Laidley (by his Litigation Friend the Official Solicitor) v Metropolitan HT Case No. CA-2024-001780 (11.4.2025)

The Court of Appeal today handed down Judgment in *Laidley v MHT* [insert link].

Catherine Rowlands and Nicholas Grundy KC acted on behalf of MHT, instructed by Sadhana Patel, of MHT's Legal Services.

The appeal concerned the following question: What disclosure of communications between a Judge and an assessor appointed to assist the Judge under the Equality Act 2010 ("EA") is necessary to satisfy the requirements of natural justice?

Mr Laidley, MHT's tenant, caused nuisance and annoyance to his neighbours by banging on the walls. However, his nuisance behaviour was a result of a mental disorder. MHT issued a possession claim, relying on reasonableness grounds. Mr Laidley's mental illness meant that he lacked capacity to conduct litigation, and the Official Solicitor was appointed as his litigation friend. Notwithstanding that Mr Laidley did not engage with the OS (he does not accept that he has a mental illness) the OS defended the claim on his behalf on a kitchen sink basis, including that (i) the nuisance hadn't happened; (ii) if it did, it was due to a lack of sound-proofing; (iii) it was not reasonable in all the circumstances to make a possession order; (iv) the possession proceedings amounted to disability discrimination and (v) that MHT had not complied with its Public Sector Equality Duty. Mr Laidley also brought a counterclaim alleging disability discrimination.

Under EA section 114(7), as the counterclaim raised issues under the EA, the Court was required to appoint an assessor to sit with and to assist the judge, unless the judge was satisfied that there were good reasons for not doing so. Accordingly, on Mr Laidley's application an assessor was appointed and the parties were notified of her identity and expertise.

At the start of the Trial, HHJ Luba KC dismissed an application by the OS that he should define the role of the assessor in line with case law on nautical assessors. Following a four-day trial, which was adjourned part heard after two days to explore the possibility of social services providing specialist support for Mr Laidley, HHJ Luba KC made a possession order. In a typically comprehensive and well-reasoned judgment, the judge dealt with each of Mr Laidley's defences to the claim and explained why, on the evidence each was rejected. The judge set out in broad terms that the assessor had assisted him on whether MHT's treatment of Mr Laidley 'had been in proportionate pursuit of a legitimate aim'. The judge did not in his judgment set out what advice, if any, the assessor had given him on that issue.

The OS appealed against HHJ Luba KC's decision on the basis of the judge's failure to disclose to the parties the "evidence" that he had received from the assessor and that the judge had received evidence from her on issues that were outside the assessor's expertise, the legitimacy of MHT's acts and the proportionality of making a possession order.

Bacon J. dismissed Mr Laidley's first Appeal. She recognised the wide range of assistance that is given to judges by experts and assessors and held that in this case, the Judge had not erred in law.

The assessor had not given any "evidence", which the Judge would have been expected to disclose, but had given him assistance, which was not disclosable.
[2024] EWHC 2611 (Ch)

The Official Solicitor appealed on her client's behalf, leaving him continuing to make a nuisance rather than seeking to move him to more appropriate accommodation.

On the second Appeal the OS argued that all and any relevant discussion between the Judge and the assessor that does not occur in open Court must be disclosed to the parties. The argument principally relied on *The Owners of the Bow Spring v The Owners of the Manzanillo II* [2005] 1 WLR 144, a case that related to the disclosure of expert evidence given by nautical assessors in maritime cases. The OS also argued that in this case the appointed assessor had not had the appropriate experience to assist the Judge.

In an excoriating judgment, the Court of Appeal dismissed all the points raised by the Appellant, noting that his argument had shifted at each stage.

Stuart-Smith LJ, giving the lead judgment, noted that there was no challenge to the facts found by the HHJ Luba KC and it was not suggested that he made any error of law. Indeed at [26] he said "I would go further and say that his conclusions on the various issues that he addressed, clearly and thoroughly set out as they were, flowed inexorably from the findings of primary fact that he had made, which were themselves based on compelling and uncontradicted evidence."

He also noted [9] that the landlord, MHT had "attempt[ed] virtually any and every conceivable avenue in its efforts to resolve issues in a manner that was suitably supportive of Mr Laidley."

Stuart-Smith LJ praised HHJ Luba KC's "humanely sympathetic" judgment, saying [28]:

> "The judgment is characterised throughout by thorough understanding and analysis suitably informed and balanced by a clear appreciation of Mr Laidley's difficulties."

The Court then considered whether the Appellant had shown any error of law which showed that – despite this – the judgment was "wrong, or unjust because of a serious procedural or other irregularity in the proceedings of the lower court": CPR 52.21(3). He had not.

The decisions in relation to nautical assessors were of no more than tangential relevance.

He found at [61] that

> The Trial Judge was correct to reject the application that was made to him. Specifically, he was right to hold that the guidance in the nautical assessor cases had no application to the present case: they were concerned with the nautical assessors' giving of expert evidence and should not be cross-applied so as to require disclosure in the present case. It is implicit in his rejection of the nautical assessor cases that he did not consider the role of the assessor in the present case to involve the giving of evidence. … Bacon J was therefore right to conclude (at [45] of her judgment) that:

> *"the role of the assessor was therefore not to give evidence as to matters of fact regarding Mr Laidley's disability and its consequences. Rather, her role was to assist the judge in the evaluation and assessment of the evidence in order to determine whether the Trust's claim was a proportionate pursuit of a legitimate aim."*

He held [63] that EA assessors are not in the same category of people appointed to assist a court as nautical assessors. Applying and approving a decision that concerned race discrimination assessors under the Race Relations Act 1976 (*Ahmed v The Governors of Oxford University* [2003] 1 WLR 995) the Court ruled that the requirements of natural justice when an EA assessor sits with a Judge do not, in the usual course of events, require disclosure of the assessor's contribution unless the assessor strays beyond the role of providing evaluative advice to the judge and either (a) provides evidence or (b) opens up lines of enquiry on which the parties have not had proper notice nor a fair opportunity to respond disclosure may be required depending on the circumstances, in which cases disclosure of the assessor's contribution may be necessary for rule of natural justice to be met. But that will be an issue for the Judge having regard to that rule.

It was not suggested that the Trial Judge was not or would not have been aware of the fundamental principles of justice that a person should know the case against him; nor is there any material in the judgment that could support such a suggestion. The parties knew why the assessor had been appointed: it was the Appellant's own application in his pleaded case. There was no basis for any speculation that the assessor stepped out of her own role.

The appeal was dismissed and permission to appeal refused.

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