

IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

Between:

ALAN MICHAEL CHICK

“Applicant”

-and-

THE GUERNSEY FINANCIAL SERVICES COMMISSION

“Respondent”

APPLICATION FOR LEAVE TO APPEAL

Judgment handed down: 4th August 2020

Before: Sir Richard Collas, Lieutenant Bailiff

The Applicant is Unrepresented

Advocate for the Respondent: Advocate C Edwards

The Application

1. The Applicant (also “Mr Chick”) has lodged an Application dated 6 July 2020 seeking leave to appeal the Judgment handed down by me on 12 June 2020 (“the Judgment”) in which I struck out the proceedings brought by Mr Chick against the Respondent (also “the GFSC”) under The Human Rights (Bailiwick of Guernsey) Law, 2000 (“Human Rights Law”).
2. The Application is supported by the Applicant’s Grounds of Appeal, also dated 6 July 2020 in response to which Advocate Edwards submitted Written Submissions dated 21 July 2020.

The Legal Test

3. The Judgment is interlocutory so leave to appeal is required from the presiding judge, or from the Court of Appeal, pursuant to section 15(e) of the Court of Appeal (Guernsey) Law, 1961. The approach to be adopted in relation to an application for leave to appeal has been considered in a number of judgments including by the late Logan Martin JA in Chilcott v Dockerill, (Guernsey Court of Appeal, unreported, 14 December 2018) where he held that the approach is:

“that leave to appeal will be granted unless an appeal would have no prospects of success, and an application for leave may also be granted “in exceptional circumstances” if it would involve an issue which in the public interest should be examined by the Court of Appeal “such as questions of great public interest or of general policy”.”

The Grounds of Appeal

4. The Grounds of Appeal submitted by the Applicant are:

- “1) *The validity of the Lt. Bailiff’s Judgement handed down on 12 June 2020 as it is argued the Lt. Bailiff became “Functus Officio” in this case at the moment he retired as Bailiff. Accordingly, the Lt. Bailiff cannot now deliver a judgement acting judicially in a different judicial capacity;*
- 2) *Subject to 1) the validity of the Lt. Bailiff’s Judgement with regard to the time in which an appeal could be lodged, The Financial Services Commission (Bailiwick of Guernsey) Law (as amended) (“FSC Law”) v The Human Rights (Bailiwick of Guernsey) Law 2000, now it has been established sanctions were imposed against the Plaintiff by an invalidly appointed Senior Decision Maker, in contravention of section 19 (5) of the FSC Law, and were therefore ultra vires and should be set aside by the Court;*
- 3) *The GFSC Commissioners’ and senior politicians’ violation of their respective oaths of office by continually appointing Senior Decision Makers from 2014 onwards to review enforcement matters knowingly in contravention of section 19(5) of the FSC Law.*
- 4) *The status of ultra vires decisions made by an invalidly appointed Senior Decision Maker;*
- 5) *The “criminal” or “civil” nature of disciplinary hearings, the applicability of Articles 6,7 and 14 of the European Convention on Human Rights, and the GFSC’s compliance with the European Convention of Human Rights generally;*
- 6) *Natural justice, the GFSC’s Duty of Candour and the Commissioners and Executive of the GFSC continually acting in bad faith from 2014 by referring matters to invalidly appointed Senior Decision Makers in contravention of section 19(5) of the FSC Law;*
- 7) *The inadmissibility of evidence and the dismissal of the Plaintiff’s Application for the GFSC’s own evidence bundle and associated files (referred to as the 6 lever arch files) to be admitted into evidence.*
- 8) *The decision not to refer the Plaintiff’s original application to a full hearing of the Royal Court sitting with Jurats to enable the Plaintiff’s Application to be heard by a truly independent tribunal and if the matters claimed by the Plaintiff were found to be justified, for the sought after compensation and damages to be considered and awarded as originally requested by the Plaintiff.*
- 9) *Any other matters which may be raised during the course of the Appeal if granted.”*

Discussion

5. **Ground 1** – that I was *functus officio*, having retired as Bailiff after hearing oral submissions and before handing down the Judgment. I regret that I was not able to hand down the Judgment whilst I was still Bailiff. Unfortunately, the time spent by me in my final weeks and months dealing with the Coronavirus pandemic prevented me from issuing the Judgment as promptly as I had hoped. However, that did not render the Judgment invalid. Leaving aside any arguments as to whether a retired judge can continue to deliver judgments on matters heard before his retirement, I was appointed by my successor as a Lieutenant Bailiff immediately upon him taking up office so there was no break in continuity and the change in

my status from Bailiff to Lieutenant Bailiff did not prevent me from handing down the Judgment. I therefore refuse leave to appeal on Ground 1.

6. **Ground 2, 3 and 4** – which I summarise as being that the appointment by the GFSC of a Senior Decision Maker (“SDM”) to hear the complaint concerning Mr Chick was *ultra vires*; that the GFSC Commissioners and senior politicians have acted unlawfully in connection with the appointment of SDMs; and hence the decision which is the subject of these proceedings was *ultra vires* the GFSC.
7. These Grounds allege that the SDM’s decision was *ultra vires* by reason of the GFSC’s appointment of the SDM and their delegation of authority to the SDM being in contravention of section 19(5) of The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended, which excludes certain powers from those that may be delegated. Mr Chick has understood that the decision by the SDM in his case was made in exercise of such excluded powers. His understanding has led him to conclude that the SDM exceeded the authority that lawfully be delegated. However, Mr Chick has misunderstood the situation and he is not correct. The appointment of the SDM was within the powers of delegation of the GFSC and the sanctions imposed on him by the SDM did not involve the exercise of any powers excluded by section 19(5). I therefore conclude that Grounds of Appeal 2, 3 and 4 are without merit.
8. **Ground 5** – whether the disciplinary proceedings were criminal or civil in nature. I considered this issue in the judgment and applied the test in Engel and others v The Netherlands ECHR, 8 June 1976. The Applicant does not suggest I should have applied another test but submits that because misconduct by a licensee may expose the individual to criminal proceedings as well as disciplinary proceedings, the criminal test must apply. However, the present case does not involve a criminal investigation. That is not correct in those cases where there is no criminal investigation. Mr Chick also draws parallels with disciplinary proceedings in other professions that have no relevance.
9. Ground 5 also raises the issue of compliance with the European Convention on Human Rights (“ECHR”) which was a major part of Mr Chick’s submissions before me focussing on the alleged lack of independence of the SDM and the alleged procedural inadequacies. Mr Chick is to some extent repeating submissions addressed by me in the Judgment with the added allegation that the appointment of the SDM was *ultra vires*. I am satisfied that, for the reasons given in the Judgment, if the SDM was not sufficiently impartial or followed incorrect procedures, any deficiencies or irregularities could have been addressed if Mr Chick had exercised his right of appeal. I am satisfied that Ground 5 is without merit.
10. **Ground 6** – alleges bad faith and a failure of the GFSC to act in accordance with natural justice by reason of the appointment of SDMs being in contravention of section 19(5) of the FSC Law. The issue was not argued at first instance but in any event it lacks merit because it relies upon the misunderstanding that the SDM was appointed, and imposed sanctions, in contravention of section 19(5) which, as I said above in relation to Grounds 2, 3 and 4, is incorrect. Ground 6 has no merit.
11. **Ground 7** – alleges that I incorrectly failed to look at additional evidence the Applicant sought to adduce. I based my decision on the material facts as pleaded and hence did not need to review the evidence that would be adduced at trial to prove those material facts. In my judgment, that was the correct approach to a strike out application and I therefore dismiss Ground 7.

12. **Ground 8** – I did not allow the claim to proceed to a hearing before Jurats. In my judgment, the Respondent's application to have the claim struck out was well founded and hence there was no purpose to be served by referring it to a hearing before Jurats. Ground 8 is also dismissed.

Conclusion

13. For the reasons given above, I am satisfied that the Grounds of Appeal pleaded by Mr Chick would have no prospects of success. I also have to consider whether there are exceptional circumstances that involve an issue of public interest. I have given careful consideration to the question of whether the delegation to SDMs by the GFSC raises an issue of public interest in that the SDM is not sufficiently independent of the GFSC but I am satisfied that, as I said in the Judgment, the case law concerning the statutory right of appeal to the Royal Court that was available to the Applicant but which he did not exercise is well established and therefore that any deficiency could have been corrected by an appeal.
14. I therefore refuse leave to appeal but as the Applicant is a litigant in person I advise him that he has a further right to apply to the Court of Appeal for leave to appeal subject to complying with any directions the Court of Appeal might impose.