general comment, not a negative behaviour observation. The report author has, however, gone beyond the objective nature of the reported entry, in order to introduce a subjective that never existed. The original entry, referred to as CEO3 bears very little resemblance to the report. The claimant exercised restraint and chose not to escalate a matter in which there was a provocation. However, such restraint on the part of the claimant undermines the subjective view and opinion held by the report author in respect of the claimant and could not, therefore, have been honestly or accurately reported as originally stated".

25. What is complained of is a statement of opinion based on a factual report contained in the claimant's case notes. The claimant says that it is an impermissible opinion, but this is to trespass upon the distinction in section 38(2) between facts and assessments.
26. Number (3) in the claimant's schedule identifies this passage in the parole custody report:

> "He still displays a form of overarching sense of entitlement and on 1 March 2022 it was made aware to staff on B Wing that he was using the community landing for non-professional visits, which he was not permitted to do unless he was there for work purposes".

27. The complaint in the particulars of claim was expressed as follows:

> "The original entry was a general observation by a person who had a direct conversation with the claimant. The data was not recorded in respect of negative behaviour, nor was the entry suggestive of behaviour in general, beyond the specific matter dealt with and recorded. The purpose to which the entry has subsequently been purposed is not justifiable as it has been authored in substance beyond its purpose and represented so as to support or convey a subjective view which has no basis in fact. This is an instance of hearsay creation based on deliberately skewing information for a purpose that it was never intended to serve. The reported statement in dispute is not accurate, nor is it factual. This is evidenced by the original entry on NOMIS and an application signed by wing staff".

28. The same comments as I made in relation to number (2) in the schedule apply. I agree with the response that the defendant has given, which is this:

> "The substance of the claimant's complaint is that he considers Mr King's conclusion to be unreasonable. That is not a basis for a claim under section 38 of the Data Protection Act".

29. Lastly, number (75) in the claimant's schedule refers to this entry:

> "When I read his last review in December 2022, Mr Ibrahim was working as a wing cleaner and had received very encouraging feedback from staff in this respect'. It goes on: "However, it was then noted that this post was terminated in November 2020 owing to thieving of food behind the servery".

30. The complaint in the particulars of claim is this:

> "The entry is factually false, inaccurate and misleading. The claimant was not sacked from his job, rather he resigned his position due to his food being stolen from behind the servery. This is evidenced by a case note, entry dated 12 November 2020".

31. The entry complained of, is in fact taken verbatim from the NDelius log and cannot, therefore, be described as false. I would also describe it as neutral because it does not imply that the claimant was the guilty party. However, even if it did carry such an implication, that would be a matter of opinion, not fact.
32. By an application notice dated 31 May 2023, the defendant applied to strike out, or for reverse summary judgment, on the claim.
33. Rule 3.4(2) of the Civil Procedure Rules says this:

> "(2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim".

34. In addition, Rule 24.3, which deals with summary judgment says this:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
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> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
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> (b) there is no other compelling reason why the case or issue should be disposed of at a trial".

35. For the reasons that I have tried to explain, both those tests are met.
36. There is no need to recite all 101 of the claimant's complaints of inaccuracy because all are infected with the same error of approach.

37. To this, I would add the following further observations:
    (i) If the claimant were entitled to the orders for rectification or erasure that he seeks, the consequence would be that the defendant would be compelled to redraft the Probation reports and OASys assessments, based upon the claimant's construction of numerous facts and matters that are open to different interpretations and upon the claimant's own parameters of what would be a permissible range of opinion on those matters. This would be inimical to the process of assessment and would reduce the utility of the assessments to bodies such as the Parole Board. The Data Protection Act was not intended, and is not apt, to be used in that way. The claimant's aims would be better served by his engaging, or re-engaging, with Probation.
    (ii) If this claimant was able to challenge assessments contained within his Probation reports and, to the extent that he seeks to do this, within entries on other of his prison records via the Data Protection Act, there would seem to be nothing to inhibit any prisoner, or to take another example, any accused person, from making challenges to whole swathes of the evidence and allied material that would be generated by any criminal proceeding or law enforcement process. That would not serve the aims of the Data Protection Act. It would impose a huge burden on court resources. And it would undermine the justice system. I repeat, the Data Protection Act was not intended or apt to be used in that way.
38. Therefore, for these reasons, I do uphold the defendant's application both to strike out and, so far as necessary, enter summary judgment in their favour.
39. There is no need to consider the defendant's subsidiary arguments based on *Jameel* abuse, as it has come to be known.
40. There is also no need to consider that aspect of the defendant's application, based on the alleged injustice of the claimant seeking orders for rectification, at least partly on the basis of the inaccuracies and fabrications for which he himself was responsible.
41. As to the claimant's cross-applications, those fall away.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com

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