

BETWEEN:

THE QUEEN

(on the Application of Ms Sophie George)

Applicant

and

THE ATTORNEY GENERAL OF ST HELENA

(for and on behalf of HE The Governor of St Helena) Respondent

RULING

This is an application made by Ms Abdel-Aziz, on behalf of the Applicant, Ms Sophie George, who seeks permission for the Court judicially to review a decision of the Scholarship Awards Committee (SAC) declining to award her a scholarship to pursue a degree course at Coventry University in the UK; permission for the Court judicially to review the decision of the Education Committee (EC) which upheld the SAC's decision; and to grant mandatory relief compelling the SAC to award the scholarship so as to enable the Applicant to depart St Helena for the UK on 7th August 2017; and therefore to enable her to take up the course at Coventry. The facts are as follows.

The Applicant is 19 years of age. She is currently employed by the Safeguarding Directorate at Safe Haven where she works with victims of domestic abuse.

The Applicant left Prince Andrew School (PAS) in June 2016. She obtained two A-Levels. When embarking upon A-Levels she had additionally studied Biology but found the work too stressful. She therefore discontinued Biology but started to study English A-Level. By the time that the Applicant left PAS, she had completed only the first year of study in that A-Level. Arrangements were put in hand for her to continue her studies privately with a view to sitting the A-Level the following year.

At or about the time that the Applicant left PAS, she made an application to SAC for an award to enable her to pursue further education overseas. She

made a presentation to SAC in October 2016. One of the criteria for an award of a scholarship in that applicants should obtain three A-Levels. The Applicant sought a provisional award on the basis that she would obtain a third A-Level in 2017 in English. It seems clear, in turn, that at a further presentation in November 2016, SAC requested that the Applicant research other options for further education and which would guarantee the Applicant entry on the basis of the two A-Levels she had already obtained. In due course-in May 2017-the Applicant obtained an unconditional offer of a place at Coventry University based upon the two A-Levels that the Applicant had already obtained.

On 17th November 2016 SAC wrote to the Applicant indicating to her that SAC had decided to make the Applicant a provisional award. Thereafter there seems to have been a period when there was little communication between the Applicant and SAC. The Applicant on the one hand complains that she received an unsatisfactory level of support from the Education Department. On behalf of the Respondent it is suggested that a great level of support was offered, offers which went largely ignored by the Applicant. For the purposes of the decision I have to make today, these are contradictions which I do not have to resolve. What seems to be clear is that the Applicant increasingly struggled with her commitment to continue with her studies for English A-Level and in May 2017 withdrew from the course before she could take the examination. It seems plain, too, and is acknowledged by the Applicant, that she did not consult SAC before taking this decision.

In June 2017 SAC met to review the provisional offer that had been made to the Applicant. Her decision to withdraw from the A-Level course was noted with some concern. The Applicant was then interviewed. The concerns felt by SAC were put to her and an explanation sought. The Applicant was also asked about the practical arrangements she had made to facilitate the course in Coventry. At the conclusion of the interview the SAC discussed the Applicant's situation and concluded that the Applicant failed to meet at least one of the criteria provided for by the SAC's Terms of Reference (TORs), namely her ability to live and study abroad (4.5 TORs) and conveyance of a mature personality and an ability to cope with living and studying overseas. A full account of the decision of SAC and the reasons for it are to be found in the Minutes of the SAC meeting of 17th June 2017 and in the letter subsequently sent to the Applicant explaining the decision not to make the award.

The Applicant, not unnaturally, was unhappy with that decision. She appealed against the decision to the EC and the appeal was heard in July. The EC first heard from the members of SAC as to the reasons for their decision. The EC then heard from the Applicant, who was accompanied by Ms C. Turner of the Human Rights Office. The Applicant explained why she felt the decision of SAC was wrong. The EC then considered the matter and, after deliberation, affirmed the decision of SAC.

By this application, the Applicant submits that the decision making processes of SAC and the EC were fundamentally flawed, inherently unlawful and in any event were decisions that no reasonable body could have reached. In essence I summarise the arguments advanced by the Applicant as follows.

1. The TORs are themselves an unlawful fetter on the discretion of the SAC to make awards. The Education Ordinance sets out the responsibilities imposed upon the Education Committee of fostering the education both of those of compulsory school age and of those who have recently left school. The Ordinance nowhere empowers the EC (or by extension SAC) to adopt criteria of the sort set out in the TORs. Those criteria are, therefore, an unlawful fetter on the statutory duty of the EC to foster education.
2. In any event, a criterion which requires either Committee to examine and assess an Applicant's "maturity" is so vague as to be unreasonable per se; and to rely upon a criterion of this type is to act in a manner that no body acting reasonably, could act.
3. SAC was in no position to assess the Applicant's maturity given the lack of support that had been afforded to the Applicant.
4. Any lack of maturity was in any event the fault of the EC which had failed properly to support the Applicant between the date of the provisional award and the date of SAC's determination in June 2017.
5. The appeals process adopted by SAC was flawed at a number of levels:
 - (a) A member of SAC who was a part of the original SAC decision making in June 2017 was present at the EC hearing and remained present when the EC conducted its own deliberations;
 - (b) There was in fact no formalised written appeals process as is indicated by the minutes of the EC meeting;
 - (c) The EC were wrong to permit members of SAC to attend the appeal to hear from them the reasons for withdrawing the offer of an award.
6. The timetable provided for by the TORs is inflexible.

7. The offer of an award by SAC created in the Applicant a legitimate expectation that the award would be made. Even if expressed as provisional, the lapse of time between the offer and the withdrawal itself created a legitimate expectation. The subsequent decision by SAC and its ratification by the EC were therefore both unlawful.

The Respondent in response submits as follows:

1. The TORs can in no sense be described as an unreasonable fetter. In the context of the limited resources available to St Helena it is inevitable that criteria have to be adopted to ensure that priority is given to those students assessed as most likely successfully to complete their courses. Further and in any event, in terms of fostering education it would be irresponsible of the EC not to have regard to the ability of those being considered for awards to cope with the demands and pressures of a very different environment both educationally and culturally.
2. Given the very high nature of the test in judicial review cases, namely that no body could have reasonably reached the decision which it is sought to attack, the Applicant falls far short, even at this stage, of demonstrating any argument that those decisions fall in to that category.
3. Even upon the admitted evidence, there are ample grounds for justifying the decisions of the EC and SAC.
4. The timetable provided for by the TORs is not inflexible and nor is it construed inflexibly as demonstrated by circumstances in this case. Under the timetable SAC should have met to review the provisional offer in April 2017. At that stage the Applicant had not received a confirmatory offer from Coventry University. Had SAC adhered inflexibly to the timetable the award would have been withdrawn because the Applicant had not received a confirmed offer.
5. The appeals process was not flawed:
 - (a) The member of SAC who remained for the ECs deliberations did so in error. She was appreciative of her position; did not therefore contribute in any way to the EC's discussions; and did not vote. The decision of the EC was unanimous and her presence there was therefore entirely irrelevant;
 - (b) It was entirely proper that the SAC should attend before the EC to give an explanation for the decision reached;

(c) The procedure adopted for the appeal was entirely proper. The EC heard SAC and then heard the Applicant who was given the fullest opportunity to address each of SAC's concerns. The fact that no written appeals procedure was in existence is not of itself indicative of unfairness

6. There was no legitimate expectation in this case. The offer made to the Applicant in November 2016 was explicitly expressed as a provisional offer. Nothing occurred between November 2016 and June 2017 which could conceivably have given the Applicant the reasonable expectation that the offer had in some way been translated into an unconditional offer. The reason why the offer was withdrawn as late as June was because the Applicant had not received confirmation of her place at Coventry University until May and SAC was not made aware of that offer until the end of May. SAC therefore acted timeously and not in a way that could conceivably be regarded as creating a legitimate expectation of the type contended for.

Those are the competing submissions. I remind myself that this is merely an application for permission to pursue judicial review. It is not for me to determine evidence or issues which are contested. At this stage I have to determine whether the Applicant has demonstrated an arguable case.

I am not satisfied that there is any conceivable basis upon which it could be argued that the TORs are themselves unlawful in the sense contended for by the Applicant, or indeed in any other sense. Far from fettering the EC or SAC they set out, I am satisfied, an entirely appropriate set of criteria for determining those to whom awards should be made. I accept that the assessment of a person's maturity and ability to cope are subjective, to an extent at least. But such criteria clearly fall within the notion of fostering education, particularly in an environment where resources are scarce. The Applicant's submissions in this regard, therefore fail.

On the accepted evidence I have read, I can see no basis for any argument that either SAC or EC, in reaching their respective decisions did so on a basis that was so unreasonable as to permit a judicial review of those decisions. The Applicant herself concedes that she discontinued her A-Level studies in Biology because she found sciences too stressful. She then pursued English A-Level and in October 2016 used her continued pursuit of this A-Level as

her reason for seeking to persuade SAC to make her a provisional offer. Irrespective of whatever level of support she may or may not have received her attendance at class began to tail off in February and she withdrew from the course altogether in May without even consulting SAC. Both SAC and EC had close regard to the Applicant's academic record and her ability to complete her studies in determining her ability to cope with a degree course. Indeed, those were entirely objective facts upon which both SAC and EC were to form the views both did that the Applicant lacked the ability to cope with study overseas and the maturity to do so. It is not for me to substitute my own view of the matter, but given those admitted facts, I am quite satisfied that the Applicant has fallen very far short of indicating an arguable case that this was a decision that no reasonable body could have reached. The Applicant, therefore, fails on this submission also.

I can see nothing to criticise in the EC decision to hear from SAC as to their reasons for the decision they had reached. Indeed, it was entirely proper for the EC to do so. The Applicant was then given the fullest opportunity to respond. There is no argument whatsoever to suggest that the appeal, or its processes were unfair.

It was unfortunate that the SAC member remained for the EC's deliberations. The Applicant does not contend that her presence had any material bearing on the outcome of the EC's decision. There is no basis, therefore, for arguing that this is a ground for permitting a judicial review to proceed.

I do not see any argument for suggesting that the TORs are inflexible in any way which could render them so unreasonable as to justify a permission for judicial review. Indeed, the history here suggests a flexible approach if such an approach is required.

I have to say that I entirely fail to comprehend the argument advanced by the Applicant that a legitimate expectation was created by SAC at any time. The offer in November 2016 was explicitly expressed as a provisional offer. Perhaps the Applicant did not understand the use of the word "provisional". It may be that the Applicant felt that the invitation to research whether a university would accept her with her two A-Levels in some way overrode the provisional nature of the offer. It may be that the Applicant convinced herself that an award was in the bag, which may explain the cavalier nature of her approach to her English A-Level and

particularly her failure ever to discuss with SAC the apparent stresses she felt she was under. The fact that the decision to withdraw the offer was not made until June is, in the circumstances, also irrelevant. SAC was not informed until the end of May 2017 that the Applicant had received an offer from Coventry. SAC acted wholly timeously thereafter. There is no basis for arguing, therefore, that a legitimate expectation was in fact created and in this respect, too, the Applicant's submissions fail

In the circumstances I see no basis for suggesting that any argument has been raised to suggest why permission should be given to pursue the judicial review that the Applicant seeks and permission is therefore refused.

For the avoidance of doubt I add that I have seen and read the documents that were sent through as attachments to various e-mails to the Registrar yesterday afternoon whilst the hearing was in progress. I was not referred to those documents at the time but I confirm that there is nothing in any of them which would have caused me to alter my decision.

Ms Abdel-Aziz suggested that funding should be made available for all students who obtain offers of further education overseas and poses the question "Why should St Helenians who have the appropriate qualifications not be entitled to pursue further education as of right?" I merely say that those are not matters for the Courts to determine.

Dated this 4th day of August 2017.

Charles Ekins
CHIEF JUSTICE