Neutral Citation Number: [2022] EWHC 900 (QB)

Case No: QB-2022-MAN-000012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Manchester Civil Justice Centre,
1, Bridge Street West,
Manchester, M60 9DJ

Date: 13/04/2022

Before :

THE HON. MR JUSTICE TURNER

- -

Between :

Michael Hamill	**Claimant**
- and -	
Lloyds Banking Group Pension Trustees Limited	**Defendant**

- -
- -

Mr Hamill represented himself as a Litigant in Person
Ms Elizabeth Ovey (instructed by **Allen & Overy LLP Solicitors**) for the **Defendant**

Hearing date: 29 March 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 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 TURNER

The Hon Mr Justice Turner :

INTRODUCTION

1. This is a curious case in which the claimant and defendant each seek to strike out the other's case.
2. In outline, the claimant alleges that the defendant continues to underpay him in respect of the guaranteed minimum pension (GMP) element of his pension entitlement under the Lloyd's Bank Pension Scheme No.2.
3. By claim form issued on 19 January 2022, he claims the sum of £250,000 representing the total losses which he alleges are attributable to this shortfall.
4. The claimant seeks to persuade this Court that the merits of his claim are such as to afford the defendant no reasonable prospect of success and that judgment ought to be entered in his favour forthwith. The defendant, however, takes a number of legal and procedural points which, if successful, would bring this litigation to an end as an abuse of the process of the court without the need to consider the substantive merits of the claim (which are, in any event, strongly disputed). It is therefore both logical and convenient to consider these matters first.

BACKGROUND

5. The claimant was born on 4th August 1956 and joined the scheme on 19th June 1972. He left pensionable service on 21st February 1985. The administrator of the scheme was Equiniti Limited.
6. Unfortunately, by letter dated 17 March 2009, Equiniti initially led the claimant to believe that the GMP element of his pension payments would apply from his 60th birthday. Subsequently, it resiled from this position asserting that the claimant's pension would not fall to be uplifted until his 65th birthday.
7. The claimant refused to accept this stance and there arose a dispute which was acrimonious from the start. The claimant was convinced (and remains convinced) that he was the victim of what he describes as criminal deception and corruption.
8. From that time on, the claimant pursued a tenacious campaign to get what he believed to be his due.
9. First stop was the scheme's internal dispute resolution procedure. In early 2017, the scheme administrators rejected the claimant's argument but made a modest lump sum compensation offer in respect of his distress and inconvenience arising from the initial errors. The claimant was not, however, minded to leave it there and proceeded to take the matter further to the Pensions Ombudsman as he was entitled to do.

THE PENSIONS OMBUDSMAN

10. The Pensions Ombudsman is responsible for investigating and determining complaints and disputes about how occupational and personal pension schemes are run. Its statutory role is set out in Part X of the Pensions Schemes Act 1993. The dispute between the claimant and the defendant thus fell squarely within its remit.
11. On 7 June 2017, an assistant adjudicator notified the claimant that his complaint would be investigated. The adjudicator's opinion was that the defendant had been right to reject the claimant's arguments and was entitled to have taken a GMP starting point with respect to his 65th birthday and not, as the claimant had argued, his 60th. This decision was considered to have been a reasonable one by the Pensions Ombudsman in a written decision of 30 October 2017. He explained that the claimant's annual benefit under the scheme was correctly calculated in the sum of £3,624 from age 60 and subject to yearly increases. The annual GMP was also correctly calculated in the sum of £4,088.76 from age 65. If the scheme benefit were found at this time to be lower than this then the benefit would be topped up. It was clear from the reasons given in the determination that it had been ruled that the claimant was not entitled to the aggregate total of the pension scheme sum and the GMP element. An argument subsequently ventilated by the claimant relating to the anti-franking regime was not deployed before the Ombudsman.
12. Section 151 of the Pensions Scheme Act 1993 provides in so far as is relevant:

> "***Determinations of the pensions Ombudsman***
>
> (3) Subject to subsection (4) the Determination by the Pensions Ombudsman of a complaint or dispute and any direction given by him…shall be final and binding on (a) the authorised complainant in question…
>
> (4) An appeal on a point of law shall lie to the High Court…from a determination or direction of the Pensions Ombudsman…"

13. The time within which any such appeal is to be brought is 28 days and, pursuant to CPR 52.29, the permission of the High Court is required for such an appeal to be brought.
14. The Pensions Ombudsman Fact Sheet helpfully sets out the procedural framework in terms which are accessible to litigants in person:

> "In England and Wales, appeals require the permission of the High Court. This means that an appellant (the party bringing the appeal) will need to satisfy the Court that the appeal has a real prospect of success or that there is some other compelling reason

> why it should be heard. The Appellant's Notice Form (N161) contains a section which deals with permission to appeal…
>
> If you appeal the Ombudsman should not be listed as a respondent in the Notice of Appeal. The respondent to an appeal should be the party or parties on the "other side" of the matter determined by the Ombudsman. However, you must send the Ombudsman a copy of the Notice of Appeal. Failure to send the Ombudsman a copy of the Notice of Appeal may have adverse financial implications for you. The High Court suggests that where the appellant is an unrepresented individual, the respondent should also take it upon themselves to confirm that the Ombudsman has been served with the Notice of Appeal. This is particularly important because the Ombudsman may wish to become a party to an appeal. The Ombudsman cannot consider his position unless he is alerted to the appeal.
>
> Occasionally the Ombudsman may wish to participate in an appeal (although the Ombudsman will only take this decision after receipt of the Notice of Appeal). For example, if in the Ombudsman's opinion, being represented would assist the Court to come to the right decision, or if the outcome of the appeal might affect the Ombudsman's legal jurisdiction or office procedures. If the Ombudsman is represented, it will be for this purpose, not to support either side.
>
> If you appeal and the Court decides that the Ombudsman's decision should be upheld then it is expected that the normal principle will apply, which is that you, as the unsuccessful party, should pay the costs of the successful party."

15. After four and a half years, the claimant has made no application for permission to appeal the determination of the Ombudsman. He explained to me that he had spent the intervening time researching the law.
16. It is against this background that the defendant contends that this claim is brought wholly outside the mandatory parameters of section 151 of the 1993 Act and thus falls to be struck out.
17. It was far from easy to understand the claimant's written response to this contention. I will, of course, make every reasonable allowance for the fact that he has, throughout, acted as a litigant in person and I will do my best to avoid any unfairness arising from his status. Nevertheless, I am unable to avoid the conclusion that, try as hard I might, I find myself struggling to rescue from the distracting clutter of his sustained invective any reasonably arguable point.
18. Indeed, the claimant is the author of a large number of emails to the Court, much of the content of which is devoted to the task of energetically denigrating most, if not all, of the judges, court staff and other parties who have been involved in dealing with his claims. From this very considerable

quantity of material, it has been possible for me to distil some passages which are capable of being directed to the issue of the allegedly conclusive determination of the Ombudsman.

19. By way of example, in an email dated 30 December 2021, which gives a flavour of both the tone and content of his other communications, and which I have attempted to clarify with footnotes, the claimant stated:

> "HAMILL[1], ARTER[2], ASHWORTH[3] or even MORGAN[4] cannot veto PRIMARY LEGISLATION, even though MORGAN thinks he can with his garbage in EWHC 2018 2839 CH[5]. I also INFORM any COURT judge be it CH DIV transfer but not for disposal as DEFENDANT would like, but for HAMILL purpose of agreeing, namely a hearing of the case and determination IN LAW meaning determination KNOWN NOW due to PRIMARY LEGISLATION of S.180(1a) PSA 1993. ASHWORTH garbage purports NO COURT THUS HIGH CT included can amend a decision of OMBUDSMAN that NO COURT CAN MAKE!
>
> The informed lawyers among you will instantly know to what I refer, namely the COURT PRECEDENT (cannot cite off memory but it is my law book used for law degree AND you can read of this on internet by searching PENSION OMBUDSMAN powers to determine law) stating as I have thus any decision on point of law must obviously COMPLY WITH LAW!! Only COUNTY CT is theoretically bound by OMBUDSMAN. All senior courts have powers to issue PRECEDENTS in any event bar none, not even ARTER or ASHWORTH let alone MORGAN can in effect give
>
> HAMILL the power to change legislation by NOT APPEALING ARTER 30/10/17.
>
> I enjoyed telling corrupt or idiot judge CRAIG SEPHTON[6] 29/7/21 "a decision that cannot be legal does not require appeal ". SEPHTON stayed silent with hint of smile!!"

20. Before going on to deal with what I can discern of the substance of the argument which the claimant appears to be making, I ought to say something on the topic of mutual respect. The Queen's Bench Guide provides:

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[1] The claimant, himself. to whom he often refers in the third person.
[2] Anthony Arter, Pensions Ombudsman and whose determination of 30 October 2017 is not accepted by the claimant.
[3] Mark Ashworth, professional trustee and author of the witness statement in support of the defendant's strike out application.
[4] High Court Judge of the Chancery division.
[5] ***Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank Plc*** [2018] EWHC 2839. A decision of Morgan J.
[6] His Honour Judge Sephton QC before whom the claimant appeared on 29th July 2021.

> "*2.3. Represented parties must treat litigants in person with consideration and respect at all times during the conduct of the litigation. Similarly, litigants in person must show consideration and respect to their opponents, whether legally represented or not, and to the court.*"

21. It gives me no pleasure to say that the claimant's enthusiasm for his cause has led him badly astray in his written contributions and he, himself, has acknowledged that he is prone to rant. I should, however, add that he was scrupulously respectful to this court throughout his oral representations and he behaved with all due courtesy to Ms Ovey who appeared on behalf of the defendant. He may be assured that his past intemperate written contributions play no part in my determination of the applications presently before me. I would, however, encourage him to exercise the same degree of restraint in his written communications as he showed himself capable of in court. I can think of no submissions which are strengthened by the unrestrained deployment of uppercase letters, exclamation marks and baseless ad hominem attacks on those who disagree with the views of the author.
22. I deal now with what I take to be the claimant's central point with respect to the operation of section 151 of the 1993 Act which he brought into sharper focus in his oral submissions than had been expressed in his written contributions.
23. In short, he argued that any senior court can overrule a decision of law of the Ombudsman by laying down a precedent to the effect that the Ombudsman in that case was wrong. That is what he was inviting this court to do.
24. This approach, however, overlooks the fact that a decision of any first instance court or tribunal normally stands with respect to the case upon which it has adjudicated unless and until it is overturned on appeal. A dissatisfied litigant is simply not entitled to circumvent the procedural formalities of the appeal process by purporting to re-litigate the same point again in different proceedings in front of a more senior judge. In the case of the Pensions Ombudsman, the statute and rules relating to appeals are designed to provide for a robust time limit and the gatekeeping scrutiny of the single judge whose permission is required. These safeguards would be removed if any litigant could simply commence fresh proceedings in the High Court free from the salutary constraints of the operation of section 151.
25. Indeed, the claimant's approach seems to be based on the assumption that if a decision at first instance is wrong in law then no appeal is needed to overturn it. Thus an appeal would only be necessary if the decision below were correct. This proposition has only to be stated to be rejected.
26. In my view, it follows from the operation of section 151 of the 1993 Act that the determination of the Ombudsman is final and binding on the claimant because he has not pursued the only permissible route to challenge it,

namely, by way of an appeal on a point of law with the permission of the single judge. His claim therefore falls to be struck out as an abuse of the process of the Court pursuant to CPR Part 3.4. For the sake of completeness, however, I will deal with a further issue relating to the form in which the claim found itself before the much (and unfairly) maligned Judge Sephton.

THE PART 8 PROCEEDINGS

27. Long after the time within which any appeal against the determination of the Ombudsman, but before the commencement of these proceedings, the claimant commenced part 8 Proceedings, QB-2021-MAN- 000089, against the defendant raising the same claim as he had raised before the Ombudsman and as he was later to raise in the present proceedings now including the anti franking issue.
28. The matter came before HHJ Sephton on 29th July 2021. The claimant appeared in person having applied for an interim injunction. The Defendant did not appear not having been served.
29. HHJ Sephton ordered that:

> "Unless before 4pm on the 12th August 2021 the claimant files and serves an amended claim form setting out his case in clear language so that it can be easily understood, the claim form shall stand struck out until further order."

30. It must be said that the order of HHJ Sephton was entirely reasonable. The claim form was, in spite of the claimant's best efforts, wholly unintelligible. The claimant volunteered to me in the course of oral submissions that he had approached three firms of solicitors who had all refused to take on his case. I made no enquiry as to the reasons which they had given for their lack of enthusiasm so as not to trespass upon his legal professional privilege.
31. In the event, this order was not served on the parties within the time allowed for by HHJ Sephton and he made a further order without a hearing extending time for the claimant's compliance to 26th August 2021.
32. No such amended claim form was ever served. The claimant explained to me that he had delivered Form N244 to seek to set aside the order but received no acknowledgment from the court thereafter. Instead, he has commenced the present proceedings in substantively identical terms albeit under Part 7 rather than Part 8.
33. I am entirely satisfied that the Part 8 claim has already been struck out by the operation of the orders of HHJ Sephton. I understand the claimant's frustration in receiving no response to his request to set aside but he ought to have pursued this by chasing the court further and, if necessary, seeking a further extension of time which, on his version of events, he would probably have been granted rather than pursuing another claim in identical terms in a Part 7 claim.

34. For these reasons, despite the existence of potentially mitigating factors, I regard these proceedings to be an abuse of the process of the court on this free-standing ground alone.
35. Furthermore, the Part 8 claim would, in any event, have been subject to the same problems concerning the limits on the appellate route imposed by section 151 of the 1993 Act as has led me to find for the defendant in respect of the Part 7 claim. That claim was doomed from the outset and any attempt to resurrect it would be an abuse of the process of the court.

CONCLUSION

36. The claimant's claim for summary judgment is dismissed and is totally without merit. The defendant's application to strike out the claim is granted. I will hear any argument relating to ancillary orders including costs after this this judgment has been handed down.