



Neutral Citation Number: [2025] EWHC 1169 (Admin)

Case No: AC-2024-LDS-000194

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/05/2025

Before :

THE HONOURABLE MR JUSTICE TURNER

Between :

Ladybill Limited	<u>Claimant</u>
- and -	
Sheffield Magistrates' Court	<u>Defendant</u>
- and -	
Rotherham Metropolitan Borough Council	<u>Interested Party</u>

G C Darbyshire (instructed by **Daniel Rainsford**, in-house solicitor) for the **Claimant**
No Representation for the **Defendant**
No Representation for the **Interested Party**

Hearing date: 11 April 2025

Judgment Approved by the court
for handing down

This judgment was handed down remotely at 10.30am on Thursday 15th May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

INTRODUCTION

1. This is a challenge by way of judicial review of the decision of District Judge Spruce (Magistrates' Court) ("the judge") of 23 May 2024 refusing to recuse himself from hearing proceedings between the claimant and the interested party. It is brought with the permission of the single judge of 8 October 2024.

BACKGROUND

2. On 21 March 2024, the judge handed down a judgment in the case of *Sheffield City Council v Emeraldshaw Limited*. The hearing took place over a period of four days from 30 January 2024 to 2 February 2024 inclusive.
3. In short, the claim brought by Sheffield in that case was for payment of non-domestic rates in the sum of about £70,000 alleged to have been due and owing in respect of periods between June 2021 and November 2022. The defence was that Emeraldshaw was not liable because it had transferred liability to a third party, namely, Space to Help (Yorkshire) ("STH(Y)").
4. The judge found not only that Emeraldshaw was liable to pay the rates but that the true commercial relationship between it and STH(Y) amounted to nothing less than "a deliberate and calculated rates avoidance scheme" based upon sham documents which were intended to create a false impression.
5. Emeraldshaw sought to challenge the judge's decision by way of judicial review. Sheffield Magistrates' Court ("the court") was named as the defendant and Sheffield City Council as the interested party. The Statement of Facts and Grounds was drafted in robust terms but did not allege any improper conduct on the part of the judge.
6. While the appeal was pending, separate proceedings were being brought by Rotherham Metropolitan Borough Council ("Rotherham") against Ladybill Limited ("Ladybill") also claiming payment of non-domestic rates. There were a number of common factors which this case shared with the earlier claim against Emeraldshaw.
7. Both Emeraldshaw and Ladybill are companies within the MCR Property Group. ("MCR") They have the same ultimate beneficial owners and directors. The alleged tenants involved were the same. The tenancy documents were in identical terms. There was, therefore, a very significant overlap between both the issues arising and the people involved in the two cases.

8. It must therefore have been a disappointment to Ladybill and MCR that the judge, who had been so critical of Emeraldshaw in his judgment, reserved the Ladybill case to himself. They cannot have been optimistic that their prospects of success had thereby been improved.
9. However, developments in the Emeraldshaw case later became the catalyst to an application made on behalf of Ladybill that the judge should recuse himself from hearing the Ladybill case. Ladybill rightly accepts that merely because the judge had made strongly adverse findings against Emeraldshaw in the first proceedings would not, of itself, have afforded any sound basis for a recusal application. Although it contends that his decision was unfair, it does not say that it displayed bias.
10. However, it is now contended that what happened after judgment was handed down gives rise to serious concerns of apparent bias. The first area of controversy arises out of the judge's involvement in the procedural progress of Emeraldshaw's application for judicial review of his decision.

THE EMERALDSHAW ACKNOWLEDGMENT OF SERVICE

11. It is often the case that, where the decision of a magistrates' court is challenged by way of judicial review, the court itself remains neutral as to the outcome. It is the interested party which meets the challenge.
12. The Acknowledgement of Service form N462 does not, however, purport to preclude the court from providing evidence and making submissions in all cases.
13. The note to section 1 provides:

“Note: If the application seeks to judicially review the decision of a court or tribunal, the court or tribunal need only provide the Administrative Court with as much evidence as it can about the decision to help the Administrative Court perform its judicial function.”
14. The form then presents the defendant court with a choice of options.
15. **Box 4:** Where it intends to make a submission it must complete sections 2, 3 and 6. Section 2 relates only to identifying any likely interested parties and section 6 is a statement of truth. Section 3 provides:

“Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give you grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.”
16. **Box 5:** Where, however, a court does not intend to make a submission only sections 2 and 6 are to be completed.
17. In the event, the judge, who filled out the form on behalf of the court, ticked box 5 thereby indicating that it did not intend to make a submission. So far so good. However, he did not limit himself thereafter to completing

sections 2 and 6 as the Form required. Instead, he went on to complete section 3 which was intended for use only where submissions were to be made.

18. The judge sought to justify filling in section 3, the whole purpose of which was to enable the court to set out any submissions, by recording the following:

“THIS IS NOT A SUBMISSION, but it is an observation on the Claim, which is intended to provide the Administrative Court with as much assistance as it can about the decision to help the Higher Court perform its judicial function.” [Emphasis not added]

19. The judge went on to say:

“The Court stands by its written judgement (sic) (attached) which sets out a clear basis for the conclusions reached, with little else required.”

20. Unhappily, what follows amounts, in large part, to a rather strenuous attempt to defend his decision in ways that provide little or no assistance to the Administrative Court. These include:

- (i) *“The Defendant Court...maintains that the Appellant is without any evidenced substantive argument whatever the avenue of appeal.”*
- (ii) *“The Defendant Court maintains that this is a judgement (sic) which can properly be held to scrutiny, like any other.”*
- (iii) *“It nevertheless remains a fully reasoned judgement (sic)”*
- (iv) *“It is open and transparent about the findings of fact...”*
- (v) *“It remains a considered and reasoned judgement (sic) which takes proper account of the available evidence, of which, on any assessment of the Appellant’s evidence there was a tumbleweed of scarcity.”*
- (vi) *“On the issue of Costs: Fully discussed at length and eminently reasonable in its claim.”*

21. In the light of the contents of the filled out section 3 of the Acknowledgment of Service form in the Emeraldshaw case, Ladybill applied to the judge to recuse himself from hearing the Ladybill case. During the course of the hearing, the judge made a number of comments which included:

- (i) *“One-sided judgment they called it in the judicial review. It was a careful reasoned judgment. It was not one-sided. It was not biased.”*
- (ii) *“Did you have a part in drafting the judicial review?”* Directed to counsel appearing on behalf of Ladybill.

- (iii) In reference to the contents of section 3. *“It is not suggesting arguments. Sheffield are capable of presenting their own arguments.”*

THE RECUSAL DECISION

22. It probably came as no surprise to Ladybill when the judge refused its recusal application. He did so in robust terms:

- (i) *“I have been a judge for 17 years and have never had an application as far as I remember.”* He did, however, go on to concede, perfectly properly, that his hitherto unblemished record did not preclude the making of the application.
- (ii) *“My one page commentary cannot possibly be a defence of a claim which is 46 pages long.”*
- (iii) *“Further, the court stands by its written judgment attached to the response which sets out a clear basis for conclusions with little else required. The remainder of the defendant court response is little more than summarising conclusions in the judgment.”*
- (iv) *“The suggestion by Ladybill that it suggested arguments that may be adopted by the Interested Party there is of low persuasive value. These arguments were already put forward in Emeraldshaw and it would be ridiculous to suggest that anything other would happen than Sheffield would re-iterate those arguments with vigour before the High Court.”*
- (v) *“As is the nature of decisions, a decision never satisfies both sides. The losing party feels aggrieved. Not usually a losing party will complain a tribunal was unfair. Such complaint often portrays a weak and poorly presented case. It was a weakly presented and poorly evidenced case.”*
- (vi) Later, he appeared to proceed on the assumption that it was alleged that it was his substantive judgment in the Emeraldshaw case (rather than, or in addition to, his response to the judicial review proceedings which followed) which was tarnished with apparent bias. For example:

“The defendant court response makes it overt that [the] judgment can be held to scrutiny like any other. It is a fully reasoned judgment. They are findings of fact reached on evidence and on balance of probability, that is not the stuff of bias or apparent bias. I would be surprised if the High Court will tell me so...”

I take the view that this application is misconceived. The judgment I gave applies to factual circumstances in *Sheffield v Emeraldshaw* under challenge and should I be held to scrutiny in the High Court which is what matters and not the views of those who are unhappy.”

THE EMERALDSHAW REVIEW

23. Emeraldshaw's challenge to the judge's decision has not, to date, been substantively resolved. In particular, it faces the challenge of demonstrating that judicial review is the appropriate remedy rather than appeal by way of case stated.
24. This procedural issue, however, does not arise in the instant case. As Collins J observed in *The Queen on the Application of P v Liverpool City Magistrates* [2006] EWHC 887:
- “6. However, I recognise that there are some conflicting authorities, which do not make it necessarily easy to decide whether judicial review or case stated is appropriate in the circumstances of a given case. Judicial review is obviously more appropriate where, for example, there is an issue of fact which may have to be raised and decided and which the Justices cannot have decided for themselves.
7. Those rather cryptic observations are intended to relate to a situation where it is alleged that there has been unfairness in the way that the Justices conducted the case, obviously where for example it is suggested that there was bias in the manner in which they conducted themselves...”
25. In this review, therefore, Rotherham has adopted a neutral position.

THE GROUNDS

26. The grounds upon which the recusal decision are challenged are that the judge:
- (i) Wrongly refused to acknowledge the importance and result of the court having filed an Acknowledgment of Service in the proceedings;
 - (ii) Wrongly stated that there was not a convention in Judicial Review that an inferior court remains neutral;
 - (iii) Improperly interpreted and wrongly applied the test for apparent bias;
 - (iv) Wrongly stated that the impartial fair minded observer would review his detailed judgment in the Emeraldshaw case, review the Judicial Review therefrom and conduct an analysis of whether it was a reasoned and fair rather than biased judgment;
 - (v) Wrongly elided the issues and wrongly applied one of the issues as whether the learned judge had been biased in his Emeraldshaw judgment;
 - (vi) Interjected during the hearing in such a way that it was clear the learned judge ought to have recused himself because he had become too personally involved in the matter of defending his judgment which was under attack in the Judicial Review.

THE EMERALDSHAW ACKNOWLEDGMENT OF SERVICE

27. The choice of the inferior court in Judicial Review proceedings will, in practice, very often be to remain neutral but there is no convention mandating this in all cases.
28. The case of *Regina (Davies) v Birmingham Deputy Coroner* [2004] 1 W.L.R. 2739 involved a claimant in judicial review proceedings seeking costs against the coroner against whose decision the claim had been brought. The Court of Appeal, however, undertook a detailed and helpful review of the authorities covering the position not only of coroners but of magistrates.
29. Attention was drawn to the provisions of the Review of Justices Decisions Act 1872 section two of which provides:

“Justice, when his decision is called in question in a Superior Court, may file affidavit showing grounds of his decision without payment of fee.

Whenever the decision of any justice or justices is called in question in any Superior Court of Common Law by a rule to show cause or other process issued upon an ex parte application, it shall be lawful for any such justice to make and file in such court an affidavit setting forth the grounds of the decision so brought under review, and any facts which he may consider to have a material bearing upon the question at issue, without being required to pay any fee in respect of filing such affidavit [...]1 and such affidavit [...]2 may be forwarded by post to one of the Masters of the Court for the purpose of being so filed.”

30. This demonstrates, as does the wording of Form 462, that there are circumstances in which it may well be appropriate for an inferior court to provide the reviewing court with information to assist in determining the outcome of the review. I therefore reject the argument that there is an over-arching convention that the court should not play an active role in opposing the proceedings when faced with an application for judicial review. On this aspect of the case, I consider that the judge was correct. Each case must be decided on its own facts.
31. Form 462 requires the court to choose whether or not to make submissions. No section is provided to facilitate any communication not amounting to submissions.
32. In the event, the judge attempted to create a hybrid communication to the reviewing court by filling out section 3 which was intended for submissions with content which asserted: “THIS IS NOT A SUBMISSION but it is an observation on the Claim.”

33. Of course, if the information provided by the court within section 3 had in fact comprised material likely to help the reviewing court then any complaint about the label “observation” would have amounted to no more than the triumph of form over substance. However, it is necessary to look more closely at what the purpose of this material really was. The first sentence to the effect that the written judgment set out a clear basis for the conclusions reached, with little else required, was, on the face of it, accurate. What purpose was therefore to be served by the page of material which followed? Either the judgment spoke for itself or it didn’t. If it did, further commentary would be superfluous.
34. With the possible exception of information relating to two arguments, which were withdrawn before the judge and thus did not feature in his judgment but which he feared might be resurrected on appeal, there is nothing in the “observation” which was likely to help the reviewing court. It is difficult to escape the conclusion that the purpose of the “observation” was to persuade the High Court that the judgment was a sound one through advocacy. Indeed, the judge, himself, asserted that the observations were not a defence of his decision and were unlikely to add anything than what Sheffield would raise on the review.
35. I observe in passing that the sort of cases in which an inferior court’s submissions are likely to be helpful might include, by way of example, those in which the court below had a special level of expertise in an arcane area of law or where the actions of the inferior court called for some explanation not otherwise to be found in any written record. Indeed, in appropriate cases, some contribution from the court may well be useful where there is an allegation of bias. There was no such allegation in the Emeraldshaw application. However, in cases where everything the appeal court needs to know about the approach of the court below is to be found in a detailed and comprehensive written judgment, the utility of observations is not obvious.

THE HEARING OF THE APPLICATION

36. Ladybill have relied upon a number of comments made by the judge during the course of the recusal hearing many of which, not repeated in this judgment, do not, in my view, take its case any further. Nevertheless, those to which I have made specific reference are, at least, susceptible to being interpreted as betraying a level of personal sensitivity about being judicially reviewed.

THE RECUSAL DECISION

37. The reasons given for the recusal decision, at least in part, also reveal a level of sensitivity to the application to which it responds. The judge’s reference to his seventeen years recusal-free history introduces an unnecessarily personal and, indeed, irrelevant observation. His general

comment that where a party relies on unfairness it often portrays a weak and poorly presented case was unfortunate and might be taken to suggest that recusal applications should be treated, from the outset, as if potentially motivated by lack of confidence in the substantive merit of the claim to which it relates. Further, later in the judgment, he appears to have conflated the grounds upon which his judgment was originally challenged (which did not include allegations of bias) with the grounds upon which the subsequent application for recusal was made (which did).

THE LAW

38. Challenges of actual bias involving the decisions of judges in this jurisdiction are rare. More commonly, the charge is of apparent bias the test for which is: “*whether the fair-minded and informed observer, having considered the facts, would consider that there was a real possibility that the tribunal was biased*” (see **Porter v Magill** [2002] 2 A.C. 357 para 102).

39. In **Helow v SSHD** [2008] UKHL 662, Lord Hope provided a useful character sketch of the observer in question:

“2. The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in **Johnson v Johnson** (2000) 201 CLR 488, 509, para 53. Her approach must not be confused with that of the person who has brought the complaint. The “real possibility” test ensures that there is this measure of detachment. The assumptions that the complainant makes are not to be attributed to the observer unless they can be justified objectively. But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively, that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.

3. Then there is the attribute that the observer is “informed”. It makes the point that, before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment.”

40. In **Zuma’s Choice Pet Products Ltd v Azumi** [2017] EWCA Civ 2133 at para 29, the Court of Appeal observed:

“...the mere fact that a judge has decided applications in the past adversely to a litigant is not generally a reason for that judge to recuse himself at further hearings. If that were the case the same judge could not make two successive interim decisions in a case without risking accusations of bias... The position might well be different if in the past the judge has expressed a final, concluded view on the same issue as arises in the application.”

41. Applying the approach of the Court in Zuma, I am satisfied that Ladybill was right to conclude that the judge was entitled to sit on the case notwithstanding his trenchant observations in the Emeraldshaw case. He had been dealing with litigation involving both legal and factual complexity and the disadvantages of involving a different judge were self-evident.

CONCLUSION

42. However, I am satisfied that the combination of:
- (i) the judge’s oratorical contribution to the Acknowledgement of Service Form;
 - (ii) some of his comments during the recusal hearing; and
 - (iii) some of the comments which he gave in his reasons for refusing to recuse himself;

are such as would lead the fair-minded and informed observer to conclude that there was a real possibility that the judge was biased.

43. It is only human nature that a judge may feel a mixture of emotions when facing a challenge to one of his or her decisions whether by way of appeal or review. Ultimately, however, he or she must thereafter be seen to act in a way which is consistent only with the objective demands of fairness and justice. Where a judge has made adverse findings against a party in one claim it is particularly important that the impression is not given thereafter that he or she may approach later related cases with anything other than an open mind.
44. In this case, the fair-minded and informed observer would be entitled to conclude that there was a real possibility that this judge was likely to be influenced by the extraneous desire to decide the Ladybill case in a way which validated, ex post facto, his earlier decision in the Emeraldshaw case.
45. It would be wrong to conclude this judgment without expressing some sympathy for the position of the judge below. I suspect that many, if not most, judges, while no doubt genuinely welcoming legal clarity from the appeals or review process, would often prefer that such clarity were not achieved at the expense of the success of the challenge to their original decision. I make no comment as to the substantive merits of the challenge

to the Emeraldshaw decision but it is clear that the judgment was one which was the product of much commendable time and effort.

46. Regrettably, in my view, the judge thereafter went too far in seeking unnecessarily to advocate in favour of the soundness of his earlier decision in a way which the fair-minded and informed observer would consider gave rise to a real risk that in the Ladybill proceedings he would struggle to keep a sufficiently open mind on the issues which fell to be determined in that case.
47. In conclusion, I quash the decision refusing the recusal application and substitute for it an order that the judge is hereby recused from sitting on the Ladybill claim.