



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO/1864/2019

In the matter of an application for Judicial Review

The Queen on the application of ESTHER LOUISE LEIGHTON

versus SECRETARY OF STATE FOR JUSTICE

NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

Order by the Honourable Mr Justice Edis

Permission is granted

Observations:

1. The claim is clearly arguable on the merits, in that it claims that the SoS has a duty to decide whether to extend QOCS to discrimination claims and has failed to do so. The answer by the SoS is that he has not failed to do so, and is in the process of doing so. There is no evidence as to what, exactly, this means.
2. LASPO was implemented, so far as relevant, on 1st April 2013. In a letter of 4th January 2017 to RNIB the defendant said
"As you will no doubt have seen from the Government's response to the House of Lords Select Committee Report on the Equality Act 2010, which was published in July last year, the Government will be carrying out a post-implementation review of Access to Justice considerations, including whether the case is made out for extending QOCS to other categories of law, including discrimination claims under the Equality Act 2010, will be addressed as part of that review."
3. Substantial evidence was then submitted to the PIR concerning the desirability of extending QOCS to discrimination claims. The PIR was essentially an evidence gathering exercise and a report on the extent to which the reforms had met their objectives. It did not make any recommendations for any reform of the law by extending QOCS to discrimination cases. It identified the extension of QOCS beyond PI cases as a "main area of concern" and recorded the views it had received at 4.1, paragraphs 102-108.
4. The PIR was published in February 2019 and, on this issue, said at paragraph 20
"The second area of concern for is that QOCS (or some other form of costs protection) should be extended beyond PI. There are clear attractions for claimants and their lawyers in being able to litigate at no or reduced costs risk. However, there is also a clear risk that by extending costs protection that some of the benefits of the Part 2 reforms would be undermined: the shifting of costs back to defendants, an overall increase in costs and the potential for prolonging rather than settling litigation. The Government would wish to be satisfied that these risks have been addressed before considering the case for extending costs protection further."
5. Whether that approach amounts to "addressing" the case for extending QOCS to discrimination claims as promised in the January letter may be arguable. It certainly did not decide the merits of that case, or propose any mechanism for doing so
6. Apart from assertions in the AoS and pre-action correspondence, that is all the evidence before the court about the current state of the decision making process which is arguably required in view of the submissions made to the PIR about the Public Sector Equality Duty etc.
7. The final sentence of paragraph 20 of the PIR says, in terms, that the Government is

not considering the case for extending costs protection to discrimination cases. It says it will not do so until it is satisfied that some ill-defined "risks" have been "addressed" in some unspecified way by some unspecified process or person. The AoS says that the Government is not legally obliged to follow any particular timetable in pursuing this amorphous exercise, and is, therefore, entitled to take as long as it likes before starting to consider the issue it promised to "address" in its letter of January 2017.

- 8 It may transpire when evidence is served by the SoS complying with his duty of candour that there is a perfectly lawful process in place. Presently, it is arguable that there is not. Please see the note at the end of this order.

Case management directions

- The defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve detailed grounds for contesting the claim or supporting it on additional grounds and any written evidence, within 35 days after service of this order
- Any reply and any application by the claimant to lodge further evidence must be lodged within 21 days of the service of detailed grounds for contesting the claim.
- The claimant must file and serve a trial bundle not less than 4 weeks before the date of the hearing of the judicial review.
- The claimant must file and serve a skeleton argument not less than 21 days before the date of the hearing of the judicial review.
- The defendant and any interested party must file and serve a skeleton argument not less than 14 days before the date of the hearing of the judicial review.
- The claimant must file an agreed bundle of authorities, not less than 3 days before the date of the hearing of the judicial review.

Listing Directions

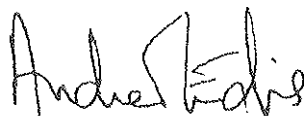
The application is to be listed for 1DAY; counsel to provide a written time estimate within 7 days of service of this order if counsel disagrees with this direction.

Case NOT suitable for hearing by a Deputy High Court Judge*

Criminal case NOT suitable for hearing by a Single Judge*

[*Tick if applicable]

Signed



The date of service of this order is calculated from the date in the section below

For completion by the Administrative Court Office

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendants, and any interested party's solicitors on (date)

Solicitors:
Ref No.

Notes for the Claimant

To continue the proceedings, a fee is payable.

For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>. Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out. The form to make an application for remission of a court fee can be obtained from the Justice website <https://www.gov.uk/get-help-with-court-fees>

You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's evidence.

08 AUG 2019 Deighton Pierce Glynn
Rg: LW/3975/001/MRC

