Neutral Citation Number: [2024] EWHC 939 (Admin)

Case No: AC-2022-MAN-000442

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

Circulated: Monday, 22nd April 2024
Hand-down: Wednesday, 24th April 2024

Before:
MR JUSTICE FORDHAM

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Between:

THE KING (on the application of VALENCIA WASTE MANAGEMENT LTD)	**Claimant**
- and -	
ENVIRONMENT AGENCY	**Defendant**

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Alex Sandland (Dyne Solicitors Ltd) for the Claimant
Amanda Pinto KC and **John Carl Townsend** (instructed by the Environment Agency) for the Defendant

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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

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. I am transferring these judicial review proceedings, having been told that a special advocate "is to be" instructed. Transfer of a judicial review claim is a "judicial act" (CPR PD54C §2.3). Neither party wished the opportunity, which I raised, for an oral hearing. My reasons could simply have been embodied within a court, to which any person would have a right of access from the court records, if they knew to ask. Recording reasons in the form of a judgment, listed in a published Cause List, promotes open justice.

Transfer and Special Advocate Cases

2. CPR 54PDC §2.1 provides that judicial review proceedings "should be commenced at the Administrative Court office for the region with which the claim is most closely connected, having regard to the subject matter of the claim", "save where the proceedings are within any of the excepted classes of claim set out in §3.1"; and §2.2 provides that where a "Claim Form which includes one of the excepted classes of claim" is filed "other than in London", then "the proceedings will be transferred to London". CPR PD54C §2.4 provides that "once assigned to an Administrative Court Office, the proceedings will be administered from that office"; but §2.3 empowers the transfer to another office on application by a party or on the Court's own initiative.

3. The PD54C §3.1 excepted classes of claim include at §3.1(1)(d) "(1) proceedings to which Part 76 or Part 79 applies, and for the avoidance of doubt … (d) proceedings in which a special advocate is or is to be instructed". Part 76 is proceedings under the Prevention of Terrorism Act 2005. Part 79 is Proceedings under the Counter-Terrorism Act 1008, Part 1 of the Terrorist Asset-Freezing Etc Act 2010 and Part 1 of the Sanctions and Anti-Money Laundering Act 2018. CPR Part 82 makes provision for closed material procedure ("CMP") in the context of the Justice and Security Act 2013. CMP under the 2013 Act, in judicial review proceedings, is comprehensively described in the Administrative Court Judicial Review Guide 2023 at §19.3. Under the 2013 Act, special advocates are appointed under s.9(1) (see CPR 82.9).

4. Part 82 (CMP) is not mentioned in PD54C §3.1. But both parties have treated the language of CPR 54PDC §3.1(1)(d) as, in principle, applicable to a judicial review claim involving a CMP. That is presumably by reference to the words "and for the avoidance of doubt". I do not, in the circumstances, need to invite further submissions as to whether that premise is correct. The parties have proceeded on the basis that I am not in a jurisdictional straitjacket, and that it would be within the jurisdiction of the Court to retain the proceedings in Manchester. In particular, this is not a case where the "claim form" included an excepted class of claim (§2.2). It could presumably happen – after issues have crystallised in pre-action correspondence – that it is known that there is to be a s.6 application and that a special advocate "is to be appointed". But that is not this case, as the Claimant's submissions emphasise.

5. The provision regarding "proceedings in which a special advocate is or is to be instructed" (§3.1(1)(d)) has clearly been made within PD54C for good reason. The good reason must be that, in principle, proceedings involving special advocates should

be dealt with from London, where the specialist arrangements for proceedings involving special advocates have been put in place.

Background

6. These judicial review proceedings were commenced in November 2022. The target decision was a decision (2.11.22) refusing to accept a £4m transfer as Financial Provision for a site in Suffolk. It identified the claimant as based in Bicester (OX27), its solicitors in Chester (CH3) and the decision-maker in Warrington (WA14). The Environment Agency made no PD54C §2.3 application for transfer of venue on the basis that the North-West was not the office for the region with which the claim is most closely connected, having regard to its subject matter. I would not now be acceding to such an application; it being far too late.

7. On 16 February 2024, the Defendant gave notification of its intention to make an application under s.6(2) of the 2013 Act, for a declaration permitting the use of a CMP in these proceedings. The parties agreed – and I ordered by consent (8.3.24) – that the Defendant should have 30 days to file its s.6 application or confirm that no application would be made; and that a hearing (12.3.24) should be vacated, with directions for evidence and skeleton arguments dispensed with.

Unilateral Communication: CPR 39.8

8. At the same time as the notification was given, the Court received a "unilateral" communication from the Defendant about a transfer of this case to London. By "unilateral", I mean a communication which did not comply with CPR 39.8, because it was not shared with the Claimant's solicitors. I took steps for that communication to be brought to the attention of the Claimant's solicitors (as it should have been all along), and liberty to apply for a venue transfer. This was so that venue could be dealt with properly; rather than considered by the Court informally and unfairly. On 19 March 2024, the Defendant filed and served a proper Form N244 application to transfer these proceedings to London. On 27 March 2024, I made an Order giving directions for written submissions.

Directions

9. By an email on 25 March 2024, I drew CPR PD54C §3.1(1)(d) to the attention of the parties, inviting that any submissions address it. In my Order (27.3.24) I recorded the then position in this recital:

> ***AND UPON there being no present s.6(2) application and no decision as to appointment of a special advocate (as to which, see CPR 54PDC §3.1(1)(d)), but D's solicitors informing the Court of the position (at 27.3.24) that "the Secretary of State was notified of the Defendant's intention to make an application under section 6 Justice and Security Act 2013 and, in accordance with CPR 82.9, notified the Attorney General. The Defendant has been in liaison with the Special Advocate Support Office who confirmed that they (the SASO) would be in contact with the Claimant's legal representatives in relation to the appointment of a Special Advocate in the next few days.***

10. My Order (27.3.24) included: (1) D's time for making the s.6(2) application was "extended until 7 days after the Court's determination on venue". (2) The question of venue, next steps and further directions would be further considered, in the first instance on the papers, by me on or after 11 April 2024. (3) Pending further order, and

subject to the determination of the issue of transfer, a hearing was provisionally fixed (16.5.24) before a High Court Judge in Manchester, to deal with such applications and matters in this case as could suitably be addressed at that stage.

11. I then received written submissions from both parties, for which I am grateful.

Notification of my Decision

12. By an email in the evening of 16.4.24 (my "Notification Email"), I informed the parties as follows:

> ***(1) I have made my decision. I intend to give reasons in a short judgment in due course. I write to inform you that I am going to be making a transfer order: (a) specifically so that the s.6 application can be made in London, the sensitive materials filed there, and the directions hearing and any closed hearing on the s.6 application can be heard there; (b) I will be vacating the hearing scheduled in Manchester in May (but the parties should hold that date in case London can accommodate it); (c) I will give reasons in due course but the essential point is that a special advocate is to be appointed, engaging the purpose of the Practice Direction provision; (d) whether open hearings, or the case as a whole, continues back in Manchester by transfer back there, and in front of which Judge, will be questions for Judge(s) who deals with the next stages to consider. (2) For next steps, the case will go to London. (3) I am giving you this information now (a) to reduce any further delay and uncertainty and (b) so that you can now liaise and please provide a draft order(s) giving effect to what I have communicated above (agreed to the extent possible).***

A Special Advocate "is to be" appointed

13. The "essential point" is that I have been told by the representatives of the Defendant that a special advocate "is to be" appointed. This reflects the language of CDP PD54C §3.1(1)(d) ("a special advocate … is to be instructed"). I had recorded in my earlier recital (27.3.24) what I had been told at that stage (§9 above). Next, there was an email from the Defendant (28.3.24) which told me that "progress has been made in respect of instructing a special advocate". Then came the written submissions of Ms Pinto KC and Mr Townend for the Defendant which told me that this case is within PD54C §3.1(1)(d) "because it is 'proceedings in which a special advocate is or is to be instructed". That is a clear statement, on which I have taken it that I can rely, that a special advocate "is to be instructed". That is why my Notification Email said: "the essential point is that a special advocate is to be appointed". This is a position "engaging the purpose of the Practice Direction provision", which I have identified (§5 above).

14. When I received a draft order, the Defendant included a suggested recital recording it as "confirming that it has taken steps to secure" the appointment of a special advocate. But I find that language less clear and less satisfactory than what Ms Pinto KC and Mr Townend for the Defendant had told me, and what I had taken from it in the Notification Email. The only recital necessary will refer to this judgment.

15. The submissions of Ms Pinto KC and Mr Townend provided further information which assists as to purpose. They told me that enquiries with SASO (the Special Advocates' Support Office) had revealed that "no Special Advocates are based on the Northern circuit; indeed, it is understood that all are based in London". They told me that "information provided by the specialist court staff at the RCJ" was that "two closed proceedings in the High Court of England & Wales have occurred outside London and both had to be held at Crown Court buildings" and "for security reasons in those cases,

two courts had to be closed for their normal business too and corridors had to be closed off and secured". They also told me that it was understood that special advocate proceedings in Manchester would mean the prospect of "appropriately trained and vetted staff being relocated from London". I can add to this that my own information from HMCTS has confirmed that the majority of cases are held in London as the skillset and appropriate clearance levels are based there.

16. It is for these reasons, and these reasons alone, that I am therefore satisfied that this case should be transferred to London and now administered from that office. As I communicated in the Notification Email (but it is not necessary to include within my Order): whether open hearings, or the case as a whole, continues back in Manchester by transfer back there, and in front of which Judge, will be questions for any Judge who deals with the next stages to consider. A Judge in London would also need to consider the position if, after all, no s.6 application were made; or if, after all, no special advocate were appointed.

Consequential Matters

17. That leaves three consequential matters, raised by the parties in emails subsequent to my Notification Email. The first is about the timing of the s.6 application. I had ordered that the Defendant's time for making the s.6(2) application be extended until 7 days after "the Court's determination on venue". The Claimant says that time should be taken as having started running on the evening of my email of 16.4.24. I do not agree. In any event, I would now extend time to 7 days from the Order transferring the case. My Notification Email said I was "going to be making a transfer order … specifically so that the s.6 application can be made in London [and] the sensitive materials filed there"; and I invited a draft order (agreed if possible). There needs to be a sufficient time for the order to have been made, and reacted to, including in London. My Order will be dated 24.4.24 -the same day as hand-down of the Venue Determination – and the 7 days will run from then. That is also the start date for any appeal.

18. The second matter is as to whether a Judge considering the s.6 application will make a decision on the papers or whether there will be an oral hearing. The Claimant asks me to say that it would be inappropriate for anything to be determined in London on the papers. I decline to do so. I have recorded that we had lined up a hearing scheduled in Manchester in May before a High Court Judge, which I have vacated. But all next steps are for the Administrative Court in London.

19. The third matter is as to costs. The Defendant asks me to say: "costs in the case". The Claimant asks me to order that the Defendant pay the costs of the application to transfer. In my judgment, the appropriate order is "costs reserved". The case has been transferred; but only when the Court received the very recent confirmation that a special advocate "is to be" instructed. There is no present basis for a costs order in either direction. By reserving the costs, I leave open the possibility that the costs of the application to transfer should be borne by a party, independently of whether they prevail in the proceedings as a whole. That, in my judgment, is the right course, in the circumstances.

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