

Court of Appeal, 23 July 2013

Counsel's note of the judgment of Lord Justice Jackson

**JUDGMENT:**

This is an application for permission to appeal to the Court of Appeal.

The facts. The Appellant is the owner of two boats, lives in one of them. Holds standard canal and river licence. His boat is kept in Reading, Bristol and Oxford region. Travels along Grand Union canal, Kennet and Avon canal and possibly other waterways.

The Appellant is aggrieved by restrictions imposed by CRT, successor body to BWB. In particular, the Appellant maintains that with the benefit of his licence he should be able to keep his boat in place A and then move to place B after 14 days, perhaps 2-3 km away, and then after a further 14 days move back to place A. Not a progressive journey around the canal system.

CRT say this is not permissible use of the licence. They rely on s.17(3)(c)(ii) of the British Waterways Act 1995. They argue that since the Appellant does not have a houseboat licence he falls under s.17(3)(c)(ii) [reads out].

CRT promulgated the Guidance document setting out how s.17(3)(c)(ii) will be construed and applied. Published September 2011. [reads out introduction and 'Navigation' section]

The Appellant is aggrieved by that passage as well as a number of others which for present purposes I do not need to read out. The Appellant says they are unduly restrictive.

On 11 January 2012, the Appellant issued judicial review proceedings claiming essentially two remedies: (1) amendments to the Guidance, (2) a declaration that s.17(3)(c)(ii) is incompatible with Article 8 ECHR. He attached 70 pages of argument which is not easy reading. Minute analysis of Parliamentary process and much else.

Eder J held the claim had no prospect of success and refused permission.

The Appellant renewed at an oral hearing before Cox J on 18 October 2012. The Appellant submitted such a vast body of material that Cox J reserved judgment, contrary to the normal practice in permission hearings. Cox J in due course on 16 November 2012 handed down a long and detailed reserved judgment addressing all of the arguments. Cox J refused permission for two separate reasons: (1) claim out of time – CPR 54.5; (2) no real prospect of success.

The Appellant applied for permission to appeal. Pitchford LJ refused permission on the papers. The Appellant now renews orally.

The Appellant is a litigant in person but is highly intelligent and well experienced in litigation. He does not make life easy for the court by producing long documents, much of which is not germane to the case. He has lots of arguments, some of which are not pursued today.

Lengthy argument regarding s.43 of the Transport Act 1962 that powers apparently given have in fact been spent. This argument has no prospect of success and I do not give permission to pursue it.

More promising are his submissions regarding s.17(3)(c)(ii) of the 1995 Act. It seems to me that the correct interpretation of that provision is not an easy matter and there is room for argument on whether the Guidance document is a fair and accurate summary of the way in which s.17(3)(c)(ii) should be applied. The Appellant has not assisted his case by putting forward reams of analysis of the Parliamentary process. I do not think that Pepper v Hart principles enable discussion of this. But the Appellant does have a point that merits pursuit in judicial review proceedings.

I therefore do not give permission to appeal, but exercise my power under CPR 52.15 to grant permission to the Appellant to pursue the claim for judicial review limited to the issue of whether the Guidance accurately sets out the powers of CRT and restrictions on licence owners arising out of s.17(3)(c)(ii) of the 1995 Act.

*[ends]*

IAIN STEELE

Counsel for the CRT

23 July 2013

I am asked to check this note of my *ex tempore* judgment almost three months after the hearing. It looks broadly right, but I no longer have any detailed recollection of the judgment.

Rupert Jackson

3<sup>rd</sup> October 2013