Faiz Siddiqui

-v-

The Chancellor, Masters & Scholars of the University of Oxford

Summary of judgment of
The Honourable Mr Justice Foskett

7 February 2018

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document

[10] = paragraph 10 of the judgment

1. In this action the Claimant, Faiz Siddiqui, sought damages for the alleged damaging consequences of obtaining a low mark (a 'CB' which equated to 50%) in one of the seven papers he took in June 2000 in his Finals for a BA in Modern History at Oxford University. The paper concerned was one of two papers taken following a Special Subject course which was entitled "India, 1916—1934: Indigenous Politics and Imperial Control" ('the ISS'). The Claimant had chosen this course because it was of interest to him. The paper concerned was the "gobbets paper" (see paragraph 6 below).

2. He ascribed the low mark to (i) negligently inadequate teaching of the ISS in the relevant year and/or (ii) to the failure of his personal tutor at Brasenose College to alert the examination authorities to the "insomnia, depression and anxiety" from which he said that he suffered at the time of the examination. His case was that his personal tutor effectively undertook during a conversation in March 2000 to alert the examination authorities to this medical problem of which he (his tutor) was aware.

3. The trial was limited to the issues of whether the University and/or his personal tutor was in breach of duty to the Claimant and, if so, whether the Claimant could establish the harmful consequences alleged to have flowed from the low mark.

4. The University had previously tried to have the claim dismissed on the basis that there were no reasonable prospects of success, but that application was rejected in December 2016: [2016] EWHC 3150 (QB).

5. The consequences alleged by the Claimant to have arisen from his low mark were –

   (a) that he achieved a low Upper Second degree rather than a First or a high Upper Second;

   (b) that this level of degree was not high enough for him to obtain entry to Harvard, Yale or another top US Law College;

(c) further, that the "shattering blow" he felt when learning of this result has caused him serious mental health difficulties such that he has not been able to hold down jobs with several leading firms of solicitors and a leading firm of accountants.

6. A "gobbets paper" (with which most undergraduates would have been unfamiliar at the time and often found difficult: [22] – [24]) is a paper that requires the student to comment in relatively short form on an extract of text from a document on a reading list with which the student is supplied at the outset of the course and is designed to test the student's knowledge of the document, its background, origins and significance. In order to be properly prepared for such a paper it is necessary to have read all the texts: [19] – [21], [81-83].

7. It was not disputed by the University that during the Michaelmas Term 1999 (when the ISS was taught to the Claimant and his colleagues) there were less teaching staff available than normal because of leave of absence being granted to other members of staff [36-38, 42-68] with the result that one teacher (Professor David Washbrook) had to take all the tutorials for the 16 students taking the course whereas in a normal year that task would be shared by at least two teachers ([26-35]). Professor Washbrook had to undertake that task when teachers on other courses upon which he taught or supervised were also absent on leave. It was accepted this placed him under pressure. However, the University denied that this resulted in the teaching received by the students being of a negligently inadequate standard.

8. The Judge held that the evidence did not establish that the teaching was negligently inadequate: [69] – [92]. Professor Washbrook was "an excellent teacher" ([69-70]) who simply "put his shoulder to the wheel" and despite the pressures delivered the course in much the same way as he had previously delivered it: [74] and [91]. The documents classes (which dealt with how to answer gobbets questions) were delivered in the same manner (and with the same numbers in each class) as in other years: [74]. After the end of the Michaelmas Term the Claimant (along with the other students doing the ISS) took "Collections" (a mock examination) in which he scored well in the "gobbets paper", obtaining a 'BA' (70%) overall [84], [96] and [133]. This suggested that the teaching he received was of a perfectly adequate standard and that he was well-prepared for that examination. It was further evidence that the teaching was at least of a reasonable standard.

9. The poor result in the Finals "gobbets paper" was more likely to have resulted from a number of reasons not associated with the quality of the teaching including inadequate preparation by the Claimant, lack of academic discipline, general anxiety about taking examinations (which the Claimant had exhibited over many years) and a severe episode of hay fever about which there was contemporaneous medical evidence: [94-103].

10. The Judge concluded, in any event, that the Claimant could not establish the link between the result in the "gobbets paper" and any of the consequences identified in paragraph 5 above. In the first place, the Claimant could not demonstrate that, even with a higher mark on the gobbets paper, he would have obtained a First. Whilst a higher mark might have resulted in a higher Upper Second, there was evidence that his result did not affect his applications for entry to institutions like Harvard ([181]) and that the cause of his difficulties with such applications was (a) the general intensity of competition for such places and (b) his insufficient scores in the LSAT (the 'Law School Admission Test' which is a standardised admission test used by all the principal Law Schools in the US): [180-187].

11. The Judge accepted that the Claimant had "suffered intermittent bouts of severe depression over the years for which he is entitled to sympathy and understanding", but that it

could not be demonstrated that it resulted from this one examination result ([241]). Equally, the evidence demonstrated that there were reasons other than his periodic bouts of depression and his alleged perceived failure to obtain a high degree to explain his failures to hold down the various jobs he obtained: [218].

12. The Judge concluded that there was no evidence that the Claimant was suffering from "insomnia, depression and anxiety" at the time of his Finals. There was no evidence of this in his medical records at the time. His complaint then was of hay fever that was drawn to the attention of the examining authorities. His personal tutor would have had no reason to think that the Claimant was depressed at the time and the Judge concluded that the conversation between the Claimant and his personal tutor upon which the Claimant relied for the undertaking referred to in paragraph 2 above did not take place. The first occasion upon which this conversation was mentioned was in the Claimant's witness statement made in May 2016 when there had been many occasions previously when it could have been referred to: [147-166].

13. The Judge considered the case on its merits and did not consider that the University was prejudiced by the delay. However, the University had submitted that the proceedings were brought a long way out of time and were barred by the Limitation Act. The Judge held that the Claimant could and should have brought the claim at a much earlier date and that it was *prima facie* statute-barred: [219-230]. He rejected the contention that the University had "fraudulently concealed" any material facts from the Claimant such that the limitation period had been extended: [232-236]. Whether the Judge would have extended the period for bringing the proceedings under section 33 of the Limitation Act had the issue been raised prior to the trial was academic given that the Judge dealt with the case on its merits: [237-238].

14. The Judge has adjourned the hearing further so that any other consequential matters, including any application for permission to appeal, can be considered in due course, probably on the basis of written submissions.