

THE HON. MR JUSTICE FORDHAM

Determination as to Venue



Neutral Citation Number: [2022] EWHC 152 (Admin)

Case No: CO/4003/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LEEDS

1 Oxford Row,
Leeds LS1 3BG

27th January 2022

Before:

MR JUSTICE FORDHAM

Between:

THE QUEEN (on the application of YVONNE FORTT)

- and -

FINANCIAL SERVICES COMPENSATION SCHEME LTD

Bevan Brittan Solicitors for the Defendant

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.

A handwritten signature in black ink, appearing to read "Michael Fordham".

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

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. This is a claim for judicial review in which a minded to transfer order (“MTTO”) was made on 10 December 2021. The MTTO is a mechanism by which the Court invites and considers “the views of the parties” before any finalised decision to transfer the claim: see the *Administrative Court Judicial Review Guide 2021* at §7.7.5. The background is this. The Claimant had filed the claim in London. She had answered “no” to this question in Form N461: “Have you issued this claim in the region with which you have the closest connection?” She then gave these reasons:

The decision to issue the claim in London rather than Manchester is based upon the location of the FSCS, their legal representative and that the decision being challenged by this permission application affects complainants throughout England and Wales.

The MTTO was made by Martin Lee, Administrative Court Lawyer, in the exercise of powers delegated by the President of the Queen’s Bench Division (CPR 54.1A). The Order recorded that Mr Lee was “minded to transfer this case to the Administrative Court in the Northern region for administration and determination at the Manchester Civil Justice Centre”, giving the parties “liberty to indicate opposition to transfer by way of written submissions” within 7 days. In his reasons, Mr Lee said this:

Although the claimant has ticked in section 4, N461 that the claim has been filed in a region other than that with which the claimant has the closest connection the only justification given is the location of the defendant (which is a national service) and the fact that it may affect others. Neither of those are reasons for the claim not to have been filed in Manchester to make best use of court resources and not over-burden the RCJ. The venue decision is best determined by the Judge.

2.

The Claimant does not object to the transfer to Manchester. She lives in Blackpool (FY2). Her solicitors APJ Solicitors are based in Warrington (WA4). Her barrister (Mark Harper QC) is based in Manchester (M3). The Defendant opposes transfer, inviting the Court to retain the proceedings at the Administrative Court in London where the claim was originally commenced. The grounds are set out in a helpful letter from Bevan Brittan, the Defendant’s solicitors. They call for careful examination. They are as follows:

i)

The Claimant had confirmed in the Claim Form that the proceedings had deliberately been issued in the Royal Courts of Justice and that she considered that it should stay in London. Consideration should be given to the views of both parties before determining that the claim should be transferred.

ii)

Transferring the proceedings to a location away from the Defendant’s offices in London would increase the Defendant’s costs of responding to the litigation and would adversely impact on its attempts to comply with its statutory obligations, including (by [s.224ZA of the Financial Services and Markets Act 2000](#)) to have regard to the need to ensure efficiency and effectiveness in the discharge of its functions, reflecting the fact that the Defendant is funded by way of levy on active financial services firms.

iii)

Since the Defendant (based at E14) its solicitors Bevan Brittan (based at EC4M) and its Counsel James Strachan QC (based at WC2A) are based in London, it follows that all of the key personnel involved in this case for the Defendant are in London. There would be a significant costs impact in having to travel to Manchester for a substantive hearing, including potentially having to source overnight accommodation for any hearing listed more than one day. The travel requirement could impact on availability dates for the Defendant's Counsel and solicitors. The overriding objective (dealing with cases justly and at proportionate cost) would best be furthered by the claim remaining in London for case-management and determination.

iv)

Given that the Administrative Court (and Court of Appeal) in London has, in various cases referenced in the Defendant's Summary Grounds of Resistance, been engaging with claims arising from similar subject matter - regarding SIPP Operators' obligations and potential liability to their clients, including when acting on an execution-only basis - there is a body of knowledge amongst many of the judges sitting at the RCJ which would be beneficial and ensure efficiency at the permission stage and any substantive hearing.

3.

Practice Direction 54C of the Civil Procedure Rules "is intended to facilitate access to justice by enabling cases to be administered and determined in the most appropriate location" (§1.1) and explains that the "administration of the Administrative Court is organised by geographical area"; that, "in addition to the central Administrative Court Office at the Royal Courts of Justice in London, there are Administrative Court Offices in Birmingham, Cardiff, Leeds and Manchester" (§1.2(1)); and that (so far as concerns Leeds and Manchester), "claims on the North-Eastern Circuit are administered from (and should be filed in) Leeds" and "claims on the Northern Circuit are administered from (and should be filed in) Manchester" (§1.2(1)). The Practice Direction identifies this "principle" (§1.2(2)): "The Administrative Court applies the principle that where a claim has a specific connection to a region (by subject matter, location of the claimant or defendant or otherwise) it should, if at all possible, be administered and determined in that region." As the Practice Direction explains (§2.1), leaving aside "excepted classes of claim" (§3.1), "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, the location of the claimant, or the defendant, or otherwise: see further ... paragraph 2.5". Paragraph 2.5 is then in these terms:

The general expectation is that proceedings will be administered and determined in the region with which the claim has the closest connection. This will be determined having regard to the subject matter of the claim, the region in which the claimant resides and the region in which the defendant or any relevant office or department of the defendant is based. In addition, the court may consider any/all other relevant circumstances including the following: (a) any reason expressed by any party for preferring a particular venue; (b) the ease and cost of travel to a hearing; (c) the availability and suitability of alternative means of attending a hearing (for example, by video-link); (d) the extent and nature of any public interest that the proceedings be heard in any particular locality; (e) the time within which it is appropriate for the proceedings to be determined; (f) whether it is desirable to administer or determine the claim in another region in the light of the volume of claims issued at, and the capacity, resources and workload of, the court at which it is issued; (g) whether the claim raises issues sufficiently similar to those in another outstanding claim to make it desirable that it should be determined together with, or immediately following, that

other claim; (h) whether the claim raises devolution issues and for that reason whether it should more appropriately be determined in London or Cardiff; and (i) the region in which the legal representative[s] of the parties are based.

4.

In my judgment, the Administrative Court in Manchester (Northern Circuit) is the region with which this claim has the closest connection, having regard to (a) the subject matter of the claim, (b) the region in which the Claimant resides and (c) the region in which the Defendant is based. In my judgment, having regard to all the circumstances, it is that region which provides the most appropriate location for the administration and determination of the case. I will explain why. I accept that the following are all basic, relevant features which would support London as a venue: London reflects “the region in which the Defendant ... is based”; London reflects “the region in which the legal representative” – solicitors and Counsel – of the Defendant are “based”; there is the “ease and cost of travel to a hearing” in London rather than Manchester. Having said that, the train from London to Manchester is a little over two hours. Moreover, Manchester reflects “the region in which the Claimant resides”; Manchester reflects “the region in which the legal representative” – solicitors and Counsel – of the Claimant are “based”; and so there is the “ease and cost of travel to a hearing” in Manchester rather than London. The Defendant’s solicitors describe people travelling to Manchester and possibly needing to stay overnight. They also emphasise the statutory duty to have regard to the need to ensure efficiency and effectiveness in the discharge of its functions. I have naturally had regard to the overriding objective (dealing with cases justly and at proportionate cost), and to [CPR 1.1\(2\)\(b\)](#) (saving expense). But it is relevant that costs are incurred on both sides, by any necessary travel or accommodation. And there is this same symmetry as to the overall burden of costs (whether recoverable or irrecoverable). There is no reason why cost and travel should favour one party (a public authority defendant) over another (a private individual claimant). The fact is that the cost and travel considerations substantially cancel one another out. For, if the case is dealt with in London, the Claimant, her solicitors and Counsel would be making an equivalent journey the other way, with the equivalent needs. If the Defendant’s team would need to stay overnight in Manchester for a hearing there, then the Claimant’s team would need to stay overnight in London for a hearing there.

5.

As Mr Lee observed, the Defendant is providing “a national service”. There is nothing, in my judgment, about the “national” nature or spread of a public authority’s work which necessarily indicates that the RCJ in London is the appropriate venue. The assessment of the appropriate venue is based on identifying the appropriate “region”: whether that is London or elsewhere. So, what links the Defendant to the RCJ is not that London is somehow a ‘national’ venue for ‘national’ public authorities, but that the RCJ is in the “region” in which the Defendant is located. The claim impugns a decision by the Defendant on its interim approach to claims under s.27 of [the 2000 Act](#), in circumstances where [Adams v Options UK Personal Pensions LLP \[2021\] EWCA Civ 474](#) is pending before the Supreme Court. The Claimant recognised that this issue “affects complainants throughout England and Wales”. That is a point about ‘national’ spread, of an effect which (most directly) is on the Claimant in Blackpool. Insofar as the Claimant’s “claim” is linked to a “region”, it is her region. It is the Claimant’s claim. The impact is primarily for her, where she is. The impact is spread among financial services firms (through the levy). There is a reason why, as a sensible starting-point, the Claim Form asks the Claimant about “the region with which you have the closest connection”. It is true, and relevant, that the Claimant’s Form N461 originally identified London. But having said that, and in light of the MTTO, the Claimant has not maintained her position and does not resist the transfer to Manchester, her regional Administrative Court.

6.

There are other points about subject-matter. As the Practice Direction makes clear, it is important to consider “whether the claim raises issues sufficiently similar to those in another outstanding claim to make it desirable that it should be determined together with, or immediately following, that other claim”. The answer to that is ‘no’. The Defendant’s solicitors make a different point. They suggest there is, by reference to case-law as cited in the summary grounds, a “body of knowledge” amongst “many of the judges sitting at the RCJ” which would be “beneficial and ensure efficiency” at the permission stage and any substantive hearing. I have considered the summary grounds of resistance and the cases cited there. I have also considered the judicial review cases on Westlaw involving the Defendant. In my judgment, the point being made has been overstated. The three most recent judicial review cases on Westlaw involving the Defendant were decided by three different Judges: two by relatively recently appointed High Court judges, and the third (a case cited in the summary grounds of resistance) by a Deputy High Court Judge. The *Adams* case was one decided in the Chancery Division, and by a Deputy High Court Judge. The regional Administrative Court has a team of ticketed specialist judges – many of them with cross-over expertise in commercial and regulatory work – well able to deal with the issues which arise in judicial review cases involving the Defendant. Added to that, there are – each term – visiting High Court Judges sitting in the regional Administrative Court, who are the very same personnel who would be allocated these cases in the RCJ. Having considered the nature of the claim, I can be confident that there will be suitable knowledge and experience, no injection of inefficiency, and no injection of delay. Finally, as Mr Lee pointed out, the use of the regional Administrative Court – including in the present case – makes best use of court resources and serves not to over-burden the RCJ. The Administrative Court in Manchester has the capacity and resources, alongside its workload, to determine the claim in an appropriate time frame. For all these reasons, I have concluded that this claim should be transferred to be determined in the Administrative Court in Manchester.