**Skeleton Argument:**

CO/807/2021

DWAustin

&

Defendant: Local Government & Social Care Ombudsman

(POBox 4771 Coventry CV4 0EH 0330 403 4682 J.Gooch@coinweb.lgo.org.uk)

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Interested Party: London Borough of Hammersmith & Fulham

(145 King Street, Hammersmith, London W6 9JT,020 8753 3972 h&fintouch@lbhf.gov.uk)

1) I can confirm that no additional evidence has become available, beyond that included in the Grounds of Appeal and that the, short, rationalisation remains as in the original application:

*The Investigator considers that "There is no policy or requirement for the Council to ban dog walking which is a legal activity within the UK", but so many dogs defecating on the streets 'outrages public decency', particularly given the large number of dogs kept in apartments with no private grounds and given that other pets are available that cause no offence (such as budgerigars, hamsters and house-cats) - the Council is at fault. The investigator claims "there is insufficient evidence of injustice"; the claimant may well live "about 125 miles from London" but he might both wish to visit (to enjoy the 'less vulgar' sights of the city) and be required to visit the Capital (and stay in a Borough such as Hammersmith and Fulham) with any, unforeseen, frequency, as it is the seat of government and remains administratively significant for many bodies, both private and public - this represents an injustice.*

2) For the convenience of all parties, and as the Order of 4th May itself is not lengthy, I include here all of said Order:

*Notification of the Judge’s Decision on the application for permission to apply for judicial review CPR 54.11, 54.12).*

*Order by his honour Judge Simon sitting as a judge of the high court:*

*1. The application for permission to apply for judicial review is refused.*

*2. The application is certified as totally without merit.*

*3. The costs of preparing the acknowledgment of service are to be paid by the Claimant to the Defendant summarily assessed in the sum of £726.*

*4. Paragraph 3 above is a final costs order unless within 14 days of the date of this order the Claimant files with the court and serves on the Defendant a notice of objection setting out of the reasons why he should not be required to pay costs either as required by the costs order or at all if the Claimant files and serves notice of objection. The Defendant may within 14 days of the date it is served file and serve submissions in a response. The Claimant may within 7 days of the date on which the Defendant response is served file and serve submissions in reply. Thereafter a judge will decide on the basis of the written representations referred to above what order for costs if any should be made.*

*Reasons:*

*1. The Claimant seeks permission to apply for judicial review of the Defendant’s decision not to investigate his complaint of maladministration and injustice regarding the Interested Party*

*2. In short, the Claimant who lives in Stourbridge in the West Midlands wrote to the Interested Party which one of the London Boroughs (but with which the Claimant has no extant direct connection) to complain about the “toileting of dogs”, i.e. dog fouling, in public places and inviting the Interested Party to ban dog walking in public in order to prevent both the fouling itself and the prospect of having to observe such fouling, should he have to visit the borough on any occasion. The Claimant describes the activity of dog fouling as a “public indecency”*

*3. In response to his correspondence, the Interested Party indicated that dog walking was a normal activity and that most people in charge of dogs acted responsibly by picking up any waste and disposing of it appropriately. In addition the Interested Party explained the measures it has employed to encourage cleanliness and decent behaviour by those walking dogs in public places*

*4. The Claimant was dissatisfied with the Interested Party’s response and complained to the Defendant on the 8th of January 2021. The Defendant considered the complaint but decided not to investigate it for various reasons including the absence of a policy or requirement to consider banning dog walking; the lack of legal power in the Interested Party to do so; and there being insufficient evidence of injustice due to the Claimant’s limited connection with the borough governed by the Interested Party. The final decision was dated 15th of February 2021.*

*5. As a result of the Defendant's decision not to investigate the Claimant’s complaint, the Claimant issued a claim for judicial review on the 4th of March 2021 asserting that the Interested Party was at fault for failing to act to prevent the outraging public decency cause my dog fouling in public places he further asserts he may wish or be required of is the borough of Hammersmith and Fulham and they would therefore be a continuing potential for injustice to him if dog working if dog walking were not curtailed*

*6. The Defendant has filed an Acknowlegement of Service and sundry grounds of defence contending that (i) the decision was within the wide and bit of the discretion held by them; (ii) it is rational to conclude that there are no grounds to investigate given that the Claimant had requested the Interested Party to do an act that it could not in fact lawfully do; and (iii) the claimant did not comply with the pre-action protocol.*

*7 Though it seems not in doubt that the Claimant feel strongly about the sight of dogs fouling public places, his requests of the Interested Party are utterly outwith the bounds of their statutory powers. Thus, his contention that the Defendant's decision, not to investigate the Interested Party’s response to his complaints, is susceptible to judicial review is untenable. The Defendant's decision was wholly within the bounds of reasonable decisions open to it indeed any conclusion by the Defendant in line with the Claimant’s expectations might well itself be likely to be deemed irrational and unsustainable.*

*8. In addition the Defendant’s conclusion that the Claimant had not established anything like the necessary nexus with the Interested Party to assert injustice is again an entirely reasonable one and within the bounds of its discretion.*

*9. The Claimant has failed to establish any basis whatsoever upon which the Defendant’s decision or decision making process could be challenged by way of judicial review and the claim is certified as totally without merit.*

*10. In addition the Claimant failed to comply with the pre-action protocol but in any event the lack of any merit in the claim justifies the making of the order for costs at paragraph 3 of the order subject to any notice of objection/response that might be filed in accordance with paragraph 4 of the order above.*

*CPR 54.12 (7) applies. The Claimant may not request that the decision to refuse permission to apply for judicial review be reconsidered at a hearing.*

*Signed Judge Simon.*

3) I have sent two messages since the Order was received; I have had a reply after the first from M Print of the Birmingham Office, but only late on last Friday afternoon (21st May) and I am keen to avoid any possibility of running ‘out of time’, hence this submission.

Some of the material in the first message appears elsewhere in this Appellant’s Notice, but one enquiry that does not, and M Print has not been able to answer (giving instead the Appeal Court’s email address), is whether I can communicate exclusively during this latest part of the process, in electronic form?

Largely for completeness, I will include the first message, to M Print of the Birmingham Court (10th May):

*kevin.print@administrativecourtoffice.justice.gov.uk*

*Dear Kevin,*

*I acknowledge receipt of the Order of 4th May.*

*Of course I do not agree with the findings, but the Order is at least clear and the next steps in the process are well delineated; I must also thank the Office for the administrative help that was provided in preparing my Claim, even though the Office 'came very close' to dabbling in its favourite occupation, pushing cases 'out of time' - at least, on this occasion, there was no attempt at any date-fixing!*

*The last time I had to deal with the Administrative Court, in Birmingham, after that notorious attempt at perversion had been exposed, Sir Stephen Silber cantered over the Cotswolds to deliver a negative verdict (very likely pre-determined, for which I have a small amount of evidence) and in which some rather-unpleasant accusations were upheld, despite the presentation of no evidence (usually a signal for an acquittal!). The consequence was not only a bill of several thousand pounds, but the trashing of a reputation and a career - thanks Betty!*

*1) I cannot establish the true identity of the Judge in the current case, possibly for security reasons; 'Judge Simon' could indicate a first name or a 'last name' - the gender is not important, though apparently male, nor would any claimed ethnicity be significant, but whether or not 'Simon' is a cynophile is important, as would be the opportunity to ask relevant questions in a hearing - denied by this Order. Can the Office provide more details of this Judge's identity and relevant 'predilections'?*

*2) Regarding an appeal, I must, "Send or take the appellant’s notice and copies of all the supporting documents to the appeal court office with the appropriate fee. The court can tell you how much this is." Could the Office, then, send details of the fee? Where can I access advice as to the possible costs (currently standing at £880) incurred (potentially ruinous) associated with the Court of Appeal? Bearing in mind that we are still fighting a pandemic, could the Office also confirm that no document need now be sent by 'conventional post' and that every document associated with a possible appeal may be sent electronically? If I have to, once more, indulge in 'hard copies', paper, stamps, envelopes and even have to make my way past my aggressive, abusive, violent 'doggie' neighbours to the local pillar-box, that would be a serious disincentive to mounting an appeal!*

*3) Whilst accepting that the Office is not technically concerned with points of law, I must make the observation here, if only for completeness, that I am baffled by Simon's verdict; much is made of the "lack of legal powers" of the Interested Party (the Council) in this area, but "Dog Control Orders", since 2005, and now "Public-Spaces-Protection-Orders", since 2014, have been available for a while - even the Kennel Club concedes that a Local Authority "could impose a complete ban";  it would appear that the Bad Joke that is the British Judiciary not only has no idea of the concept, or the importance, of justice but has also lost interest in law!*

*Finally, one correspondent considered that I had incorrectly indicated on the original form that the claim had been issued "in the region with which I have the closest connection" - I had merely followed the process electronically which resulted, for a while, in officials viewing my documents at a desk in London, or thereabouts; none of this is important, but the fact that the Appeal Court is located in The Strand is important - conceivably, I might need to attend a hearing at the Royal Courts and stay in an 'Inner London Borough' such as that of Hammersmith and Fulham, cycling into Town down the New Kings Road and having to witness all those defecating dogs! And on the matter of my alleged failure to comply with the "pre-action protocol", precisely 'which box is ticked' is not critical as no number of "letters before claim" can change the position of the defendant - I had exhausted all routes of appeal through the Ombudsman, with a Judicial Review the next step in the process, as the Ombudsman will know; but though the Court might establish that a letter has not been received, how can it be sure that a letter has not been despatched? Could it be said that the Court has here indulged in a 'spot of pre-judgement'?*

*David Austin*

*PS: It's not just the Civil wing of blighty's 'questionable' judicial system that indulges itself at the expense of Civilised Man - another repulsive, cynophillic, neighbour complained, just after a chap's sixtieth, about my habit of litter-picking the locality, dodging the dog-excrement and taking me past 'er premises; though I was declared innocent of the charge of harassing Ms Davies "about her pet" on the High Street with Judge Challinor declaring the case had "little to do with Julie's dog", in a bizarre and remarkable decision, possibly without precedent in any judicial system, Michael still upheld the Magistrates' conviction!*

*PPS: According to the Civil Procedure Rules (23.8) "The court may deal with an application without a hearing if ... the court does not consider that a hearing would be appropriate." Does this mean that there is a mechanism, realising that I am merely requesting the Ombudsman be asked fully to investigate this matter, by which this nonsensical exchange, ridiculous deliberation and much ado can be ended?*

The second message (sent 17th May), principally the required “Notice of Objection”, included an enquiry regarding fees: (now assumed to be £255):

*birmingham@administrativecourtoffice.justice.gov.uk*

*Regarding; Notice of objection*

*Mesdames/Sirs,*

*Regarding the above case, I understand the wording of the judgement including its order for costs and appreciate the clarity of the guidance in terms of the next steps in the process.*

*Whilst I currently do have the means to settle the costs instruction, I do intend to appeal the decision with which I cannot agree; I have sent a message to the Court (specifically to M Print from whom I received the last correspondence) asking, as is expected, for further details, including notice of the required fees, but, possibly due to the priorities that the Court may have, I'm yet to receive a reply.*

*I am therefore requesting a delay, beyond fees, of any payment.*

*David Austin*

*PS: To underline the importance of this case, I am currently embroiled in a bitter conflict with my neighbour who, without any private grounds, toilets 'is dog on the public land in front of my property and, should I summon the means to stay at the Savoy, actually within the London Borough of the City of Westminster, in order to attend a hearing at the Royal Courts, I might be expected to share the Hotel with guests who are asked to toilet their dogs, apparently, on the Embankment or even the Strand!*