



Neutral Citation Number: [2023] EWHC 3216 (Admin)

Case No: AC-2023-LON-003211

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

Issued: Thursday, 14th December 2023
Hand Down: Friday, 15th December 2023

Before:

MR JUSTICE FORDHAM

Between:

**THE KING (on the application of
ADAM BALE)**

Claimant

- and -

**COMMISSIONERS FOR HIS MAJESTY'S
REVENUE AND CUSTOMS**

Defendant

Aparna Nathan KC and Howard Watkinson (instructed by ASW Solicitors) for the Claimant
John Banks (HMRC Solicitor's Office and Legal Services) 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.

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

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. The parties are jointly resisting a proposed transfer of this claim to Manchester from London. They have asked me to consider a number of points in support of that opposition.

The Claim

2. The claim for judicial review was filed in London on 30 October 2023. London is the Administrative Court venue for the South-East region. A minded to transfer order (MTTO) for transfer to the Administrative Court in Manchester was made on 9 November 2023. Manchester is the Administrative Court venue for the North-West region.
3. The Claimant lives in Wirral, Merseyside (CH63). He was director of an employment company called EMCL. The company is in Liverpool (L3). In conjunction with his activities as director of that company, he was served with a personal liability notice dated 27 July 2023. It involves a penalty, for alleged personal responsibility for inaccurate PAYE returns. The penalty is in the sum of £124.9m. The notice is the decision impugned in the judicial review proceedings.
4. The Claimant has instructed solicitors based in Liverpool (L1). They have instructed Leading and Junior Counsel based in London (WC2R).

The Claim Form

5. The claim form N461, filled in by the Claimant's legal representatives, included the answer "yes" to this question: "Have you issued this claim in the region with which the claim is most closely connected?" In my judgment, that answer was simply incorrect. In fact, nowhere in the representations in response to the MTTO do the Claimant's representatives seek to defend that description of the claim. Nor does HMRC (as Defendant) say that the South-East is the region with which the claim is most closely connected. The claim is plainly most closely connected with the North-West region.
6. The question in the claim form matters. It requires representatives to face up to the issue, and then gives the opportunity to provide reasons why the venue has been chosen, even though it has not been lodged in the region with which the claim is most closely connected. It alerts the Court and its staff. It should have a straight, justified answer. The Court should not need to be looking behind it to see that what has been said is wrong. That is a marker for the future.

Public Interest

7. The representations now filed by the Claimant's representatives say that there is no particular public interest that the proceedings be heard in Manchester. I disagree. There is a general public interest that a judicial review claim should be heard in the court centre which is the Administrative Court venue for the region with which the claim is most closely connected. There is a general public interest that claims should

not ‘default’ to the regional venue for the South-East region, just because it is the capital, or by reason of some hierarchical perception about the London Administrative Court as a national venue or its judges as the A Team. There is also a general public interest that the choice of lawyers – wherever they are – should not ‘drive’ the venue for judicial review. It is important not to undermine the integrity and ethos of the Administrative Court as a national court operating through regional venues.

Discussion

8. I accept that there can be good reasons to justify a venue for judicial review which is not the Administrative Court venue for the region with which the claim is most closely connected. I accept that the geographical locations of all those concerned – and time and cost considerations – can be powerful factors. I also accept that the parties’ wishes, and especially joint wishes, are powerful features.
9. The Claimant’s representations say that, although the Claimant’s solicitors have “a registered office located in Liverpool”, they “spend a considerable amount of time in London”. I am not sure what to make of “a” or “registered”. It would seem that the Claimant’s solicitors’ office is in Liverpool. It is not said in the representations that the solicitors’ have a London office. Nor, it seems, does their website. Nor is it said that London-based or South-East-based solicitors are dealing with the case. The solicitors are said to travel to London, to deal with “London-based matters”. It is said that this is because these are matters where they have “elected to instruct specialist Counsel based in London”. That is their “election” and the Claimant’s. But it cannot ‘drive’ the choice of venue to London.
10. I accept that the London-based Counsel will need to travel to Manchester for any in-person hearing. It is highly relevant that HMRC – based in London (E20) – also opposes the transfer to Manchester. I accept that the handling lawyer from HMRC’s Solicitor’s Office and Legal Services is based in the South-East and would need to travel to any hearing. HMRC has chosen to instruct London-based Counsel. That, again, is a choice. It touches on a point which I want to re-emphasise.

Defendant’s Choice: Speedy Venue Determination

11. I said this in R (Ellis) v SS for Education [2022] EWHC 1263 (Admin) at §§3-4

The Claimant's representatives' choice of a venue – wherever it is – may lead to Defendants and Interested Parties making decisions as to lawyers who are to be instructed in the case, including Counsel local to a venue. If the geography of those decisions follows the lead of venue chosen by the Claimant and the Claimant's representatives, what can develop is a 'momentum', and which may then be relied on to 'anchor' the case in the venue which was first chosen, even if it was not the venue with which the claim has the closest connection.

It may be, in an appropriate case where the Claimant's representatives' choice of venue appears to them to be fragile, that the Defendants and Interested Parties or their solicitors could properly approach the Administrative Court and the Claimant's representatives, to have venue determined promptly – if that is possible – while putting on hold the timeframe for Acknowledgements of Service, if that can be done promptly and without undermining any necessary expedition in any urgent case.

I repeated in Bhimsinhji Thakor v SSHD [2022] EWHC 2556 (Admin) at §2

A prompt consideration of venue could have been sought, with an extension of time for the Acknowledgment of Service...

Both of these cases are on Bailii and Westlaw. They are listed in the published Minutes for the Administrative Court North User Groups.

12. By way of background, the Minutes of the Administrative Court Manchester User Group for 17 May 2022 (published on the judiciary website), record this discussion topic:

On the question of MTTOs [Matthew Hunt] said [Government Legal Department] was also keen to spread the work to the regional offices but asked that they were made as early as possible because, it might be appropriate to instruct regional counsel in those cases, again making best use of resources. [Fordham JJ] indicated that he would try to make provision for an early venue decision to be possible on request by a party in response to an MTTO.

13. In the present case, it is regrettable if HMRC was not alerted to the venue issue from the way the Claimant's representatives filled out the claim form. But HMRC could have seen the point – as the Court did – and could have raised it for a prompt decision, with a stay on the AOS. Both parties' representations confirm that there is no particular need for expedition. HMRC could have asked for a speedy venue determination before making its choice of Counsel to respond to the claim and assist at the permission-stage with the summary grounds. This is a textbook case where the course could have been taken. It is a matter for HMRC whether they would want now – or for a hearing – to switch to Manchester-based Counsel in this case.

Conclusions

14. I have not been persuaded that the venue of London is justified, rather than Manchester. Nor are the points about possible transfer to the Upper Tribunal in the Rolls Building in London. If that course of transfer is justified, venue is a non-issue. There is a mention of the London-based Joint Administrators of EMCL as a potential interested party. But that is unconvincing (they were not even named as Interested Party in the Claim Form). It is also, in my judgment, insufficient.
15. I support the parties' focus on practical realism and cost. But meetings and consultations, in preparing the proceedings, can all be held in London, if that is each party's wish. If an oral hearing is needed at the permission stage, it will be a short hearing. It can readily be attended from Liverpool. It can also be readily attended from London (just over 2 hours by train). If there is a substantive hearing, and if (which I provisionally doubt) it were to need a second day, there could be an overnight stay. That is like the Claimant and his solicitors travelling to and staying in London. I remind myself that these are not live-evidence proceedings, with witnesses travelling to a court centre to give evidence.
16. As a final reality-check, there is this. On the face of it, this claim is worth £124.9m. The Claimant and his solicitors have instructed Leading and Junior Counsel. They are perfectly happy to travel to London and stay there. That entails costs too. I do not accept that the venue-related costs are substantial, in this case, looking in the round. I do not accept that the additional cost to the Claimant, or to the public purse so far as HMRC's costs are time are concerned, can – together with the other points – displace

the considerations supporting this case being dealt with in the region to which it is most closely related. The claim is hereby transferred to Manchester.

14.12.23