



Neutral Citation Number: [2023] EWHC 3230 (Admin)

Case No: CO/04383/2022 and CO/152/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/12/2023

Before :

LORD JUSTICE WARBY
and
MRS JUSTICE THORNTON

Between :

(1) LIVIA TOSSICI-BOLT
(2) THE KING (on the application of
CHRISTIAN CONCERN)

Claimants

- and -

BOURNEMOUTH, CHRISTCHURCH AND
POOLE COUNCIL

Defendant

Bruno Quintavalle (instructed by Andrew Storch Solicitors) for the Claimants
Kuljit Bhogal KC and Tara O'Leary (instructed by BCP Council Legal Services) for the
Defendant

Hearing date: 17 October 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 15 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE WARBY and MRS JUSTICE THORNTON:-

1. We have today handed down our judgment dismissing the claimants' challenges to the Public Spaces Protection Order made by the defendant on 13 October 2022 ("the Main Judgment"). This is the Amendment Judgment referred to in paragraph [33] of the Main Judgment. In it we will adopt the abbreviations used in the Main Judgment.
2. By an application notice filed with the Court on 16 October 2023 the second claimant sought permission to add an additional ground to the judicial review claim. The ground is that the Order was made without lawful authority because it was not passed according to the Council's Constitution. It was instead decided upon unilaterally by a single Councillor.
3. In oral submissions before the Court, it was said on behalf of the second claimant that the Council had been put on notice of the issue by its inclusion in the Statement of Facts and Grounds, and that it was then made clear that evidence on the topic was required from the Council and that the issue would be pursued in the absence of any evidence. It was submitted that the Court has all the evidence necessary to resolve the point which is of practical importance as at least one Fixed Penalty Notice has been issued under the Order.
4. In oral submissions in response, the Council objected to the application on the basis that it is prejudiced by its lateness. The Council wishes to respond to the ground and has not had a fair opportunity to do so.
5. After hearing submissions on the application at the start of the hearing we informed Counsel of our decision to refuse the application on the basis it would be unfair and unjust to permit the addition of a new ground at such a late stage in the proceedings. We indicated that we would explain our reasons in this written judgment.
6. In *AB v Chief Constable of Hampshire* [2019] EWHC 3461 (Admin) at [108] the Divisional Court explained that a claim for judicial review is a claim to review the lawfulness of an enactment, decision, action or failure to act in the exercise of a public function. There are rules of procedure contained in civil procedure rules, in particular CPR Part 54 and Practice Direction 54A on Judicial Review. The rules and the relevant case law are summarised in the current Administrative Court Guide to which regard should be had by all those engaged in proceedings in the Administrative Court. The rules are there to ensure fairness as between the parties, that is, the claimant, the defendant and any interested party and that the relevant issues are properly identified and the relevant evidence is produced. This enables a court to determine whether a claim is established. The timetable laid down in the rules, and in any directions made by the court, enables the issues between the parties to be identified and the relevant evidence to be produced in a coherent sequence. The conduct of litigation in accordance with the rules is integral to the overriding objective set out in the first part of the CPR and to the wider public interest in the fair and efficient disposal of claims. Public law cases do not fall into an exceptional category in any of these respects. If the rules are not adhered to there are real consequences for the administration of justice.

7. We set out below the respects in which the procedure followed by the second claimant's legal representatives did not comply with the relevant procedure rules or the practice direction.
8. CPR Practice Direction 54A rule 4.2 (54APD 4.2) provides that the claim form must be accompanied by a) a clear and concise statement of the facts and b) a clear and concise statement of the grounds for bringing the claim. The statement of grounds should identify in separate numbered paragraphs each ground of challenge, identify the relevant provision or principle of law said to have been breached and provide sufficient detail of the alleged breach to enable the parties and the court to identify the essential issues alleged to arise. In its Statement of Facts and Grounds dated 11 January 2023, the second claimant raised a point about the authority of the Councillor with responsibility for Anti-Social Behaviour to unilaterally adopt the PSPO in the absence of a vote and deliberation by the whole Council. It was said that "It is not known by what legitimate Council resolution Bobbie Dove was empowered to make the decision to implement the PSPO unilaterally and independently of a vote and deliberation of the full Council; the Defendant is required to demonstrate that Councillor Bobbie Dove had authority to make a unilateral decision to implement the PSPO. The Defendant reserves the right to amend this claim in the event that it emerges that Councillor Bobbie Dove did not have authority to make the decision to implement the PSPO unilaterally". The point was not included as a ground of claim but appeared in a part of the document containing the background facts and legal framework under a heading, 'Consultation'. A separate section of the document set out the grounds for judicial review and did not refer to the point. In our judgment, the point reads as a passing reference and factual query. Insufficient detail of the alleged breach had been provided to enable the Council to identify the issue as an essential issue which it needed to address in its summary grounds of resistance.
9. The Council filed summary grounds of resistance dated 1 March 2023 responding to the three grounds raised in the Statement of Facts and Grounds. No reference was made to the constitution issue. It was open to the second claimant at this point to request information from the Council pursuant to its duty of candour or, if need be, to apply for an order that the Council provide further information under CPR 18.1 about the issue. It did not do so.
10. No further mention was made of the point until 3 October 2023, when Mr Quintavalle filed his skeleton argument on behalf of the second claimant, pursuant to a case management order of Swift J. The issue was included as a fourth ground of claim and the point was made that "The Defendant was asked to provide evidence that Bobbie Dove had delegated authority unilaterally to make such a decision but none was provided". That is not an appropriate means of seeking to rely on additional grounds of challenge. Pursuant to Practice direction 54A rule 11.1 (54APD 11.1) a claimant wishing to rely on further grounds after the grounds have been served must make an application to the court for permission to do so. The procedural requirement is explained at Chapter 7.11 of the Administrative Court Guide 2023. The application should be made promptly and should include or be accompanied by a draft of the amended grounds and be supported by evidence explaining the need for the proposed amendment and any delay in making the application (54APD 11.2). The application should be served on the defendant (54APD 11.3).

11. The second claimant did not comply with these requirements. The ground was first introduced in its skeleton argument dated 3 October 2023. The ground was not introduced promptly. A formal application to amend was only made on 16 October 2023, the day before the hearing. No draft of the amended grounds has been supplied. No evidence explaining the delay has been provided. We do not accept the contention advanced on behalf of the second claimant that the onus was on the Council to provide evidence on the matter once the point had been raised in the Statement of Facts and Grounds. The onus is on a claimant to make proper and necessary inquiries before seeking permission to apply for judicial review to ensure so far as reasonably possible that all relevant facts are known (54APD 4.1(1)). Whilst the Council is subject to a duty of candour, it had been given insufficient notice or detail of the issue in the Statement of Facts and Grounds for the duty of candour to bite.
12. In response to the ground being raised in the skeleton argument the Council filed a supplemental witness statement from Ms Howlett, its Anti-Social Behaviour Manager, dated 10 October 2023. The statement pointed out that the challenge to the constitution was not one of the three grounds of claim previously advanced and had simply been added to the skeleton argument. Nonetheless, Ms Howlett sought to address the issue by exhibiting the Council's constitution and the Council's scheme of delegation and portfolio holder responsibilities.
13. On 16 October, Mr Quintavalle filed a 'revised' skeleton argument on behalf of the first claimant, Ms Tossici-Bolt. This was filed with the Court (and served on the Council) the day before the hearing. It was said to replace the skeleton argument filed by the first claimant's previous Counsel on 3 October, in accordance with the directions of Swift J. That earlier skeleton argument had simply repeated, in large part, the Statement of Facts and Grounds. The revised skeleton was filed without prior notice to the Court or the Council and was filed contrary to the case management directions of Swift J dated 18 May 2023 which required service of the skeleton argument not less than 14 days before the hearing date.
14. The revised skeleton argument made submissions on the evidence produced by the Council about its constitution in Ms Howlett's witness statement. It stated that the Order does not fall exclusively within the remit of the Councillor responsible for Anti-Social Behaviour but also within the remit of other portfolio holders including the Cabinet Member for Children and Young People and the Cabinet Member for Adults. The submissions concluded with the assessment that "it is clearly beyond argument that this particular PSPO involves the functions and competencies of the Cabinet Member for Adults whose written approval was not obtained and hence without which the [Order] was made contrary to the Constitution." As mentioned above, on the same day, an application notice was filed seeking permission to add the constitution point as a fourth ground of claim in the judicial review claim. But no application has ever been made by the first claimant for permission to amend the grounds in the statutory review.
15. We accept the Council's submission that it is prejudiced by the sequence of events. Not only was a new and complex ground of challenge raised inexplicably late by the second claimant. Points of substance were then raised in a skeleton argument served by the first claimant the day before the hearing about the Council's constitution and the division of responsibilities amongst Councillors, to which the Council could not respond in time for the hearing. Those points were not relevant to any ground of claim which the party that filed the skeleton argument had advanced, or sought to advance. The fact that the

point may be relevant to other proceedings in respect of the Order makes it all the more necessary that the arguments are set before the Court in an orderly and timely fashion. The Administrative Court Guide emphasises the importance of procedural rigour in judicial review. As the Divisional Court in AB said, it cannot simply be assumed by those engaging in this type of litigation that permission will be given in the absence of compliance with the rule.

16. It is for these reasons that we refused the second claimant's application for permission to amend to rely on the additional ground of claim and we now refuse to consider the arguments relating to that ground of claim which were advanced on behalf of the first claimant in the passages of the revised skeleton argument to which we have referred.