Koyama, R (on the application of) v University of Manchester [2007] APP.L.R. 07/27

JUDGMENT : HIS HONOUR JUDGE GILBART QC ; Administrative Court. 27th July 2007

Introduction

1. In this matter I am asked to consider the renewed application of the Claimant Simon Koyama for permission to apply for judicial review against the Registrar and Secretary of the University of Manchester. Permission was refused on the papers by Wilkie J on 20th April 2007. The Claimant lives in Manchester. The proposed Defendant is the University of Manchester. The application was to have been heard over the video link from Manchester Crown Court to a judge 200 miles away at the Royal Courts of Justice in London. It is not available to litigants in person such as this Claimant. Happily he has been able to have an oral hearing before a judge in a location (Preston) much more convenient to him than London.

2. Mr Koyama studied law at the University. For part of that time his tutor was Professor Margaret Brazier. I am acquainted with Professor Brazier. I have met her socially on a few occasions (perhaps 3 in the last 10 years) at events for the legal profession in Manchester. I have not done so for at least 3 years. I have not discussed the case or anything to do with it with Professor Brazier.

3. My own preliminary view was that I was in no sense prevented from hearing his application, but would welcome any submissions the Claimant may wish to make. I communicated my knowledge of Professor Brazier and that preliminary view to the Claimant through the Court Office before the day of hearing. Mr Koyama wished to get on with his case being heard. Notwithstanding that, I have reminded myself of the principles which must be observed, as summarised by Sir Anthony Clarke MR in ***Howell & Ors v Lees Millais & Ors*** [2007] EWCA Civ 720 at paragraphs 4-13. In essence, would a fair minded informed observer conclude that there was a real possibility, or a real danger, the two being the same, that I was biased as a result of my knowledge of Professor Brazier? In my judgement he or she would not do so.

4. The Visitor to the University is Her Majesty the Queen. Until section 20 of the Higher Education Act 2004 came into force on 1st November 2004, complaints could referred by petition to the Visitor. Since then they have been subject to the system of review under Part 2 of that Act.

5. The Claimant had been embroiled in a long running dispute with the law faculty about his alleged conduct towards a female fellow student, where she had complained of harassment by him. After the Dean had dealt with the matter in a way which reflected acceptance of the allegations against him, he complained on 26th June 2003 about the way the matter had been handled and about other matters. A decision was reached by the University on 24th March 2004, and a decision by the ProVice Chancellor on 22nd April 2004 rejected his request for a review.

6. It appears to be the case that at that time, two separate procedures were in place. In the case of complaints *by* students Regulation XXX applied. As then drawn, complaint about the handling of the complaint was to be made by petition to the Visitor. That route has since been replaced by a new Regulation XVIII, with a complaint to the designated operator of the student complaints scheme as established under the **Higher Education Act 2004** as from 1st November 2004. The designated operator is the Office of the Independent Adjudicator for Higher Education ("OIA"). In that first matter the OIA refused to accept a complaint made in July 2004 and insisted that it go to the Visitor. The claimant then used that route, whereupon the Visitor referred it to the OIA to investigate. The second procedure related to academic appeals, to which Regulation XIX applied, from which a complaint could be made to the OIA.

7. He was awarded a 2:2 degree after he concluded his course in June 2005. He was unhappy about his mark generally, but in particular about the marks awarded to him for Family Law in his final year in respect of his coursework, and those awarded for his dissertation. He also sought to be allowed to resit his final examinations. An appeal to that effect pursuant to Regulation XIX was rejected by the Senior Undergraduate Administrator in the Faculty of Humanities (Ms Heinze) on 8th July 2005. She informed him that he had a further right of appeal to the Registrar and Secretary, which he exercised. His appeal was rejected by letter of 12th September 2005. It was a decision by the Student Experience Officer of the University Ms Sarah Beer. In that decision Ms Beer considered whether the Senior Undergraduate Administrator in the Faculty of Humanities had been right to reject an appeal by the Claimant, and gave reasons for her decision. Within her reasoning she concluded that the original rejection of the appeal on 8th July 2005 had been reasonable.

8. The procedure followed had one very puzzling aspect. The copy of Regulation XIX with which I have been provided expressly excludes any further appeal beyond the determination made under Regulation XIX- i.e. that on 8th July 2005. But be that as it may, the effect was that there was a further review.

9. As noted above, the Claimant has complained unsuccessfully about the University's first decision to the Visitor, who sought the advice of the OIA. His complaint was rejected. That rejection was communicated by letter from the Clerk of the Privy Council of 18th February 2005, wherein he stated that the Visitor agreed with the OIA's advice to her on 29th November 2004 that the complaint should not be upheld. As to the appeal against the mark for the dissertation, the OIA rejected his complaint by reasoned decision attached to a letter of 8th March 2006. I shall have more to say about that process below.

10. The Claim sought judicial review, and sought an extension of time for making the claim. It sought to challenge the decision of the University of 12th September 2005- in other words that upholding the earlier rejection of the appeal. However the claim also included much material which attacked the University's handling of the other matters, and of the OIA's handling of both complaints. One of the difficulties the Claimant has is in winnowing the

relevant from the irrelevant, and in seeing which points affect which arguments. Large amounts of what I have been asked to read are repetitious. The bulk of it is aggressively argumentative, and in significant parts of it he prefers invective and vituperation to reasoned contention. That may of course be due in some measure to the strength of feeling held by the Claimant combined with his particular way of expressing himself. I have read all of the material he has asked me to consider. I shall not be deflected by his manner of argument from considering the merits of his case. As appears below there is one respect in which the consideration by the University of his appeal does give rise to cause for concern. Whether it gives rise to arguable grounds for judicial review is another matter.

11. The Claim Form is accompanied by 10 bundles of material. The Claim Form stated that it and the accompanying bundles of material had not been served on the proposed Defendant. The Claimant asserted that he had no need to do so, as he contended that the University had failed to recognise what he called its shortcomings. On 16th October 2006 the Court informed him that he must serve the papers on the Defendant. On 20th October 2006, he served parts of the grounds, but omitted all but the covers of 5 bundles. He omitted another 4 bundles altogether. As far as I am aware he has still failed to serve his claim in full. He has never served the claim form, and he edited the grounds when served so as to exclude his arguments as to the extension of the time limit for bringing the proceedings. Mr Justice Wilkie's reasons for refusing permission refer to the failure to effect proper service. Notwithstanding that, he has taken no steps to bring himself in compliance with the Rules on renewing his application after Mr Justice Wilkie's decision.

12. The issues that arise are
(a) Does the claim show a reasonably arguable case?
(b) Whether the time for the making of the claim should be extended
(c) What are the consequences of the failure to serve the Defendant?

A reasonably arguable case?

13. The appeal under Regulation XIX turned on the complaints which the Claimant had about the marking of two papers, and the supervision of him in one of them. His papers and marks in his final year were

Dissertation 58

Criminal Justice 61 Coursework: 60 (1/3), Exam: 61 (2/3)

Family Law 47 Coursework: 30 (1/3), Exam: 55 (2/3)

Consumer Law 47

Criminal Evidence 50 Coursework: 64 (1/3), Exam: 43 (2/3)

Law and Economics 44 Coursework: 57 (1/3), Exam: 38 (2/3)

It will be seen that where there is a mix of coursework and examinations, the first figure is derived (with rounding) from the combination of the two that follow; thus for Family Law 47% = (30/100 + 2(55/100)) %.

14. Mr Koyama complains that the assessment made of his coursework in Family Law was objectionable. That coursework set this question "*Moral judgement and censure have no role to play in modern family law.*" The claimant sought to submit an essay on an historical approach, drawing on the relationship of the law of divorce and that of the law of consortium. It is clear that his assessor was less than pleased at the choice of topic. He wrote this against the pre defined headings:

"Structure:

"Awful; the essay is about "Family Law"; not matrimonial (still less, divorce) law"

Introduction and Interpretation of Question;

"You say you'll focus mainly on the "contemporary" Yet virtually all your sources are deeply historical and there's nothing more recent than 2002 in the bibliography"

Legal Content and Use of Sources:

" What about: same sex marriage; transsexual marriage; civil partnerships; modern domestic violence law; differential treatment of married person's" (sic) " and cohabitants" (sic) "property/finance on relationship breakdown."

Clarity…….:

"Fair"

Marker's Overall View:

"An essay that takes a most peculiar and not the least convincing approach." (sic)"

15. One notes that the last comment has plainly substituted "least" for "most." Among many other complaints which do not merit rehearsal, the Claimant points to two matters
(a) That the person assessing it used the word "awful" to describe the structure, which he says has been accepted by the University to be an inappropriate term
(b) The assessor wrongly claimed that he had looked at no material after 2002 whereas he had in fact cited material from 2003.

16. I regard the very robust use of language by the person marking the work as perhaps unfortunate, but the central question is whether this was an academic assessment. If it was, then the choice of language is not a matter for admissible complaint. In my judgement the sting of the assessment is not altered by the error the marker made

about the date of the material which was examined. His academic point was a substantial one, namely that this candidate had selected a very narrow compass for an essay plainly intended to provoke discussion of the tension between moral judgements and legal principles or decisions.

17. The Claimant also complained that his anonymity was compromised because the practice of a student putting his/her tutor's name and his/her initial on the submitted coursework could lead to a student being identified.

18. On 8th July 2005, Ms Heinze wrote the letter determining the appeal. On this issue she stated that

(a) *Normal procedures were followed and the coursework had been referred to an external examiner. The use of the word "awful" was inappropriate and unhelpful. The Law School Administrator had apologised for its use.*

(b) *As to anonymity, she accepted that it could have been compromised, but went on: " However I note that you have scored higher marks in coursework, where anonymity could potentially be compromised, than in the examinations, where anonymity is effectively preserved, therefore I can find no evidence that you have suffered detriment in the way you suggest"*

(c) She never addressed the point about the assessor's error on the dates of material submitted.

19. Of course the second statement misrepresents his marks. His coursework marks in his final year were better than his exam marks in two cases, roughly equal in a second case and significantly worse in the paper in question. Had she said what she did about his first and second years' results, it would have been correct.

20. The claimant submitted a letter asking for a review of that decision, as the letter from Ms Heinze informed him he could. His letter of 15th July 2005 is long on angry adjectives, but it does also point out the error on marking which Ms Heinze had apparently made. When Ms Beer determined her decision, she rejected his complaints about the phrasing on the feedback form, and while noting that the use of the word *"awful"* was *"regrettable,"* regarded it as the expression of academic judgement, albeit in emotive terms. She also considered that what she called the "*unfortunate*" error about the end date of the historical material made no difference to the overall point. Unhappily, Ms Beer never addressed the topic of anonymity in the context of the coursework, but only in the context of the dissertation (of which he had also complained – see below). She never addressed the point about Ms Heinze's confusion over the marks. However she did place reliance on the fact that the mark had been confirmed by an external examiner.

21. His second complaint related to his dissertation. This was to be on a topic unfamiliar to me relating to restitution from Public Authorities, derived from the decisions in ***Woolwich Equitable Building Society v Inland Revenue Commissioners [***1993] AC 70 and cases which follow on from it. He told me that he was unhappy that having sought out Professor MacCormack as his supervisor, he was informed that he was unable to accept that request. Dr Thomas agreed to supervise him, but according to the Claimant (and the documents give some support to this view) Dr Thomas was not entirely au fait with the parts of the topic dealing with some of the niceties of the law of restitution. When the paper was marked, Dr Thomas and Professor MacCormack exchanged E mails about the work. Dr Thomas concluded that it was *"fairly descriptive and lacks sufficient depth. It raised important issues but they are not sufficiently well developed in the work to justify a higher mark. It does though draw on a wide range of primary and secondary materials hence the mark of 58%"*. Professor MacCormack made comments in similar vein. He agreed with the mark proposed. The work was also assessed by an external examiner, Professor Rehman of the University of Ulster, who endorsed the approach and the mark.

22. The Claimant asserts that the check by the external examiner was just a rubber stamp, and that Professor MacCormack should not have been available to mark it given his inability to act as a supervisor, and that Dr Thomas was not competent to mark it. He was again concerned about his anonymity being compromised.

23. Ms Heinze relied on the fact that there was an external examiner and concluded that the highest standards of procedure were followed. She concluded that the appeal was seeking to question an academic judgement. She never addressed the anonymity point.

24. The Claimant took all of those points above (and more which do not require rehearsal here) in his letter on 15th July 2005 seeking review of the appeal decision. Ms Beer concluded that Mr Koyama had received supervision from Dr Thomas without complaint until long after the date of submission. She concluded that it was not possible to maintain anonymity with regard to the arrangements for external examination, not least because the supervisor could be one of the examiners. She concluded further that both the internal examiners were properly qualified to examine the subject, and that the submission to an external examiner and consideration by all three meant that the assessment had been conducted properly and that the result represented a considered academic judgement.

25. The third point taken by the Claimant in his request for review was that the examiners should have taken into account as mitigation the effects of the dispute he had previously been embroiled in, and should have regard to the fact that for that and other reasons he felt under pressure. He had in fact asked Ms Heinze that he could resit some of his examinations from the second year. Miss Beer addressed this in the light of the LLB programme handbook which requires any student concerned about illness or personal difficulties to make a report in writing to the Dean. She concluded that there was no evidence that this had happened.

26. It is unfortunate that the complaint about anonymity was not addressed properly by Ms Heinze, or at all by Ms Beer. But the fact is that the Family Law coursework was also sent for external examination, and the mark was confirmed. But even if he had a residual ground for complaint, it is necessary to consider what occurred next.

27. Thereafter the Claimant had the opportunity to seek a review from the OIA, which he did by a form dated 15th Sept 2005. In that form he reiterated his case in very brief outline, but described the OIA procedure as " a waste of time" and refused as a result to state his grounds for appeal, preferring to rely on past correspondence. When asked for further information by the OIA by letter of 27th September 2005 (in a very sensible and reasonable letter) he demanded that the case handler be changed, on the basis that she had been involved in dealing with his original complaint to the Visitor. When that was done, he then angrily declined to answer another reasonable request for the details of his complaint. On 16th January 2006 the OIA asked him for his comments on the comments submitted to it by the University. It particularly sought his response to the University's comments about how anonymity was protected. On 25th January 2006, again in intemperate terms, he replied to the Chief Executive that he would not answer letters from the second case handler. On 30th January 2006 the Chief Executive refused to allocate a third case handler and gave him another opportunity to reply, stating that the decision would be made on the basis of what had been received by 13th February 2006. The Claimant declined to answer that letter or accept that opportunity. The complaint was rejected on 8th March 2006. While the OIA decision never explored the issue about the mistake made by Ms Heinze, it did criticise the University for the way in which it protected anonymity. It declined to enter consideration of matters of academic judgement, and (although that is not given as the reason) said nothing about the mark for the dissertation on the *Woolwich* case. It rejected his case about the difficulties caused to him. It also criticised the language used to assess the Family Law coursework, but noted that the mark had been checked by an external examiner.

Legal Principles

28. I remind myself and the Claimant that this court cannot get involved in the merits of a decision entrusted to the University or whose review is entrusted by statute to the body designated under the 2004 Act - the OIA. The Court, if it gets involved at all, can only deal with whether any decision was reached lawfully, whether as a matter of its power to make such a decision, or the manner by which it made it.

29. As there was a Visitor to whom petitions could be made, it is very doubtful indeed that judicial review was available at all in the case of the first complaint: see ***Page v Hull University Visitor*** [1993] AC 682 and ***Clark v University of Lincolnshire and Humberside*** [2000] EWCA Civ 129, although one must note the cautions of Sedley LJ in ***R (Jemchi) v Visitor, Brunel University*** [2001] EWCA Civ 1208, albeit that that was only an appeal on the grant of permission. No such bar applies in the case of the second complaint, but that is not to say that the existence of the OIA as a statutorily designated body is not relevant. For the existence of an alternative remedy is a discretionary bar to judicial review, and one which is applied unless some good reason is shown for the remedy not having been deployed. The cases will be few indeed where judicial review would lie where the claimant had not availed himself in a reasonable manner of an alternative remedy.

Conclusions on the Merits

30. In my judgement there is no arguable case that the University was not right to conclude that the assessment of the coursework was a matter of academic judgement which should not be disturbed, whether because it fell outside the scope of Regulation XIX or generally. The fact that an assessor indulged in colourful language to do so does not remove it from the reasonable scope of academic judgments. Like those from the University who considered the matter, I regard the assessor's choice of language as a touch too much on the warm side, but it is in essence no more than an academic judgement, robustly expressed. It is also a quite unsurprising one given the very narrow focus the essay maintained on an historical part of the genetics of modern divorce law. It was entirely reasonable for the decision maker to conclude that the mistake about the end date of the material cited, and the other infelicities of language, do not undermine those judgments. I take the same view about the dissertation. It is not reasonably arguable that the University was not entitled to reach the view that it did.

31. I regard the complaints made by the Claimant about Ms Beer's rejection of his case about his dissertation as quite unarguable. I take the same view about the complaint about his circumstances. It was a matter for the University to determine in the appeal if any of the complaints were made out. It did so on the basis of factual material before it, and reached conclusions which it was entitled to reach. This is simply a case of a disappointed student searching for reasons to explain away his lack of success.

32. So far as the question of anonymity is concerned, the treatment of that issue with regard to the Family Law coursework by the University was arguably deficient. I do not consider that any reasonable complaint can be made about its conclusion on anonymity in the context of the dissertation.

33. However even if it is wrong to say that any vice flowing from Ms Heinze's confusion about the exam marks was negated by the fact that the academic judgement on the coursework was supported by an external examiner, the appropriate way of dealing with this by the Claimant would have been by way of a proper, reasonable and cooperative approach to the OIA. Parliament has created a quick and efficient way of dealing with student complaints against University decisions. If a student treats that body with contempt, and refuses all reasonable requests to cooperate with it, he cannot complain if that body failed to take points which he would have taken before it if only he had cooperated. It was difficult to take seriously Mr Koyama's complaint to me that the OIA had not sent him a draft for factual correction (as its guidance says will usually occur, but may not at the discretion of OIA) when his whole approach had been to refuse all cooperation.

34. I therefore regard the grounds argued by the Claimant against the University as not giving rise to any arguable ground for judicial review.

Delay

35. It is not therefore strictly necessary to express my views on delay, but as it has been argued before me, I shall do so. CPR 54.5(1) provides that in judicial review proceedings the claim form must be filed (a) promptly, and (b) in any event not later than 3 months after the grounds to make the claim first arose. As Keene LJ observed in R ***(Hardy & Ors) v Pembrokeshire County Council & Ors*** [2006] EWCA Civ 240, CPR 54.5(2) shows that the parties may not extend this time limit by agreement between themselves, a provision which underlines the importance attached to the need to observe CPR 54.5(1). Indeed, the House of Lords in ***Caswell v. Dairy Produce Quota Tribunal for England and Wales*** [1990] 2 AC 738 held that, where the application for permission to seek judicial review is not made in compliance with those provisions, the delay is to be regarded as "undue delay" within section 31(6) of the Supreme Court Act 1981. That subsection reads as follows:

"Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant –

(a) leave for the making of the application; or

(b) any relief sought on the application

if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration."

36. The Claimant contends that any reliance on a time limit to restrict his ability to bring judicial review proceedings would amount to a breach of his rights under Article 6 of the ECHR. As to service, he asserts that it was unnecessary to serve copies of documents already in the possession of the Defendant. He also asserts that staff of the Administrative Court told him that the proceedings were *"deemed served in time, so that no further action was required at that stage."*

37. I reject the Claimant's submissions on the relationship of the time limit for bringing process and the ECHR. The matter was referred to obiter by Lord Steyn in ***R (Burkett) v. London Borough of Hammersmith and Fulham and Others,*** [2002] UKHL 23, but his dicta were considered by the Court of Appeal ***in R (Hardy & Ors) v Pembrokeshire County Council & Ors*** [2006] EWCA Civ 240 per Keene LJ. After reviewing the authorities, he stated at paragraph 17: *"Consequently, for all these reasons and despite the doubts expressed obiter in* ***Burkett,*** *it seems to me that there is no realistic prospect of the applicants successfully establishing that CPR 54.5(1), insofar as it requires a claim form to be filed "promptly", is contrary to European law and unlawful."*

38. While it is itself not binding, as that was technically a judgment refusing permission to appeal against a decision of the first instance judge to grant permission, I still regard it as having great persuasive force, and especially so given the expertise of Keene LJ in this area of the law. In my judgment, it follows that the concept of the time limit is not contrary to the ECHR. I turn therefore to consider whether there are any reasons for or against the time limit being applied in this case. In particular, I must consider the extent of any delay, the reasons for it, and the effect on others of a reopening of the decision under challenge.

39. The decision under challenge (the rejection of his academic appeal) was issued over a year before the proceedings for judicial review were issued in October 2006, and related to work submitted in the academic year 2004-5. The delay is therefore substantial and relates to a decision made in September 2005 about an earlier decision made in July 2005.

40. As to the reasons for delay, the Claimant relies on his having to await the OIA decision, and then on what happened about his taking advice

(a) He put his case before solicitors (in S Wales) by 20th February 2006, and gave them an account of his complaints. Dealings between him and the solicitors were dilatory, but on 22nd May that firm sought details of the complaints he had. He responded at length on 25th May 2006, and again on 5th June 2006. On 28th June 2006 he sent a closely typed 12 page document setting out not just his grievances about the decisions, but a wide ranging attack on the way he was treated as a student. It consisted of a series of angry denunciations of University staff and decisions, with several allegations that the University staff and faculty had fabricated reasons for deciding as they had done, or were affected by his particular racial origin. In public law terms, it could be read as making allegations of bias and perversity against the University and members of the law faculty. Much of it, although not all, relates to matters the subject of his first complaint, determined by the Visitor in February 2005.

(b) On 2nd August 2006 the solicitors sought a meeting, which took place on 7th-8th August 2006. On 17th August 2006 the solicitor dealing with his case advised him that she considered that none of his complaints gave rise to any "substantial issue which could form the basis of further action against the University in an attempt to overturn the decisions that have been made." It is fair to say that when one reads her notes, it looks as if she has looked at the issues through the spectacles of litigation for breach of obligation, rather than through the prism of potential judicial review. However what she did do was to address the way in which the decisions had been reached.

(c) Now the claimant complained about her advice, writing to the senior partner on 21st August 2006 in terms as free with invective as those he had previously deployed against the University. On 12th September 2006 the senior partner (who only seems to have considered this as a case of breach of contract) advised him to instruct another firm. The claimant instructed another firm (in the Midlands) on 13th September 2006. He sent a long 48 paragraph closely typed document on 18th September 2006, which again ranged widely over the disputes he had with the University and his teachers during his academic career. That solicitor advised him on

6th October 2006 that any claim for judicial review would be out of time, and that any contract claim that he should have been awarded a 2:1 degree rather than a 2:2, would fail. She noted also that judicial review could not produce his aim of a higher degree grade and compensation.

(d) Against that background he issued these judicial review proceedings. He complains that the delay was caused by his taking advice, which he argues was inadequate and ill informed in the case of both solicitors.

41. I am prepared to accept for the purposes of this hearing that it was right for the Claimant to wait until the publication of the OIA decision in March 2006, for had he not done so I have no doubt that the Defendant would have argued successfully that judicial review was not available in principle where another avenue of redress could have been pursued. But here one still has a period of no less than 7 months elapsing after that before the proceedings are instituted, or over 12 months from the date of the decision complained of.

42. I am also prepared to accept for the purposes of this hearing that the first solicitor did not have judicial review at the forefront of her mind, if at all. The second solicitor seems to me to have acted properly and promptly. She only had time to give succinct advice, and did so. It is therefore arguable that his legal advisers had therefore never grappled with the realities of a potential claim for judicial review. It must also be said in fairness to them both that dealing with instructions as confused and vituperative as his cannot have been easy.

43. There is nothing wrong in principle with a claimant being refused an extension to the time for service, even though the fault may lie on the part of his legal advisers, and if an extension is refused he must look to remedies against them to achieve some, albeit indirect, level of redress. In most cases such a decision strikes a proper balance between the harm done to him and the prejudice caused to others affected by the later reopening of an issue which had been finally determined. I am also mindful of the importance to good governance and especially that of a University department, of decisions not being reopened at a later stage. But here, no prejudice would be caused to anyone else should permission be granted. The question of how his work should have been marked would not involve anything but a review of the paperwork considered at the time. There would of course be some administrative inconvenience to the University were I to grant permission and were the decision eventually to be overturned.

44. If I thought that the claim were otherwise reasonably arguable, I would therefore have been willing to extend time, had that matter stood on its own. However I regard the claim as quite lacking in merit anyway. It is also necessary to consider the effect of the defects in service on the delay.

Disregard of CPR

45. CPR Rule *54.7* requires service of the claim form on the defendant, and any person the claimant considers to be an interested party. The Claimant has elected not to comply with that rule, even when his failure was brought to his attention by the Court Office. He has elected to serve only some parts of the Grounds, so that, for example, he has not served the University with the parts of his Grounds setting out his arguments about why time should be extended. He has not served the Claim Form itself at all. His argument that he need not comply with very straightforward requirements is untenable. The University was and is entitled to know the case it has to meet. Had he wanted to avoid copying material, all he needed to do was to get the University's consent to his not having to copy it all. He has compounded that by his failure to serve the University with the missing documents when renewing his application despite the observations of Wilkie J on his failure to do so.

46. Given the deliberate refusal to comply with the Rules, I would have refused him permission in any event, or at best adjourned his application to require him to serve the University. However as I consider his claim to be quite devoid of merit, I would regard it as undesirable to generate more expense by doing so. The effect of the failure has of course been to extend the delay before the University knows the case it has to meet from 13 months to 22 months. That is simply unacceptable.

Conclusion

47. I therefore refuse permission to apply for judicial review.