IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 1292 (Admin)

No. CO/4056/2018

Royal Courts of Justice
Thursday, 16th May 2019

Before:

MR JUSTICE HOLMAN

B E T W E E N:

PAUL EKPERIGIN — Appellant

- and -

BAR STANDARDS BOARD — Respondent

THE APPELLANT appeared in person.

MR D. BENEDYK (instructed by Capsticks LLP) appeared on behalf of the respondent.

J U D G M E N T
(a s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

1 This is a statutory appeal to the High Court pursuant to section 24 of the Crime and Courts Act 2013 from a decision of the Bar Standards Board in relation to the qualification or training of the appellant barrister. By section 24(6) of that Act the High Court may, on such an appeal, make such order as it thinks fit. So I have a very wide discretion, although I must of course exercise it on a principled basis. By a decision communicated by a letter dated 19 September 2018 the Authorisations Review Panel of the Bar Standards Board refused the appellant's application for a complete exemption from the non-practising period (viz. the first six months) of pupillage. He now appeals from that decision.

2 The essential factual background and context is as follows. The appellant completed all the examined stages of training for the Bar and completed his Bar Vocational Course in August 2011. He was called to the Bar by the Middle Temple in October 2011. Under the scheme established by the Bar Standards Board, a 12-months pupillage is normally the essential prerequisite before a barrister who has been called to the Bar can in fact embark upon practice in his own right. It is very well known indeed that there is currently, and has for some time been, an acute shortage of pupillage places such that a far greater number of people are being called to the Bar than there are pupillages available for.

3 The effect of that shortage is very well demonstrated by what this appellant said in his applications to the Bar Standards Board in relation to himself. He made a first application for exemption from all or part of the non-practising, and also the practising (or second six months) stages of pupillage in 2016. In support of that application, he said:

> "I am conscious of the need to satisfy the professional stage of training and eager to develop a practice, but my efforts remain hindered by

> the lack of pupillage placements and the fierce competition for the limited spaces advertised yearly by chambers and other approved training organisations. To put this into context, I made about 100 pupillage applications over a period of six years and was only invited for two first round interviews ... Nonetheless, my resolve to practise is unflinching and I remain determined to demonstrate my competence to develop and manage a practice either as an employed or self-employed barrister. Therefore, I hope to persuade you to look at the merits of my application on balance with my prospects of securing a conventional pupillage with a set of chambers or approved training organisation..."

4 In September 2016, based upon that application, the Bar Standards Board did indeed grant a reduction of two months in each of the non-practising and the practising stages of pupillage, so that in relation to each stage this appellant was only required to undertake four months. He still faced the utmost difficulty in obtaining pupillages, and so in 2017 he made a further application for a complete dispensation from the non-practising stage of pupillage. In support of that application, he said:

> "Following the grant of a reduced pupillage, I lodged a total of 12 pupillage applications with chambers directly and via the pupillage gateway on the basis of the grant. I was invited for only one interview in November 2016 ... which resulted in no offer of pupillage. I have continued to develop legal skills relevant to practise at the Bar and recently secured a permanent salaried legal role ..."

5 I completely accept what the appellant said with regard to his difficulties and experience in seeking pupillages, and I approach this appeal with the utmost sympathy for his situation. He has clearly worked hard to obtain the formal qualifications and be called to the Bar. He has also worked hard since then in employed roles. He has asserted, and repeats to me today, his absolute determination to emerge as a fully-fledged practising barrister, and it must be deeply frustrating to him that he has so far not been successful.

6 At all events, having been granted that first reduction of two months in each stage of pupillage, the appellant commenced employment with an organisation called HB Public Law. HB in fact stands for Harrow and Barnet Councils and is structured to provide legal advice and services to those two local authorities and indeed three others, namely Aylesbury, Buckinghamshire and Hounslow, who have, as it were, joined in. The appellant began working with them in an employed role as a lawyer in March 2017. He has now ceased that employment, but had been in continuous employment with HB Public Law up to and including the time of the decision now under appeal.

7 The essence of the appellant's application for a complete dispensation from the non-practising stage of the pupillage was, and is, that through his work with HB Public Law he has been exposed to, and acquired, a range of legal experiences at least equal to those that he might acquire through the non-practising stage of a pupillage. He says, further, that whilst working for HB Public Law he was appropriately supervised by more experienced lawyers and so the required element of supervision was present in his work.

8 The application was first considered by an officer of the Bar Standards Board, namely Sarah Okran, who is a supervisor and authorisation officer. By a letter dated 3 May 2018 Sarah Okran rejected the application. She gave reasons, namely that:

> "The applicant has not demonstrated that the knowledge and experience he has acquired outside of pupillage (as a legal assistant) clearly makes it unnecessary for him to undertake four months' non-practising pupillage ... This application has also been refused for the following reason. The experience relied on by the applicant is not so similar to the training/experience that would be obtained during a standard period of pupillage that he should be granted full exemption from the non-practising period of pupillage."

9 The appellant complains strongly, and it is one of his grounds of appeal, that there was unlawful or inappropriate delegation of his application to an officer of the level of Sarah

Okran. Whether or not there is any substance in that complaint, it seems to me now to be entirely academic. The rules of the Bar Standards Board provide for a right of review by an Authorisations Review Panel and the appellant exercised that right. The later decision of the Authorisations Review Panel did certainly consider the appropriateness of the decision of Sarah Okran, but did also quite clearly go on to exercise their own discretion and judgment and consider the matter "afresh", as the rules of the Bar Standards Board require, and reach their own decision. So, the position today is that the appeal is an appeal from the decision of the Authorisations Review Panel and, frankly, it seems to me that any question as to the lawfulness or regularity or appropriateness of Sarah Okran having earlier considered the application is now academic.

10 On 21 May 2018 the appellant made his application for a review. Paragraph 3.3 of the Bar Standards Board Guidance Notes in relation to applications and appeals provides as follows:

> "Review panels deal with reviews of decisions as if the application was being dealt with afresh, applying the guidelines set out in these notes. A review panel shall be entitled to have such regard to the original decision, and to uphold, vary or take into account such decision, as in its absolute discretion it feels appropriate."

11 The application came before the Authorisations Review Panel at a meeting on 6 June 2018. The appellant was not present at that meeting, nor invited to attend. However, he has expressly said today that it is not a ground of his appeal that in some way justice or fairness required there to be an oral hearing. It appears that the normal procedure of the Authorisations Review Panel is to consider appeals of this kind on the documents, and it has not been suggested to me that there was any irregularity in their doing so.

12 Their decision was communicated by a letter dated 19 September 2018, which is clearly the formal decision letter which is now the subject of this appeal. During the course of these appeal proceedings, however, the appellant sought and obtained from the Bar

Standards Board their internal "meeting notes" which give a summary narrative account of the meeting in question. The appellant applied to me for permission to adduce those meeting notes as fresh evidence in relation to this appeal, which I granted. Thus, somewhat unusually, I have today both the formal decision letter of 19 September 2018 and also the meeting notes of the meeting itself.

13 It is clear that the panel felt, amongst other matters, that there had been insufficient supervision of the work that the appellant had done and was doing for HB Public Law so as to satisfy the element of scrutiny and supervision that is contemplated by the non-practising stage of a pupillage. The appellant complains most strongly that if the panel were concerned about the degree of supervision, or the absence of evidence about the degree of supervision, they could and should have adjourned their deliberations and asked him for further information. The Guidance Notes of the Bar Standards Board at Note 2.6, now at bundle page 48, say as follows:

> "An applicant must ensure that all supporting evidence is sent with the application form. An application will not be treated as 'complete' until the application form, required supporting documentation and application fee have been received. The BSB may request further information or documentation be supplied in support of an application, but applicants should note that it is the primary responsibility of the applicant to provide all relevant information and supporting evidence."

14 So, within that paragraph, one clearly sees express recognition of the power of the BSB to request further information or documentation; but one also sees, as is perhaps obvious, that the primary responsibility is on the applicant to provide all relevant information and supporting evidence. In support of this particular point, the appellant relies also on what he had said in his letter of 13 February 2018, now bundle p.188, in which he wrote:

> "In your consideration of this application, if the need arises for further information in relation to the employment, work, supervision and

> experience of the applicant you are directed to contact either of the following ..."

Then the names and full contact details are given of a senior lawyer at HB Public Law and also the head of legal practice at HB Public Law, each of whom were said to be supervising his work.

15 Further, the appellant had placed before the panel a letter dated 1 June 2018 from Mr Paresh Mehta, a senior lawyer and team leader at HB Public Law, who was also supervising the work of the appellant. I will refer later to the contents of that letter, but it concluded with the following:

> "I hope this letter is of assistance to you. Please do not hesitate to contact me should you require any further information from me about the work [the appellant] carries out."

16 So, the appellant now complains that instead of taking the view that his level of supervision was insufficiently demonstrated, the panel should have taken up the invitation of himself in his letter of 13 February, and/or of Mr Mehta in his letter of 1 June 2018, and asked for more information with regard to supervision. I do not accept that as a significant ground of criticism of the approach and decision of the panel, and certainly not as one which in any way undermines or vitiates their decision. After all, as is clearly set out in paragraph 2.6 from which I have quoted, the primary responsibility was upon the applicant to provide all relevant information and supporting evidence to them.

17 However, I have today granted to the appellant his application for permission to adduce in evidence at this appeal, and to rely upon, his supervision sheets from HB Public Law. That, frankly, was a generous decision on my part, since these sheets were all in existence before, and in some cases long before, the decision of the panel and could clearly have been made available and placed before them. So, the first requirement of the rules in *Ladd v Marshall* is, frankly, not satisfied. Nevertheless, I accept that it came as something of a surprise to

the appellant that the panel seemed to feel that the level of supervision of his work had been insufficiently demonstrated and so, stretching the *Ladd v Marshall* rules, I have permitted him to adduce these documents in evidence, and I will turn to them later.

18 Before I consider the substance of the appellant's application to the Bar Standards Board and the approach and decision of the panel, I mention the position of the appellant as it now is under the so-called "five-year rule". Rule Q32 of the Qualification Rules of the Bar provides as follows:

> "A person may not start the professional stage [viz. a pupillage] more than five years after completing the vocational stage except with the permission of the Bar Standards Board and after complying with any condition which the Bar Standards Board may impose."

19 As I have said, the appellant completed his Bar Vocational Course in August 2011. So, five years after that date elapsed in August 2016. On the face of it, therefore, whatever outcome is reached on the present appeal, the appellant could not embark on whatever part of the non-practising pupillage that he is still required to undertake, nor (if exempted from the whole of that stage) could he embark on the practising stage of a pupillage without first obtaining the permission of the Bar Standards Board as rule Q32 requires. That is dealt with more fully in published Guidelines from the Bar Standards Board which, under a heading "Approval to commence pupillage more than five years after the completion of the vocational stage", sets out the following:

> "3.5. The purpose of the five-year rule is to mitigate the risk that the legal knowledge and skills of those undertaking pupillage might be out of date. Those seeking a dispensation from the five-year rule will therefore need to demonstrate that they have kept their legal knowledge and skills up to date through legal study and/or work experience.
>
> ...

3.7. Approval will normally be given in cases where

(i) The applicant can demonstrate that they have kept their legal skills and knowledge up to date; and

(ii) Either there is a good reason for the delay or the applicant has secured a pupillage to commence within 12 months of their application ..."

20 I observe, therefore, that even if this appellant is successful on the present appeal, and even if I were to reduce the period of the non-practising pupillage to zero so as to extinguish it, he will still need to obtain the approval of the Bar Standards Board before embarking even on the practising stage of a pupillage, now that well over five years have elapsed since he completed the vocational stage of his training.

21 I turn from that aside to consider the actual application in relation to which the appellant now appeals. This fell, and falls, to be considered by reference to the "Criteria for Applications" published by the Bar Standards Board and now set out in p.51 to p.53 of the present bundle. The over-arching principle is to be found in paragraph 1.2, namely that:

" ... in exercising any discretion whether to grant such an exemption the BSB will determine whether the relevant knowledge and experience of the applicant makes it unnecessary for the applicant to undertake such training."

22 Pausing there, it is apparent that the overall approach and test is whether, as a result of knowledge and experience obtained elsewhere, it is "unnecessary" for the applicant to undertake the non-practising stage of a pupillage. Paragraph 1.6 provides as follows:

"Pupillage usually comprises non-practising and practising periods of pupillage. The training given in the non-practising period of pupillage and, in particular, the structure of the training which is provided and experience gained in the non-practising period, is important, so will not readily be reduced."

23 Pausing there, that paragraph clearly emphasises the view of the Bar Standards Board that the non-practising stage of a pupillage is important and explains that, accordingly, it will not readily be reduced. However, paragraph 1.7 goes on to provide that:

> "An applicant may seek a reduction in pupillage for any previous experience gained outside a pupillage."

24 It is of course on the basis of previous experience gained outside a pupillage that this appellant relies. Paragraph 1.8 provides as follows:

> "In exercising any discretion whether to grant such an exemption we will review and determine whether the relevant knowledge and experience outside of a pupillage of the applicant clearly makes it unnecessary for the applicant to undertake some or all of such training. In coming to this determination, we will also have regard to the BSB's professional statement, which describes the knowledge, skills and attributes that all barristers will have on day one of practise."

25 Pausing there, that paragraph sets out an approach that the Bar Standards Board, or in this case its panel, will require to determine that the relevant knowledge and experience "clearly makes it unnecessary" for the applicant to undertake any part of the non-practising stage of pupillage before the requested exemption would be granted. That is repeated again at paragraph 1.13 which provides as follows:

> "The BSB will have to be persuaded that the relevant knowledge, abilities and experience of the applicant <u>clearly</u> make it unnecessary for the applicant to undertake the whole of pupillage." [emphasis added by me]

26 Returning to paragraph 1.9 of the criteria, that provides as follows:

> "Where we are satisfied that an applicant has reached the threshold standard described for each of the competencies in the professional statement, we will grant a full exemption from pupillage. Otherwise, we

> will consider granting a reduction in the amount of pupillage to be undertaken. We will look at all the circumstances, in particular the applicant's duration of experience, variety of experience, the level of supervision and assessment, amount and quality of legal work, advocacy achievements and jurisdiction."

27 Pausing there, it is to be noted that an identified circumstance is "the level of supervision and assessment." At paragraph 1.11 the criteria provide that:

> "Where a period of training/experience is so similar to the training/experience that would be obtained during a standard period of pupillage that it can be deemed to be equivalent, a reduction will be granted equal to the length of that training/experience."

28 Finally, I quote in part from paragraph 1.1.12 which includes:

> "... At present our outline approach is that the preliminary starting point for a reduction in pupillage on this basis is:
>
> - about one to three years' relevant experience leads to a reduction of about two months, usually in the practising period of pupillage ... "

29 Pausing there, the appellant did have several years of earlier experience working for the London Borough of Tower Hamlets, but the particular experience that he was relying upon was that with HB Public Law, which had endured about 15 or 16 months by the time the panel were considered his application in June 2018. The "preliminary starting point" is a reduction of about two months' pupillage for that experience. As I have described, the Bar Standards Board had already granted to this appellant a reduction of two months in each of the two stages of the pupillage. Further, that reduction contemplated by paragraph 1.12 is "usually in the practising period of pupillage" whereas it is in the non-practising period that this appellant seeks his further reduction. So, those were the criteria that the panel were required to apply and which, indeed, I apply in my approach to the present appeal.

30 In support of his application, the appellant had made a very full personal statement setting out the nature of his work with HB Public Law and describing some of his casework there. Further, he submitted and relied upon the letter to which I have referred from Paresh Mehta dated 1 June 2018. That letter is quite long and I can only quote rather selectively from it. On the first page Mr Mehta described the nature and functions of HB Public Law and continued:

> "The legal practice employs and trains trainee solicitors and supports staff seeking to qualify as legal executives but does not provide pupil barrister training."

31 That paragraph does need to be emphasised, for in it Mr Mehta himself is clearly explaining that although HB Public Law trains solicitors, it does not provide, and I assume is not registered or qualified to provide, training for pupil barristers. Mr Mehta then continues by describing that the appellant has his own personal caseload to manage, and that typically he has sole conduct of between 40 to 60 cases, the majority of them being possession claims where the authority are seeking possession against tenants for arrears of rent. He says:

> "[The appellant] is responsible for managing his cases from when they are initially referred to the team to their ultimate conclusion. Advocacy is part of his role, but [the appellant] must also consider and advise on the initial instructions, identifying and researching as necessary the applicable law and providing his view on prospects of success ..."

32 Mr Mehta explains that the appellant drafts pleadings as well as interlocutory applications, orders, skeleton arguments and so on as required. It is clear from the letter of Mr Mehta and other material that the appellant has appeared as advocate at many court hearings on behalf of his clients. The letter continues:

> "While we have a structured supervision regime, including regular file reviews and monthly supervision meetings, [the appellant] works with limited supervision. He meets clients, provides advice and so on without

> the assistance of senior colleagues. That is not to say that [the appellant] will not seek assistance as and when required if he encounters the need to do so, but he generally works independently."

33 That paragraph, as it seems to me, is very important, and indeed was influential on the decision of the panel. On one level it is of course a very positive testimonial that this appellant has been able to handle a heavy caseload with only "limited supervision" and generally working "independently." On another level, however, that paragraph expressly highlights the relatively limited degree of supervision to which the appellant was subject, which, frankly, is the antithesis of what is contemplated by the non-practising first stage of a pupillage. The published material of the Bar Standards Board under the heading "Structure of Pupillage", now at bundle p.106, says of the non-practising period (the first six months):

> "During the non-practising period, pupils shadow their pupil supervisor ..."

34 The metaphor of a "shadow" is of a person attached to their pupil supervisor as closely as a shadow is attached to the body casting the shadow. The first six months of a pupillage is not about "independence" or "limited supervision", but, on the contrary, about constant close proximity, so that the pupil sees or hears everything done and said by the pupil supervisor, and is indeed able to discuss it with him or her. At all events, that was the evidence of Pavesh Mehta upon which, of course, the appellant heavily relied and does rely before me.

35 As I gave him permission to adduce as further evidence the supervision sheets, I will briefly refer to them. These indicate reviews at 8, 16 and 26 weeks of his employment with HB Public Law. They are essentially tick box forms which indicate that under a variety of headings such as "job related knowledge", "experience", "skills and abilities" his performance has in every case been "satisfactory". The appellant particularly wished to rely on a note on the second page of the supervision sheet dated 5 May 2017 which includes

a note "speak to Victoria." He says that the reference to Victoria is a reference to Mrs Victoria Seifert, who is a barrister who is, or was, also working for HB Public Law. So, he says, there is a small pointer to some engagement between him and a barrister in relation to supervision.

36 The difficulty with that is, first, that in his underlying application form he described his supervisors as being other people, not including Mrs Victoria Seifert, and he merely mentioned that she is a barrister employed by HB Public Law. Second, there is no evidence from Victoria Seifert as to her degree of supervision or oversight of the work of the appellant; and, third, as I have been told today, Victoria Seifert is not herself a registered pupil supervisor.

37 The appellant wished to stress also in the supervision sheet signed on 3 July 2017 a note that there is "good feedback on written advocacy. Continue to expand" and references in the supervision sheet of 21 August 2017 to his having conducted 24 hearings on his own and that his written advocacy continues to be good.

38 I do entirely accept that, so far as HB Public Law was concerned, the performance of the appellant was entirely satisfactory. That is evidenced by those supervision sheets and also by the reference letter from Paresh Mehta dated 1 June 2018. It is not, however, his performance which is in issue. It is whether or not the appellant has been exposed to the sort of osmosis that is expected to take place from close proximity to a practising barrister (whether in private practice or in the employed Bar) during the pre-practice stage of a pupillage.

39 The decision letter dated 19 September 2018 extends to some three and a half pages and I can only quote very selectively from it. The overall conclusion on the first page, now at bundle p.182, is that:

> "The panel considered all the information provided in both your original application and your review request, and agreed that there was insufficient evidence to support such an exemption."

40 Passages were then set out from the guidelines and criteria which I have quoted above. The panel then went on to consider the decision of Sarah Okran and felt there was no substance in any of the grounds of complaint made by the appellant from that decision, but they then clearly turned to consider the application "afresh", as they were required to do. On the third page of the decision letter, now at bundle p.184, the panel say:

> "Having considered these grounds, the panel went on to consider whether the information provided in your original application and request for review demonstrated to its satisfaction a justification for the dispensation sought. ... The panel reaffirmed that the purpose of pupillage is to establish the fundamentals of practice, client management and professional ethics and that pupils benefit enormously from interaction with, and observation of, their pupil supervisor(s) in these matters. The panel further emphasised that the structure of the training which is provided, and experience gained in the non-practising period specifically, is important and so will not readily be reduced. "

41 That paragraph, as it seems to me, encapsulates in the words of the panel the reasons for, and the belief of the Bar Standards Board in, the importance of pupillage generally and the non-practising period specifically. The decision letter continues a little further on:

> "To assess the equivalence of this experience to a conventional non-practising pupillage, the panel considered the types of legal activities you have undertaken and the level of supervision and assessment to which you were subject. The panel determined that the work you have described is more akin to that of a paralegal than a non-practising pupil, and so is unlikely to be of a comparable level of difficulty or complexity. In addition, the panel noted that your referee, Parish Mehta ... stated that you worked with 'limited supervision' and that you 'generally [work] independently'. While the panel accepted that these comments suggest

> a level of autonomy in your work which may be regarded as positive, it highlights the absence of structured interaction with a pupil supervisor. It further noted that while you have stated that you received supervision from experienced lawyers within HB Public Law, none of those named in your application is currently a practising barrister."

42 Pausing there, it is to seek to contradict that sentence that the appellant wished to draw my attention to Mrs Victoria Seifert; but, as I have said, there is nothing, even now, to indicate any particular level of supervision from Mrs Seifert, who in any event is not registered with the Bar Standards Board to provide it. The letter continued:

> "The panel agreed that you had demonstrated a breadth of experience, knowledge and skill throughout your employment at HB Public Law. The panel was, however, not satisfied that this experience in and of itself will have provided you with all the attributes required of a practising barrister. The panel concluded that you would benefit from undertaking structured periods of both non-practising and practising pupillage to enable you to build on your existing skill set and to develop your legal knowledge with the support and guidance of a registered supervisor. It is the assessment of a pupil supervisor, based on direct interaction with their pupil and observations of their individual competences, that forms the basis of the Bar Standards Board's decision to award a Provisional Practising Certificate at the end of the non-practising period of pupillage. The panel concluded that you had not presented evidence which may stand as a satisfactory substitute for that assessment."

43 It seems to me that that reasoning by the panel cannot seriously be faulted on the totality of the evidence in this case, and certainly cannot be characterised as wrong.

44 I turn, however, from the formal decision letter to the "meeting notes" of the meeting of the panel itself, which I gave permission to the appellant to admit in evidence today. Those notes indicate that the panel consisted altogether of five named individuals. I have been told

that one of them, Jamie Hunt, is a barrister. The other four are lay people who I assume have been appointed as members of this panel for some specified period of time.

45 The notes of the meeting do record one of the lay members of the panel, Sarah Brown, as saying "potential floodgates outcome if we do approve this application." The appellant very strongly submits that that note indicates the panel, or at any rate that member of the panel, taking into account an inappropriate and prejudicial consideration when considering his application. To that extent, I agree with the appellant. The Bar Standards Board and this panel are clearly required to consider applications on a case-by-case and case-specific basis. They must of course have regard to the published rules and guidelines which I have quoted above, but any kind of policy approach based on a "floodgates" argument or consideration is, in my view, inappropriate and, indeed, mistaken and wrong.

46 It does not seem to me, however, that that short reference to "potential floodgates outcome" in the meeting notes invalidates or vitiates, or makes wrong the decision as a whole. There is nothing to indicate that other members of the panel took up or in any way developed the "floodgates" point, nor even that Sarah Brown, who made a number of further contributions to the meeting, was motivated by a floodgates consideration at the end. Thus, she said further on, according to the meeting notes:

> "We are not convinced his work is at a comparable level of difficulty to that we may expect of a non-practising pupil."

47 That is not a reference to floodgates at all. So, I accept the complaint and grievance of the appellant in regard to the improper reference to "floodgates", but I cannot accept that it thereby vitiates the whole decision.

48 The appellant further complains that he had some "legitimate expectation" that his application would be granted. With respect, that argument is completely unsustainable. He may well have had a personal subjective expectation that his application would be granted,

and certainly a hope that it would be. But there is nothing in either the published rules or guidance, or in anything else said or done by the Bar Standards Board in relation to his application which raises any kind of "legitimate expectation" that his application would be granted in the sense in which public law understands and uses that concept.

49 The appellant complains that the decision as a whole was not a reasonable or proportionate one, but it seems to me that it was one that was well within the discretion of the panel. The over-arching question for me is whether, nevertheless, I, in my discretion, consider that decision to have been wrong so that in exercise of my powers under section 24 of the Act I should now substitute a decision of my own, either further reducing, or even extinguishing altogether, the requirement of the non-practising stage.

50 In my view, the decision was not wrong. Indeed, it was wholly justifiable and right. There is, as the materials I have quoted indicate, a very distinct purpose and importance in the non-practising stage of a pupillage. It is the stage in which, by a form of "osmosis", a barrister at the outset of his career learns and absorbs what it is to be a barrister, the conduct and etiquette that is required and expected of a barrister, and the attributes that are required of a barrister in dealing with a client, with courts, with instructing solicitors and with opponent lawyers.

51 The importance of all of this can clearly be seen from the "pupillage checklist", which a pupil supervisor is required to complete and sign at the end of both the first and the second stages of a pupillage. Frankly, although the appellant has worked well and entirely satisfactorily for HB Public Law, there is simply nothing to indicate that he had the level of supervision and scrutiny that is contemplated by being a "shadow" of a pupil supervisor, and nothing to indicate that he had much proximity at all to a registered pupil supervisor barrister. On the contrary, as I have already said, the letter itself of Mr Mehta dated 1 June

stresses that HB Public Law does not provide pupil barrister training and that the supervision given to him was "limited".

52 Paradoxically, as it seems to me, the work that the appellant did at HB Public Law might more strongly have supported an application for a further reduction of the practising stage of a pupillage, where the embryo barrister may often spend a great deal of time handling his or her own caseload and appearing as an advocate in a variety of courts, just as this appellant has done. But I am concerned today with the non-practising stage and, for the reasons I have given, I regret that I do not consider the decision of the panel to have been wrong and this appeal must be dismissed.

53 I wish however to say, in conclusion, to that during the course of today the appellant has demonstrated to me his own strengths (and some weaknesses) as an advocate. He has been clear and cogent. He has demonstrated a mastery of the documents. He has displayed the utmost courtesy to the court, even when things were not going his way. These are all hallmarks of good advocacy and tend to indicate the degree of experience that the appellant has already obtained as an advocate. So, although dismissing his appeal, I can only, with sincerity, wish him good luck in the future and in his continued quest ultimately to emerge as a fully qualified practising barrister.

Right. That is the end of the judgment. Now. Where do we go from here?

MR BENEDYK: Thank you, my Lord. I am grateful.

MR JUSTICE HOLMAN: Other than dismissing it, is there anything that I have to say or do on the substance of this?

MR BENEDYK: Not on the substance.

MR JUSTICE HOLMAN: No.

MR BENEDYK: The Bar Standards Board have decided that they only wish to seek the costs that were ordered in their favour by Lang J at the hearing in February.

MR JUSTICE HOLMAN: And what do they amount to?

MR BENEDYK: You should, my Lord, have a statement of costs.

MR JUSTICE HOLMAN: Well, maybe I have. I have, but I have not studied it, because costs are costs and come at the end. She has already made an order.

MR BENEDYK: She has made an order.

MR JUSTICE HOLMAN: Where do I see that order? I have seen it, but where is it currently?

MR BENEDYK: I have a copy here.

MR JUSTICE HOLMAN: I think I have it now. I have got it. This is when she adjourned it.

MR BENEDYK: That is right, my Lord.

MR JUSTICE HOLMAN: She has already ordered him to pay your costs thrown away, the amount of such costs to be determined by assessment or agreement at the conclusion of the appeal.

MR BENEDYK: That is right, my Lord.

MR JUSTICE HOLMAN: You say you are limiting your costs application to what has already been ordered.

MR BENEDYK: Yes. There are other costs that naturally have been incurred.

MR JUSTICE HOLMAN: Obviously there have, because there have been the costs of being here today.

MR BENEDYK: Yes, but the Bar Standards Board have taken the view that they are only going to seek that which has already been ordered.

MR JUSTICE HOLMAN: All right. So it is not a matter for me then. Lang J has ordered that. I am not sitting on appeal from Lang J. He has to pay those costs. So the only question for me, if the amount of them has not been agreed, is assessment of them.

MR BENEDYK: Indeed.

MR JUSTICE HOLMAN: Where do I look for that?

MR EKPERIGIN: My Lord, if I may suggest, in my skeleton argument I make submissions on the costs order.

MR JUSTICE HOLMAN: I know, but you cannot, because I am not on appeal from Lang J.

MR EKPERIGIN: That I presumed, but the basis of my submissions in the costs order pertain to variation of that order in the circumstances that transpired on the day of that hearing and I made that very clear.

MR JUSTICE HOLMAN: I know all that, but I am sorry. It is a very important point, Lang J is a co-equal judge, she was in fact listed to hear this on that day. For whatever reason, it was not heard that day, but was adjourned until today and, for whatever reason, good or bad, she made an order, which is very clear, the appellant to pay the respondent's costs thrown away as a result of the adjournment. I cannot sit on appeal from Lang J and so that costs order must stand. It does not matter what points you may have. She has made that order and it stands, but she has left to me to assess the amount of them, which is what I will now proceed to do.

MR EKPERIGIN: My point is the case of *Tibbles* does point out at paragraph 41 that you can indeed revisit that order.

MR JUSTICE HOLMAN: On what basis?

MR EKPERIGIN: On the basis that on the day of the hearing there was not a deliberate omission on my part to draw to the court's attention the conduct of counsel on the day with a view that the overriding objective of this court be fulfilled. The point I am trying to make, sir, is that on the day of hearing counsel had the overriding objective to draw the judge's attention to the fact that in his supplementary skeleton argument he had addressed the fact that the additional submissions in my skeleton argument had been addressed.

This was the reason why Lang J in her order directed that the costs thrown way be factored in, but, my Lord, counsel did not draw that to her Ladyship's attention the fact that the supplementary point in my grounds of appeal had been addressed.

MR JUSTICE HOLMAN: Maybe, but Lang J has made her order. It may be, you say there is a case called *Tibbles*. It may be there is some residual discretion, but I am not going to

exercise it. I am sorry. But I will look at the amount of them and let us see which is the document.

MR BENEDYK: My Lord, it is the statement of costs. There were two statements of costs.

MR JUSTICE HOLMAN: I have got several here.

MR BENEDYK: The way to difference it is first of all to identify it is from the Bar Standards Board. you will see the fee earners are Peter Edwards and Hanna Lang rather than Mr Ekperigin of course.

MR JUSTICE HOLMAN: Yes. I think I may have two copies of the same thing is what I may be looking at.

MR BENEDYK: You may see a difference.

MR JUSTICE HOLMAN: Yes.

MR BENEDYK: The first page of it is other than in "C" under "letters out" one hour £150.

MR JUSTICE HOLMAN: Which one are you asking me to look at?

MR BENEDYK: It comes to a grand total, perhaps that is the easiest way to identify it, of £8,221.32 rather than the other high statement.

MR JUSTICE HOLMAN: Right. So I will put the other one to one side. How much of this relates specifically to the costs thrown way? I mean, really the costs thrown away are the costs of the attendance on that day.

MR BENEDYK: It is the costs, my Lord, of attendance on that day and dealing with the original grounds and skeleton argument, both of which by reason of the adjournment had to be redone and redone by reference to.

MR JUSTICE HOLMAN: I do not think that is costs thrown away. The costs thrown away I am going to treat as the costs of attendance that day. So, what are the costs of attendance that day?

MR BENEDYK: That will be attendance at hearing on the third page.

MR JUSTICE HOLMAN: Who did attend on that occasion?

MR BENEDYK: Hanna Lane.

MR JUSTICE HOLMAN: And she is Grade C £150. Is she in fact here today?

MR BENEDYK: She is not here.

MR JUSTICE HOLMAN: Not here today and the attendance was three and a half hours?

MR BENEDYK: Yes.

MR JUSTICE HOLMAN: At £150 an hour. That is your £525.

MR BENEDYK: Yes. And £300 for two hours' travel and waiting time.

MR JUSTICE HOLMAN: Is this a solicitor employed by the Bar Standards Board or a solicitor in private practice?

MR BENEDYK: Capsticks.

MR JUSTICE HOLMAN: Capsticks. Travel and waiting time would normally be charged at a lesser amount. I will allow that at half, which is £150 and then there is your fee.

MR BENEDYK: Then my brief fee £2,000. I understand from your Lordship not including the fee for advice and conference documents, so my brief fee----

MR JUSTICE HOLMAN: £2,000. If we just add up those, we get £2,675 plus VAT.

MR BENEDYK: Yes.

MR JUSTICE HOLMAN: But I am afraid I have not got a calculator here with me. What is 20 per cent of £2,675?

MR BENEDYK: £535.

MR JUSTICE HOLMAN: £535. The sum of those is I think it is £3,210.

MR BENEDYK: Yes.

MR JUSTICE HOLMAN: That was listed as the final hearing of the appeal, was it?

MR BENEDYK: That is right, my Lord.

MR JUSTICE HOLMAN: You were briefed to attend on the final hearing of the appeal?

MR BENEDYK: I was.

MR JUSTICE HOLMAN: Then all sorts of arguments arose which I am not going to go into, but, anyway, the net result was it was adjourned.

MR BENEDYK: That is right.

MR JUSTICE HOLMAN: And Lang J considered that he should pay the costs thrown away. So, your brief fee was a brief fee not for some interlocutory hearing, but for the substantive appeal.

MR BENEDYK: Yes, that is right, my Lord.

MR JUSTICE HOLMAN: Yes. Well, Mr Ekperigin, I am not going to go behind Lang J's order. I have to assess. I will limit it entirely to the costs of the attendance of the solicitor. £150 an hour does not sound a great deal for a Grade C solicitor. So, if it is the case that she was in court basically for three and a half hours there is the £535. I will cut by half the amount claimed for the waiting and travel time. So, I am reducing it from £300 to £150. I do not see how I could take the view that the brief fee at £2,000 for a full day's appeal hearing is excessive, even for somebody called in 2016. So, one then arrives at these figures.

MR EKPERIGIN: My Lord, all I would add to this that I have been financially prejudiced by this. I have been financially prejudiced by this.

MR JUSTICE HOLMAN: Of course. Everything, the whole story, is one of constant financial prejudice in the sense that you are not able to get going with practice at the Bar.
I understand all of that.

MR EKPERIGIN: Yes.

MR JUSTICE HOLMAN: But I am afraid I am just performing the function of assessing the reasonableness of the costs actually claimed. They have taken quite a benevolent view. I thought they might ask for their entire costs against you, which I would probably not have ordered, because it would be crippling to you. But the fact is this is all money ultimately which is paid by all the barristers who have to pay annual subs to the Bar Council, is it not?

MR BENEDYK: My Lord, there is just one point that I want to correct which is you said that was my brief fee for a full day's hearing. I just wanted to make sure your Lordship was aware it was originally listed for a half day.

MR JUSTICE HOLMAN: For a substantive appeal hearing?

MR BENEDYK: That's correct. Including preparation.

MR JUSTICE HOLMAN: Yes. It is very, very difficult.

MR EKPERIGIN: My Lord, affordability is the issue. At the moment, I will be out of work come the end of May. I will not be in a position.

MR JUSTICE HOLMAN: That is not really a matter for me.

MR EKPERIGIN: I know that.

MR JUSTICE HOLMAN: Lang J has made the order. I am going to assess it. Whether or not, and with what intensity, they pursue you at the moment is a matter for them and not for me.

You know all this from the work you do. You succeed and you obtain a costs order. It does not mean you get the money out of the tenant, frankly. They may or may not pursue you, and may or may not get the money out of you.

Are there any submissions that you feel you could make as to the quantification, because I do not see that I can reduce it below £3,210.

All right. Mr Benedyk, I will assess the costs as ordered by Lang J in paragraph 9 of her order of 7 February 2019 in the total sum of £3,210 inclusive of VAT. That is all I am doing.

MR BENEDYK: Thank you, my Lord.

MR JUSTICE HOLMAN: Can you kindly draft a very short order and type up a short order to give effect to this. I think it is very straightforward.

MR BENEDYK: Yes.

MR JUSTICE HOLMAN: Recite that I have heard from the appellant in person. I have heard from you on behalf of the Bar Standards Board. It must recite that I have formally given him

permission to admit in evidence the supervision sheets and the meeting notes. It will order that the appeal is dismissed, and will order pursuant to paragraph 9 of the order of Lang J that I now assess the costs thrown away on 7 February in the sum of £3,210 inclusive of VAT. I think that is all it does.

MR BENEDYK: Yes, my Lord.

MR JUSTICE HOLMAN: It should just say, save as aforesiad, there is no order as to costs of and incidental to this appeal.

MR BENEDYK: Yes.

MR JUSTICE HOLMAN: Anything else, Mr Benedyk?

MR BENEDYK: Only if you have, my Lord, an email address that you wish me to send that.

MR JUSTICE HOLMAN: Well, if you send it to today's associate, I expect she will send it to my clerk.

MR BENEDYK: Thank you.

MR JUSTICE HOLMAN: And it will emerge. Do not delay too much, because after next week I am away for a bit. Provided I get it next week I will deal with it.

MR BENEDYK: Thank you, my Lord.

MR JUSTICE HOLMAN: Mr Ekperigin, that is the outcome. I will not keep repeating my sympathy for you. Is there anything else that you now wish to raise or say?

MR EKPERIGIN: If I did have something to say, it will be seeking permission to appeal.

MR JUSTICE HOLMAN: Well, you cannot, because the statute says it is final, I am afraid.

MR EKPERIGIN: That will the end of matters.

MR JUSTICE HOLMAN: You cannot. If you look at section 24(4) of the 2013 Act it says that a decision of the High Court on an appeal under this section is final. I think that is the end of the road.

MR EKPERIGIN: Yes, sir.

MR JUSTICE HOLMAN: You are not going to be able to say that I sat without jurisdiction or anything like that. So I am afraid "final" means what it says. It of course does not stop you going back to the Bar Standards Board again if you get into other employment, for instance supervised by a registered barrister and so on. This does not preclude you going back, but you have got the problem of the five-year rule.

Thank you all. Thank you very much indeed.

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