

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE HIGH COURT OF JUSTICE  
ADMINISTRATIVE COURT

CO/4164/2021

Neutral Citation Number: [2023] EWHC 2280 (Admin)

The Court House  
1 Oxford Row  
Leeds LS1 3BG

Thursday, 8 June 2023

Before:

MRS JUSTICE HILL

BETWEEN :

PAUL HOGAN

Applicant

- and -

THE COUNTY COURT AT LEEDS

Respondent

- and -

HARGREAVES LANSDOWN ASSET MANAGEMENT LTD Interested Party

\_\_\_\_\_  
THE APPLICANT appeared In Person.

THE RESPONDENT and INTERESTED PARTY did not attend and were not represented.

\_\_\_\_\_  
**JUDGMENT**

(via Microsoft Teams – audio only)



MRS JUSTICE HILL :

- 1 This is a renewed application for permission to apply for judicial review. The Claimant is Mr Paul Hogan, who has represented himself before me this morning. The Defendant is the County Court at Leeds. The Interested Person to these proceedings is Hargreaves Lansdown Asset Management. The decision under challenge by Mr Hogan is a decision made by a Specialist Circuit Judge, HHJ Davis-White KC, on 14 July 2021. Mr Justice Fordham refused Mr Hogan permission on the papers on 18 October 2022.
- 2 The hearing has been conducted today by telephone, at Mr Hogan's request. He has made his submissions very carefully and clearly to me. He has also provided me with extensive written documentation including various skeleton arguments and submissions.
- 3 An Acknowledgement of Service has been served on behalf of the County Court at Leeds indicating that, as a court, it does not make a submission and is remaining neutral. However, certain information has been provided by the County Court specifically by the Circuit Judge as to the information he considered before he made the order of 14 July 2021, of which Mr Hogan seeks judicial review. The Interested Party has played no part in these proceedings.
- 4 The Circuit Judge's decision, dated 14 July 2021, refused Mr Hogan permission to appeal an order made by District Judge Geddes on 8 February 2021. The Circuit Judge certified the application as totally without merit and directed under CPR 52.4(3) that Mr Hogan could not have the application reconsidered at an oral hearing.
- 5 Mr Hogan's claim had been filed on 20 June 2020 and had been transferred to the Business and Property Courts. By the 8 February 2021 order, District Judge Geddes struck out the

claim and marked it as totally without merit, ordered a payment of costs, and refused him permission to appeal.

- 6 District Judge Geddes gave a careful reserved judgment of some length explaining the reasons for the 8 February 2021 order. The hearing had been held, as far as I understand it, in October 2020. Judgment was reserved until 8 February 2021 when it was handed down. The final judgment makes clear that a draft had been circulated to Mr Hogan; that he had made further submissions on it; and that the District Judge had taken them into account.
- 7 By way of very brief summary, Mr Hogan's claim was brought against Hargreaves Lansdown Asset Management. He sought damages in relation to section 138D of the Financial Services and Markets Act 2000. The claim made allegations of a breach of statutory duty under that section. The District Judge found for the purposes of the hearing before her that Mr Hogan was also alleging that the Defendant had been negligent. The losses that he claimed were in the sum of just over £555,000, said to include £264,627 for the loss of a pension fund. The underlying facts, according to the judgment of District Judge Geddes, related to the purchase of an annuity on or around 17 or 18 October 2011. That was the later of two associated transactions that Mr Hogan was making allegations about in the claim.
- 8 The central question for the District Judge was whether or not Mr Hogan's claim was time-barred under the Limitation Act 1980. The Defendant had brought an application to strike his claim out because, it was said, the cause of action had accrued no later than 17 October 2011 and he was therefore out of time. The District Judge's judgment made clear that central to her consideration was whether or not, if Mr Hogan's claim was out of time, he could benefit from a limitation defence under either section 14A of the Limitation Act 1980 which provides a special time limit for negligence actions where the facts relevant to a cause

of action are not known at the date of accrual, or section 32 of the Limitation Act 1980 which provides for the postponement of limitation periods in cases of fraud, concealment or mistake.

9 The District Judge set out the factual background to the claim, and then dealt with the legal issues in three distinct categories.

10 First, she found, at paras.39 to 40 of her judgment, that Mr Hogan was outside the primary limitation period under section 2 or section 9(1) of the Limitation Act 1980. The finding was reached by her on the basis that those periods had expired on 17 October 2017, that being six years after the transfer of his benefits out of the 3M scheme into the SIPP, or at the latest from there into the purchase of the retirement annuity policy.

11 Second, at paras.41 to 49 of her judgment, she dealt with the arguments that he had a potential defence under section 14A of the Limitation Act 1980. The District Judge concluded that it was unarguable that he did. This was because in an email of 2 May 2017 he had set out that he was concerned about the advice he had been given. He said that no advice had been given to him to shop around. He referred to his vulnerability. He said that the company had breached its duty of care to him as his advisers, and this has caused him loss. The District Judge found that he knew enough "... about the possible claim to make specific allegations of duty, breach, causation and loss, which clearly would give rise to a cause of action": see para.47 of the judgment.

12 The District Judge went on, at para.50 and thereafter of her judgment, to deal with the arguments relating to section 32 of the Limitation Act 1980. She dealt with this by reference to two different reports which I will call, by way of shorthand, the SR and the PTAR. The District Judge concluded that the SR report was to be dealt with differently from the PTAR

report. She concluded, at para.85 of her judgment, that Mr Hogan did have an arguable case that the PTAR report was deliberately concealed from him in September 2011. However, she concluded, at para.86 of her judgment, that that was not sufficient to raise an arguable defence under section 32, and that the problem for Mr Hogan was that: "Even with this as a possibly arguable point, he still falls foul of the requirement [this is a requirement from section 32] that deliberate concealment should be relevant to the right of action."

- 13 She observed in the remainder of para.86 that the complaint that he had been wrongly advised to transfer his benefits out of the scheme or that the Defendant had breached statutory duties, was capable of being fully formulated without ever seeing the PTAR report, and indeed might have been said to be bolstered by its absence. She continued:

"The evidence that the right of action was complete is amply contained in the fully-formulated letters before claim/complaints to the Defendant and the FOS, which pre-date by over a year the disclosure of this report (at earliest in October 2018) and the continued reliance on the essence of those complaints. It follows that there is nothing in the report which was relevant to the essence of the right of action, either in negligence or breach of statutory duty."

- 14 She therefore concluded that Mr Hogan had no real prospect of succeeding in persuading a trial judge to extend the limitation period via either of these routes, i.e. section 14A or section 32, and on that basis she struck out the claim. She made it clear in para.86 that it was not necessary for her to go on to consider whether his case would be arguable or have a real prospect of success if it were not statute-barred because, having found that it was, she had struck the claim out.

- 15 The grounds of appeal lodged by Mr Hogan against the District Judge's decision were dated 11 March 2021, and they ran to some 19 grounds. Of those it is important for present purposes to note that several of them specifically engaged with the District Judge's findings

around the deliberate concealment provisions in section 32. In particular, grounds 12, 13, 14, 15, 16, in varying ways, deal with the issue around deliberate concealment.

- 16 In addition to his grounds of appeal, Mr Hogan provided (as he was directed to do) a skeleton argument dated 4 June 2021. That focussed his grounds under three headings: ground 1, that it was wrong for the District Judge to have struck the claim out; ground 2, that it was unjust that she had ordered him to pay the Defendant's costs, and ground 3, that his right to a fair hearing under Article 6 of the European Convention on Human Rights) had been breached because permission to appeal had been refused. His focus was on ground 1.
- 17 Within the submissions on ground 1 and para.40 and thereafter of his skeleton argument dated 4 June 2021, Mr Hogan made further points about the PTAR and referred to the suitability letter and various other factual matters to do with the deliberate concealment point. He also quoted a new authority that I had not seen referred to in the District Judge's judgment, *Canada Square Operations Ltd. v Potter* [2020] EWHC 672 (QB). In his skeleton, he said this provided a "more substantial and conclusive viewpoint regarding section 32", but there is no further detail given about that. He also referred to *Williams v Fanshaw Porter and Hazelhurst (a firm)* [2004] 1 WLR 3185. However it is clear that the District Judge had directed herself to that key authority because it is referred to in her judgment, and she had set out what the elements of that authority indicated in terms of the requirement for section 32. The paragraph number of her judgment dealing with that is para.73, and that sets out what is the key requirement for a section 32(1)(b) defence.
- 18 The Circuit Judge considered Mr Hogan's grounds of appeal and, as I have said, refused him permission to appeal in the order dated 14 July 2021.

19 The Circuit Judge observed:

"There are no less than 19 grounds of appeal put forward. Many of them are based on a complaint that the District Judge did not consider or deal with different aspects of the underlying merits of the claimant's case, other than the issue of limitation. However, as the District Judge explained, her decision was on the basis that, assuming the claimant could make out the factual and legal aspects of his case, the claim was barred by limitation."

20 He noted that the District Judge had operated on the most favourable assumptions to the claimant that were permitted by the evidence, and said that this was a proper and conventional approach.

21 The Circuit Judge observed that several complaints had been made by Mr Hogan that he was not assisted by the District Judge as required by CPR 3.3(1)(a) as he is unrepresented. The Circuit Judge highlighted that the District Judge had, in her reasons, confirmed that she had given assistance to Mr Hogan and referred to that. The grounds, the Circuit Judge noted, failed to identify what assistance it was said was not given that should have been given.

22 More pertinently, thereafter, the Circuit Judge's order went through each of the 19 grounds of appeal advanced by Mr Hogan and dealt with each one in a discrete paragraph. It is right to record, and is a matter of complaint by Mr Hogan, that each of the grounds was found by the Circuit Judge to have no real prospect of success and be totally without merit.

23 The order made by the Circuit Judge was, as is clear from the heading to the order, made by the Circuit Judge in his capacity as a judge sitting in the Business and Property List of the County Court. It was nevertheless, unhelpfully, sealed with a High Court seal. This led to Mr Hogan understandably considering that in order to challenge the Circuit Judge's order he had to go to the Court of Appeal. He therefore lodged grounds with the Court of Appeal,



dated 3 August 2021. He has explained that on 2 October 2021 Leveson LJ indicated that the Court of Appeal had no jurisdiction.

- 24 It is clear to me that Mr Hogan was trying very hard to get proper legal advice about his route of appeal. There was discussion, according to the information I have seen, by him with the Court Service, the Administrative Court Office in London, and the Administrative Court Office in Leeds, the net result of which is that this claim was lodged with the Administrative Court Office in Leeds on 8 December 2021.
- 25 It is a requirement of any judicial review that the claim is lodged promptly and, in any event, within three months. The order under challenge having been made on 14 July 2021 and his claim having been brought on 8 December 2021, Mr Hogan is, on the face of it, out of time. However I have indicated to Mr Hogan that I am content to make no adverse finding against him on delay for today's purposes, because it is clear that he was seeking to find the correct route of appeal or judicial review, and that he was not helped by the stamp on the court order being incorrectly attributed to the High Court. I am content to work on the basis that it is at least arguable that these amount to good reasons for extending time without formally deciding the point.
- 26 When lodging this claim, Mr Hogan has relied on the grounds he placed before the Court of Appeal, but he has also placed before my learned colleague, Mr Justice Fordham, and myself, several other documents, dated 26 July, 30 October and 13 November 2022, in which he has advanced new or slightly different grounds. He has made no formal application to amend his grounds but, again for today's purposes, I do not hold that against him.

27 Similarly, it is right to record that there are various defects in the renewal bundle but, again, I have been able, by looking back at the previous bundles Mr Hogan has lodged, to obtain sufficient information for today's purposes.

28 Mr Justice Fordham has considered this case on more than one occasion, and on 21 March 2023 made a lengthy interlocutory order. This had two very important components.

29 The first point he made was that Mr Hogan's claim for judicial review was raising a factual point about court administration. This was that Mr Hogan was expressing concern that the Circuit Judge had not seen and taken into account the skeleton argument filed on 4 June 2021. On that basis, Mr Justice Fordham ordered that clarity be provided by the court as to this. As I have explained although the court has played no formal role in defending these proceedings (it being a court), a note from the Circuit Judge dated 14 April 2022 has been provided.

30 This 12-paragraph note fully explains the Circuit Judge's position. Crucially it indicates that the skeleton argument was filed by email on 4 June 2021; that the hearing bundle was made available to him to download on 7 June 2021; and that his skeleton argument and the full court file, as well as the bundles provided to the District Judge, were available to the judge and were considered by him.

31 The judge then said this at the end of the note: "I obviously read the appeal bundle and skeleton in support very carefully. I addressed the full grounds of appeal and did not treat those as restricted by the skeleton argument." What the learned judge clearly meant by that was that he took into account all 19 of the grounds advanced by Mr Hogan. Sometimes a skeleton argument can narrow the grounds initially advanced, and it would have been possible to have read Mr Hogan's 4 June argument 2021 as in fact doing that. However, the

Circuit Judge was giving Mr Hogan the benefit of the doubt and looking at all 19 of his grounds as clearly set out.

32 The second crucial part of Mr Justice Fordham's 21 March 2023 order was that he explained in some detail at para.7 and thereafter that judicial review of a judicial decision from the County Court is only available on very restricted grounds. He quoted *R (on the application of Oluwole Ogunbiyi v Southend County Court* [2015] EWHC 1111 (Admin), where Mr Justice Jay set out in great deal, at paras.26 to 29, the restricted nature of these sort of judicial review applications. The key element of his reasoning was at para.29, thus:

"... the hurdles surmounting the claimant [in such a case] are formidable. It is not enough to demonstrate that the Circuit Judge got it 'extremely wrong'. In order to succeed on this application the claimant has to demonstrate something truly egregious or outrageous as to amount to a complete abrogation of the judicial process in the context of the right to a fair trial."

Mr Justice Fordham quoted the observations of the Court of Appeal in the same case, [2016] EWCA (Civ) 549, para.4, to similar effect.

33 The provision of the court note, dated 14 April 2022, predated, as I have indicated, some more documents from Mr Hogan in the form of further skeleton arguments and submissions.

34 I turn now to the various grounds that Mr Hogan has advanced.

35 The first ground, taken from the grounds placed before the Court of Appeal – and indeed it is fair to say very much the focus of Mr Hogan's argument before me today – is the submission that the learned judge did not fully take on board the contents of his 4 June 2021 skeleton.

36 In light of the provision of the court note, Mr Hogan very sensibly accepts today that the learned judge had seen that skeleton.

37 Although he has taken a point in one of his documents that it would be wrong in these proceedings to take into account the judge's note because it was not a sworn statement in the usual form with a statement of truth, etc, under the Civil Procedure Rules, my understanding is that he now accepts that, having been ordered to provide that information by Mr Justice Fordham, it was appropriate for Mr Justice Fordham and myself to take that note into account. Mr Justice Fordham clearly had done so when refusing permission on the papers on 18 October 2022. However, for the avoidance of doubt, given that a central part of Mr Hogan's application for permission related to what the learned judge had seen, it was, in my judgment, entirely right for Mr Justice Fordham to seek information from the judge and to clarify what the judge had seen.

38 In submissions before me today, Mr Hogan has rather reformulated his complaint to the effect that while the learned judge may have seen the skeleton argument dated 4 June 2021, there is nothing in his order to indicate that he had taken it into account.

39 I spent some time during the hearing with Mr Hogan today looking at the thrust of what the 4 June 2012 document added. The totality of it, in my judgment, is really is to make further arguments about the District Judge's findings on deliberate concealment, and to refer to one further Court of Appeal authority that does not, on the face of the document, seem to change the law in any way.

40 The Circuit Judge had clearly engaged with all the grounds of appeal that dealt with the deliberate concealment point, and the Circuit Judge's order makes clear - in particular, in

relation to grounds 12, 13, 14 and 15 - that he was well aware of what concerns Mr Hogan had about the deliberate concealment findings of the District Judge.

- 41 Bearing in mind the very high threshold for an application for judicial review of a County Court decision, I am not persuaded that there is any arguable error in the way in which the judge dealt with this issue.
- 42 His next ground relies on the fact that on three occasions the learned judge erroneously referred to Mr Hogan in the order as "Mr Hope". That is plainly, in my judgment, a typing error, and is not anything close to the sort of error that might justify granting permission for judicial review, especially in a case of this nature (see *Ogunbiyi*).
- 43 Mr Hogan's third ground suggests that the Circuit Judge completed each of the grounds with the annotation "totally without merit" automatically without properly considering that matter. Any judge is required, under CPR 3.3(7), if they consider an application is totally without merit, to say so. This was an experienced specialist Circuit Judge who clearly considered that each and every one of the 19 grounds was totally without merit, and there is no basis, in my judgment, for the assertion that he had done so automatically or without proper consideration.
- 44 I have also considered the various arguments advanced in Mr Hogan's 26 July 2022 skeleton argument. These refer to illegality, irrationality, procedural impropriety and legitimate expectation. However, it is clear to me, on close analysis, that all of these arguments refer back to the suggestion that the learned judge had not properly considered the 4 June 2021 skeleton argument. I am not persuaded that there is anything in those arguments that justifies the grant of permission, for the reasons already given.

45 In his 26 July 2022 document, Mr Hogan has drawn out examples of other cases where this Circuit Judge made clear that he had considered skeleton argument. However, I am not satisfied, as I have already said, that there is any error in the way in which the judge dealt with the skeleton argument in this case.

46 Mr Hogan has also emphasised some key legal principles, to the effect that all judgments must be properly reasoned and compliant with the European Convention on Human Rights. He has referred to *Patel v Mussa* [2015] EWCA Civ 434. There, the Court of Appeal held that a Circuit Judge's refusal of permission to appeal from a District Judge's decision will be a final step for an appellant or petitioner unless there has been a serious procedural irregularity. Those principles are not controversial, and indeed *Patel v Mussa* chimes very much with the approach taken in the *Ogunbiyi* case, which dates from around the same time.

47 For these reasons, in my judgment there is nothing further in the 26 July 2022 document that justifies a grant of permission.

48 The next document advanced by Mr Hogan was his renewal notice of 31 October 2022, in response to Mr Justice Fordham's refusal of permission on the papers. The arguments made by Mr Hogan in the renewal notice are not really grounds for judicial review of the Circuit Judge's decision. Rather, they seek to challenge the approach Mr Justice Fordham took. However I have considered the issue of permission afresh.

49 Finally I turn to the two documents Mr Hogan has lodged dated 13 November 2022. One is described as a skeleton argument; one as submissions. These documents focus on the allegations of the "illegal" reliance in these proceedings on the note of the judge, which I have already addressed. They make an allegation of apparent bias by the Circuit Judge, but that is not developed in any way. They make allegations again about procedural impropriety

and Article 6. However, in my judgment, they add nothing to the points raised elsewhere that I have considered.

50 Accordingly, for all these reasons, I am compelled to refuse Mr Hogan permission to seek judicial review of the Circuit Judge's decision of 14 July 2021. In summary, none of the grounds formally pleaded are, in my judgment, arguable, and none of the potential further grounds set out in the various documents I have gone through, provided by Mr Hogan, are arguable. I reiterate the very restricted ambit of judicial review claims in these circumstances. Like Mr Justice Fordham, I am not persuaded that I should certify this renewed application as totally without merit, but I do refuse permission.

---

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
[CACD.ACO@opus2.digital](mailto:CACD.ACO@opus2.digital)*

This transcript has been approved by the Judge