



Neutral Citation Number: [2022] EWHC 993 (Admin)

Case No: CO/1299/2022

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

1 Oxford Row,
Leeds LS1 3BG

4th May 2022

Before:
MR JUSTICE FORDHAM

Between:
**THE QUEEN (on the application of OMAR
KHYAM)**
- and -
SECRETARY OF STATE FOR JUSTICE

Claimant

Defendant

Daniel Guedalla (Birnberg Peirce) 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.

A handwritten signature in black ink, appearing to read "Michael Fordham".

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

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 in which a minded to transfer order (“MTTO”) was made on 8 April 2022. 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 you have the closest connection?” The MTTO is a mechanism to allow the parties to file representations “to indicate opposition to transfer”. The judicial review claim impugns the decision on 7 January 2022 by the Defendant’s Category A Team (“the Team”) to maintain the Claimant as a Category A prisoner. The grounds for judicial review are that the decision involved public law errors, legally inadequate reasons, and a flawed decision not to convene an oral hearing. The Claimant is detained as HMP Full Sutton in York (YO4). He has been at HMP Full Sutton since some time before November 2020. Moreover, any oral hearing would have been held at HMP Full Sutton.
2. The Claimant’s solicitors’ representations, objecting to transfer to Leeds, submit that London is the most appropriate location for administering and determining this case, emphasising the following points in particular. (1) London was correctly identified in N461 as the region with which the Claimant has the closest connection. (2) The Claimant’s location within the prison estate could change at any time. The geographical location of the prison has no bearing on the determination of his claim. Any attendance at a hearing of the claim on his part – which is unlikely – would be secured by video link. (3) The Defendant and the Team are based in London. (4) The Defendant’s solicitors, the Claimant’s solicitors and the Claimant’s Counsel (Daniella Waddoup). The Court should take it that all parties’ chosen lawyers are based in London. (5) Travel to Leeds rather than London would involve time, and publicly-funded expense, for all parties. (5) Other judicial review claims of categorisation decisions outside the South-East have been heard in London.
3. I ought to deal with two points about what the Court is told:
 - i) I do not accept that the answer given, to the question posed, on Form N461 was correct. I cannot accept that London is the region with which “the Claimant has the closest connection”. He is detained in York, as identified on page 1 of Form N461. If the Claimant’s solicitors and Counsel had wanted to explain why – although London is not the region with which “the Claimant” has the closest connection – there were reasons to support the choice of London as venue, for the claim, this ought in my judgment to have been done ‘up-front’ in the box provided in N461. However, matters have now been addressed. So I will put that to one side and focus on the substance of the matter.
 - ii) If the Defendant had wanted to take a positive position against transfer it should, as per the MTTO, “indicate opposition to transfer”. By an email to the Court, the Defendant (through GLD) communicated that it “does not oppose” the Claimant’s application for the case to remain in London. GLD was entitled to adopt carefully chosen language of this kind which appears to me to reflect a “neutral” position. When the question is whether the Defendant is opposing the transfer, and an opportunity is given to say so (with reasons), to say that the Defendant does not oppose the case remaining in London does not mean the Defendant opposes transfer to Leeds. It may be that GLD’s was a cautiously

worded response in light of the awareness of the recent decision – in a case in which the Defendant was a party – in Smart [2022] EWHC 509 (Admin) (9 March 2022). If any party to a judicial review venue consideration does want to take a positive position against transfer it should, as per the MTTO, “indicate opposition to transfer”. If it wishes to take a neutral position, it can say so or say nothing. If it wishes actively to support transfer, it can say so. In the present case, in all the circumstances, I have considered the position on the premise that in fact the Defendant was intending to be supportive of the Claimant’s position on venue, in opposing transfer.

4. I take substantially the same view as I did in Smart. In my judgment, in all the circumstances, this claim does have a “specific connection” to the North-East region for which Leeds is the regional Administrative Court. The applicable principle is that it should “if at all possible” be administered and determined in that region. It is “possible” to administer and determine the claim in that region. The claim has its “closest connection” to the Leeds region. It has no ‘closer connection’ to the London region. Although other judicial review cases have been dealt with in London, I have not been shown any reasoned Venue Determination in those cases. In Smart, the same Counsel (Ms Waddoup) appeared for the prisoner and made the representations, as is instructed and appears for the Claimant in this case, having drafted the grounds for judicial review accompanying the Form N461. In Smart I was told, and I recorded, that Counsel was herself based in the North-West, albeit that her Chambers are in London.
5. It is I think important to appreciate that the choice of London lawyers by the parties will not, of itself, ‘drive’ the choice of London as a venue for a judicial review claim. The location of the lawyers is a relevant factor. So are the cost and time implications of travel. But also relevant is consideration of how it would undermine the purposes of ‘regionalisation’ if lawyer location and choice of lawyers were to dictate the answer to the question of venue. It is important of course that parties can choose their lawyers. But it is important that the choice of lawyers does not, of itself, serve to transform into an ability to choose a venue. The purposes of ‘regionalisation’ have at their core promoting claims being dealt with at the Administrative Court venue with which claims have the closest connection, with London itself as a regional venue. That carries public interest considerations as to the setting up, utilisation, and development of expertise, while of course the location of chosen lawyers and costs and time implications of travel are relevant considerations, as the Practice Direction recognises.
6. As I explained in Smart, venue must be considered having regard to the relevant circumstances and applying the relevant criteria. All the circumstances will be considered. In this case, although the Claimant’s ‘residence’ is imposed through imprisonment and although it would be subject to change, nevertheless the North-East is the region of the Administrative Court in which – in making his claim and at the material time relevant to the subject matter of the claim – he was residing. That is where he was being held as a Category A prisoner when the claim was filed. The fact that the Claimant’s attendance at any substantive judicial review hearing would be by way of video link is a neutral factor. The ‘claim’ does not have its ‘closest connection’ with London, notwithstanding the location of the Claimant’s solicitors, the Defendant (and the Team), and the Claimant Counsel’s Chambers. I have taken careful account of the ease and cost of travel to a hearing for those who would be participating in any in-

person hearing. But that and the public funding on both sides is not sufficient to drive a conclusion that the public interest calls for the proceedings being heard in London.

7. The claim can promptly and properly be administered and determined in Leeds. Looking at the grounds for judicial review, I would anticipate any substantive hearing would not exceed one day. For the lawyers to travel from London to Leeds – including the Claimant’s Counsel (if she is not travelling from home in the North-West) – is not a significant or sufficient feature, detriment or expense so as to support London as the venue for a claim whose natural home, in my judgment, is Leeds. As a general point – and having regard to the volume of claims issued, 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. For these reasons, I order the claim be transferred to Leeds.

29.4.22