



Neutral Citation Number: [2023] EWHC 2281 (Admin)

Case No: CO/4208/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/09/2023

Before :

KIRSTY BRIMELOW KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Between :

ALINA HARUTUNIAN
- and -
PARLIAMENTARY AND HEALTH SERVICE
OMBUDSMAN

Claimant

Defendant

Approved Judgment

This judgment was handed down remotely at 10.30am on Thursday 14 September by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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KIRSTY BRIMELOW KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

Kirsty Brimelow KC :

1. The Claimant (Ms. Harutunian) renews her application for permission to challenge the procedure by which the Defendant, the Parliamentary and Health Service Ombudsman (the PHSO), examined her complaint against the National Health Service Trust (the Trust) who were caring for her late mother.
2. The application for permission to apply for judicial review is dated 24 October 2022, although there are handwritten dates alongside that it was amended on 31 October 2022 and 10 November 2022. There are two decisions by the PHSO in relation to Ms. Harutunian's mother. One has not been filed and it is said to be dated 8 July 2022 (July decision) by the PHSO in its Acknowledgement of Service (AOS) and the other, which is the refusal to review the July decision is dated 18 August 2022 (August decision).
3. On 23 January 2023, the application was refused by Simon Tinkler sitting as a Deputy High Court Judge for the reasons that it was not brought promptly and in any event was not brought within three months of the relevant decision. He treated the July decision as the one that was being challenged.
4. He noted that Claimant had not provided any explanation for the delay nor sought an extension of time for filing. It was on this basis that he refused permission to bring the claim. The Judge noted that Ms. Harutunian is a litigant in person but that it was critical for her to provide a copy of the actual decision that was the subject of her complaint, a clear indication of the remedy she seeks and an application for extension of time or explanation as to why the claim is in time.
5. The PHSO had not filed an Acknowledgment of Service. On 26 January 2023, Ms. Harutunian renewed her application for permission, pursuant to the Civil Procedure Rules (CPR) 54.12 and applied for an extension of time, albeit not in compliance with the CPR.
6. On 1 February 2023, an Administrative Court Office Lawyer, using powers delegated in accordance with section 67B of the Courts Act 2003, made directions including that an electronic copy of the Permission Hearing Bundle be lodged with the court within 14 days of the Order.
7. Two electronic bundles were filed, one on 12 February 2023 and the other, an amended version, on 9 May 2023. A hearing was fixed for 28 March 2023 but was adjourned, by consent, to a date from 10 May 2023 to allow Ms. Harutunian to recover from illness.
8. On 10 May 2023, the day before the renewal hearing (the hearing), the PHSO filed its Acknowledgment of Service. It was over five months out of time. The PHSO applied orally for an extension of time for service of the Acknowledgment of Service and grounds (AOS) pursuant to CPR 3.1(2)(a). The AOS summary of grounds is skeletal and addresses only the time limitation issue, arguing that it is out of time.
9. Ms. Harutunian did not raise objections to the extension of time for the filing of the AOS and I granted the extension at the start of the hearing, having applied the relevant legal criteria.

10. Ms. Harutunian continued to appear as a litigant in person and the PHSO was legally represented by Counsel, although only in relation to the issue of the Claim not being brought promptly.
11. Subsequent to the hearing, Ms. Harutunian filed further documentation on 14 June 2023 where she submitted that the decision, she was challenging was the August decision. The PHSO was given an opportunity to respond and on 9 August 2023 indicated that they had nothing further to add as they did not consider that there was anything new.
12. Subsequent to the hearing, the Claimant also applied through correspondence for anonymity to be applied to her name and the name of her mother in the proceedings. No reasons are given. However, Ms. Harutunian's mother's name does not feature in this judgment.

Anonymity

13. The general rule is that the names of the parties to an action are included in the orders and judgments of the court (*JIH v News Group* [2011] EWCA Civ 42) Justification has not been provided by the Claimant for removal of her name from the proceedings. Her name is on the issued Claim form. In the circumstances, I do not make any order in relation to anonymity.

The Issue

14. In summary, Ms. Harutunian submits that the decision that is the subject of the judicial review is the decision of PHSO dated 18 August 2022 (August decision). This means that the application is within three months and also prompt.
15. I note that Ms. Harutunian also made attempts to resolve her complaint with the PHSO by inviting alternative dispute resolution. This was not taken up by the PHSO.
16. During the hearing, Ms. Harutunian indicated that she was challenging the July decision but had not considered it to be final until the rejection of a review on 18 August 2022.
17. The PHSO states that the August decision was a decision declining to review the decision on 8 July 2022 (July decision) and therefore the relevant and impugned decision is 8 July 2022.
18. Further to the observations of Deputy High Court Judge Tinkler, I requested that the July decision be filed. It remains critical. However, it has not been filed by the Claimant and the PHSO has not assisted.

Submissions of the Parties

19. Ms. Harutunian relied upon an email on 5 August 2022 which she had sent further to the July decision and the response from PHSO which set out that the decision was final, but that if she disagreed, she needed to inform PHSO of the following (copied below):

- Why you think our decision is wrong.
 - What you would like to happen next
 - Any supporting or new evidence
20. Ms. Harutunian submitted that she was following the internal process with the PSHO in an attempt to resolve her complaints through the PHSO processes. The PHSO requested that Ms. Harutunian “let us know why you think our decision is wrong within a month of our decision”, namely 8 August 2022. The PHSO allowed a slight extension in light of the email on 5 August until 12 August 2022. It did not alert Ms. Harutunian to the time limitation that might commence from the July decision. Rather, the email concluded “If after raising your concerns with us you remain unhappy with our decision, it is open to you to seek independent legal advice about your options to challenge the decision through the Court system”. It is understandable that Ms Harutunian believed that she was completing the internal processes of the PHSO before then considering whether she needed to commence legal proceedings.
21. Ms. Harutunian replied by email dated 12 August 2022. I have seen only a redacted version. It is apparent that Ms. Harutunian raised two concerns, namely that the PHSO had not considered relevant emails from the Trust and also that the investigation on behalf of the CEO of the Trust was not independent as, she asserted, it was carried out by the treating Consultant for Ms. Harutunian’s mother.
22. The PHSO replied on 18 August 2022 that it had decided not to carry out a review of the July decision as Ms. Harutunian’s request had shown no reason or new evidence that called it into question. The PHSO set out in the email that, if Ms. Harutunian believed that this decision was wrong she could consider legal action by way of judicial review proceedings.
23. Ms. Harutunian submitted that, in light of the email correspondence, she thought that the three months started from 18 August 2022. This also was her argument in the Statement of Grounds and Facts. She further set out that she started the judicial review process within three months of the August decision, rather than waiting for alternative dispute resolution mechanisms, so as to ensure that she was not out of time. Ms. Harutunian made it clear that she is engaged in litigation with some reluctance due to lack of further communication from the PHSO. She referred to two emails to the PHSO, dated 1 October 2022 and 14 October 2022. I reproduce them in part, as follows: “Furthermore, your last email stated about judicial review and its tight timelines, need for Pre-Action Protocols. Regarding the latter, understand it requires that both parties have discussed and tried all that is possible for the matter not to be escalated to court.”
24. And on 14 October 2022: “It is with regret and under duress, as I have been told by PHSO that sending this Letter before claim and taking legal action is the only next step, am sending this email and including the Letter before claim. Would appreciate it you could please consider the PHSO’s response. If you would like to have a meeting and/or go through any ADR please let me know, I will ensure to be available and if you have any further queries, please let me know. I would like to re-iterate that taking legal action is the last resort, as the concerns and issues are of public interest, doing nothing cannot be an option and in order not to be out of time, please accept this email and the following as Letter before claim.”

25. Subsequent to the hearing, Ms. Harutunian indicated in correspondence to the court that she wished to judicially review the decision of 18 August 2022 rather than the decision of July 2022. I note that the application has the date of the decision as being 18 August 2022. Despite requests from the court for assistance the Claimant has not supplied the July decision.
26. The PHSO applied for an extension of time for service of the Acknowledgment of Service which was filed on 10 May 2023. The application was made orally with no reasons given for the extension beyond that it was out of time.
27. The PHSO argued that that the Claim was not made promptly and was outside three months. They also pointed to lack of substance underlying the Claim. However, they were not instructed to address the merits of the Claim and did not do so. The AOS set out that the decision had been made on 8 July 2022 and the challenge was not brought promptly nor within the requisite three months.

Legal Framework

28. Pursuant to the Civil Procedure Rules 1998 (CPR) 54.5.1, the claim form must be filed:
 - (a) Promptly; and
 - (b) In any event not later than 3 months after the grounds to make the claim first arose.
29. Practice Direction 54A applies. CPR Part 54 must be interpreted and applied in the light of the CPR's "overriding objective of enabling the court to deal with cases justly" and at proportionate cost. However, CPR r.1.1(1) and CPR r.1.1(2)(f) was added on 1 April 2013 to emphasise the continued importance of compliance with procedural rules to ensure that the civil legal system can function in the interests of all litigants. The overriding objective requires that parties be dealt with "on an even footing" (*Malteez v Lewis* (1999) 96(21) L.S.G 39). A litigant in person is expected to familiarise themselves with the rules which apply (*Barton v Wright Hassall Ltd* [2018] UKSC 12.)
30. The fact that a Claimant has been pursuing ADR does not suspend the requirement that claims for judicial review are to be made promptly and in any event within three months. Judicial review is in principle a remedy of last resort. It follows that where a potential claimant expeditiously seeks a reasonable way of resolving the issue without litigation, "the court will lean against penalising him for the passage of time and will where appropriate enlarge time if the alternative expedient fails" (*R v Hammersmith and Fulham LBC ex p Burkett* [2001] Env LR 684 at §14).
31. The court should encourage the parties to use an alternative dispute resolution procedure if the court considers that appropriate (*R (on application of Cowl) v Plymouth City Council* [2001] EWCA Civ 1935).
32. Pursuant to CPR r. 54.8, the Defendant, if wishing to take part in the judicial review, must file an acknowledgment of service not more than 21 days after service of the claim form and must serve it on the claimant as soon as is practicable and, in any event within seven days of filing it.

33. Further to CPR r.3.1(2) the court has discretion to extend the time limit if there is good reason to do so.

Decision

34. The application is within time if the decision challenged is the August decision, as set out in the Claim. However, the Claimant during oral submissions stated that the July decision was the subject of the judicial review and she relied on her correspondence with the PHSO to evidence her understanding that, until the August decision, she still was exhausting the PHSO's internal processes. She subsequently changed this position in written correspondence to the court, relying again on the judicial review addressing the August decision. It may be that Ms. Harutunian was anxious that time extension would not be granted and so relied on the decision that places the application within the time limitation.
35. There is considerable force in the PHSO submissions that the decision that is challenged is the July decision and that it is clear that the August decision is refusal of a review of the July decision.
36. I take the July decision as the decision that it is under challenge for the purposes of considering whether to grant an extension of time. I do not need to consider the August decision further as the application in relation to it is within time.
37. In considering whether there is an objective reason for the delay, it is apparent that Ms. Harutunian was cognisant of the time limitation at the point of the August decision, to the extent that she prioritised the court over her preferred ADR course. It was in August that the PHSO indicated that there was no further internal process. Ms. Harutunian remained in communication with the PHSO from July 2022 to August 2022.
38. There is no identifiable prejudice to the administration of justice or to the Defendant. Ms. Harutunian was awaiting the outcome of the PHSO decision as to whether it would review the July decision. If they had decided in Ms. Harutunian's favour, it may have obviated the need for litigation. Ms. Harutunian acted reasonably in taking all the steps along the path laid out by the PHSO; with judicial review being a remedy of last resort.
39. Ms. Harutunian argues that a flawed approach underlies both the July and August decisions and so it is wholly understandable that she waited until the August decision before embarking on proceedings. These circumstances provide good reason to extend time.
40. I granted an extension of time for the AOS until 10 May 2023, a period of over 5 months. In relation to the Claimant's application, in all the circumstances of this case, the extension required to bring the application in relation to the July decision within 3 months is under a month.
41. Utilising the court's general powers of management, pursuant to CPR 3.1 (2), I exercise my discretion to extend the time for service of the application for permission for judicial review to 17 November 2023, which takes into account the handwritten amendment dates.

42. In the absence of the July decision, there is insufficient information to assess the merits of the Claim. I therefore make further directions for the further progress of this case.
43. As the refusal to grant permission was based solely on the reasons of time limitation, I set aside the refusal to grant permission.