

**INGRID SKILBECK v. JANE WILLIAMSON  
(CHAIR OF TRIBUNAL) and OXFORDSHIRE  
COUNTY COUNCIL [1999] EWHC Admin 815 (26th  
August, 1999)**

IN THE HIGH COURT OF JUSTICE CO//3143/99

QUEEN'S BENCH DIVISION  
(CROWN OFFICE LIST)

Royal Courts of Justice  
Strand  
London WC2

Thursday, 26th August 1999

B e f o r e:

MR JUSTICE COLLINS

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INGRID SKILBECK

-v-

(1) JANE WILLIAMSON (CHAIR OF THE TRIBUNAL)  
(2) OXFORDSHIRE COUNTY COUNCIL

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MR D WOLFE (instructed by David Levene & Co., London N22 8HF) appeared on  
behalf of the Applicant.

MR J LITTON (instructed by the Treasury Solicitor, London SW1H 9JS) appeared on behalf of the First Respondent.

MS K STEYN (instructed by the Oxfordshire County Council, Legal Services, Oxford OX1 1ND) appeared on behalf of the Second Respondent.

J U D G M E N T  
(As approved by the Court)  
(Crown Copyright)  
Thursday, 26th August 1999

1. MR JUSTICE COLLINS: This is an application by Ingrid Skilbeck for leave to appeal out of time against the decision of the Special Educational Needs Tribunal. The decision concerned whether there should be an assessment of the needs of the Applicant's daughter, who is now 16 1/2, and is thus at the end of the time which would be covered by any statement of special educational needs.

2. The decision in question was given on 10th June 1999 and was received by the Appellant, who was appearing in person, no doubt the next day or a couple of days later. She was concerned and wanted to appeal. She thought that there were errors of law, and on 18th June she wrote a letter to the tribunal seeking a review. In the meantime she had been endeavouring to find a solicitor to act on her behalf, as she felt, understandably, that that was necessary if the case was to go to the High Court. She appreciated that this was something of an expert field and therefore it was necessary to find a solicitor who knew what he was doing. It took her until 23rd June to find her solicitor, Mr Silas, who has since acted on her behalf.

3. That delay has been criticised on the basis that she knew that she only had 28 days in which to lodge the appeal. So be it, but it seems to me that it was quite impossible to say that the Appellant was not acting reasonably in seeking such a solicitor and in the steps that she took to find him. The solicitor understandably and sensibly asked for a fax to be sent to him of the decision in order to be able to have a preliminary view. He then agreed to take the case on because he felt that there was an arguable case, but he had of course to see the client. He received, on 24th June, a fax of the decision. He was not able to see the Appellant herself until the 29th, that was the following Tuesday, so a weekend intervened.

4. It was then clear that legal aid would be required. This was not a straightforward case in relation to means, and so the Appellant had to obtain the necessary information. This she did. As a result, there was some delay and it was not until 5th July that the legal aid form was faxed to the Legal Aid Board. Time was then very tight because the time for appeal expired on 8th July. Unfortunately (and this was undoubtedly an error by the solicitor although, in the context of the circumstances

here, it may well be that it made no difference), he did not notify the Respondents or either of them that he was intending to appeal but there was a problem with legal aid.

5. Unfortunately, the Legal Aid Board refused to grant an emergency certificate on the basis that the matter was too complicated for a faxed consideration. The application was, therefore, resubmitted on the 7th, the day before time expired. Unfortunately, the Legal Aid Board either mislaid or did not receive the postal application. Certainly, they could not find it when Mr Silas chased them on the 16th. Criticism has been levelled for that delay, that is to say between the 7th and the 16th, and it is suggested that there should have been an earlier chasing. That may well be a fair point and perhaps with hindsight Mr Silas would accept that he should not have waited until the 16th before he chased the Legal Aid Board.

6. As it was, when he did chase, he was told that the application could not be found. He faxed a copy. He chased again three days later and was told yet again that nothing could be found. He tried again, having sent a further fax on the 21st only to discover that again there were problems because, I think, the gentleman who was supposed to receive it had fallen ill, so he was not there and no one else looked at it. Eventually, when he spoke to someone on the 21st the Legal Aid Board appreciated that they had been at fault, as clearly they had, and emergency legal aid was granted.

7. Counsel was instructed on the 22nd because it was a requirement that counsel's advice be obtained. That, I think, was a Thursday. Unfortunately, counsel did not receive the instructions until the Monday. Perhaps it was something to do with the postal system. Again it is suggested that the instructions in those circumstances should have been faxed. I do not know how bulky they were, but it may be that counsel's chambers would not have been overly happy to receive that sort of fax as indeed the Legal Aid Board were not. Be that as it may, counsel advised and drafted a notice of appeal and returned that on the Wednesday, the 28th, which seems to me to be expeditious enough.

8. Again, there was some slight delay until the appeal was lodged because it was not lodged until 3rd August. The reason for that was that Mr Silas was on holiday and did not return until 2nd August and it was necessary for the witness statement to be signed by him. It would have been possible to devise a way around that, but I do not think that Mr Silas can properly be criticised for that subsequent slight delay.

9. I have been referred to the principles and they are summarised helpfully in the decision of Sedley J in Phillips v Derbyshire County Council [1997] ELR 461 at 464C. I do not need to read it. Suffice it to say, for the purposes of this case, that it is

desirable and in most cases will be necessary that there is an acceptable explanation provided for the delay, that the time limits must be complied with, particularly in cases involving public administration, and that matters such as pressure at work and lawyers being on holiday are not normally matters which will appeal to the court as excuses for any delay. However, the need for legal aid and delay occasioned by legal aid is a matter which can be taken into account in deciding whether discretion should be exercised to allow a case to proceed notwithstanding delay. Much will depend upon the circumstances of the individual case and the steps taken by the solicitor in question.

10. As it seems to me, looking at it in the round, the solicitor and indeed client did not in any respect act unreasonably. Of course, looking with hindsight it is possible to identify things which could have been done perhaps somewhat more quickly than they were and days could have been saved. In the circumstances of this case, particularly having regard to the manner in which the Legal Aid Board dealt with the application, it is highly unlikely that the appeal would have been lodged in time in any event. It might have been only a few days late, but it would have been late.

11. In my judgment, the circumstances of this case, bearing in mind the principles to which I have been referred and which I do not need to set out in this judgment (it suffices to say that I have them well in mind), there has been a reasonable excuse provided and this is a proper case, in my judgment, where the appeal should be permitted to go ahead.

12. I should only add this. Ms Steyn, on behalf of the Local Education Authority, did also submit that the appeal was without merit and that that was a factor which I could take into account. Certainly, if the court takes the view that an appeal is without merit, that is a matter which undoubtedly is relevant, but it seems to me that it is quite plain that there is an arguable point here. It cannot be said that the appeal is bound to succeed; equally it cannot be said that it is bound to fail. In those circumstances, I do not think that this is a case where the merits are such as to tip the balance one way or the other.

13. Accordingly, I will allow this application.

14. MR WOLFE: My Lord, before I proceed to my second application for expedition, may I draw your Lordship's attention to what was a slip of your Lordship's tongue, indicating that Ms Steyn appears for the tribunal. She appears for the Local Education Authority.

15. MR JUSTICE COLLINS: I am sorry. I beg your pardon.

16. MR WOLFE: My Lord, I then have a subsequent application for expedition.

17. MR JUSTICE COLLINS: That is obviously necessary. How long do the two of you want to put in your evidence?

18. MR LITTON: My Lord, I anticipate the tribunal will take no further part in this.

19. MR JUSTICE COLLINS: I assumed that that was probably the case, yes.

20. MS STEYN: I am afraid that I do not have instructions on the time needed. I do not know whether your Lordship has seen the letter dated 5th August 1999 from my instructing solicitors.

21. MR JUSTICE COLLINS: I am not sure that I have or I have not. Remind me what it says.

22. MS STEYN: It is simply the opposition to the application for expedition.

23. MR JUSTICE COLLINS: Why are you opposing expedition?

24. MS STEYN: I wonder, perhaps, if I can pass it up.

MR JUSTICE COLLINS: Yes, hand it up.

25. MR JUSTICE COLLINS: Mr Wolfe, you may need to put in some evidence - I do not know?

26. MR WOLFE: My Lord, it is a slightly unusual proceeding in the sense that we are not, in the normal rounds of judicial review ----

27. MR JUSTICE COLLINS: I know you are, but sometimes in these cases it is necessary, apart from anything else, to put in the material. I am minded to give you seven days to put any material that you want to put. Think about that while I have a look at this letter.

28. MS STEYN: My Lord, it is simply the final paragraph.

29. MR JUSTICE COLLINS: Yes, I have seen this. You may be right, but I do not see that that is any conceivable ground not to expedite because it is perfectly plain that this must be dealt with as soon as possible.

30. MS STEYN: I do not make any further submissions.

31. MR JUSTICE COLLINS: I do not think much of that. You, no doubt, will get evidence if you think it right from the college to say that it is totally unnecessary. That may not be material. Anyway, it is something which you might like to think about. If you get such evidence you might even persuade the other side that there is not much point in pursuing the appeal. That is another matter, but the sooner you get down to doing that, the better. Seven days for them, 14 days thereafter for you.

32. MR WOLFE: My Lord, could I ask for 14 days?

33. MR JUSTICE COLLINS: If you want expedition you will do it in seven days.

34. MR WOLFE: My Lord, can I just deal with it this way? Your Lordship has dealt with the main challenge of the tribunal ----

35. MR JUSTICE COLLINS: The weekend will not count incidentally in a seven-day Order.

36. MR WOLFE: My Lord, I do not think I can take it any further.

37. MR JUSTICE COLLINS: You cannot have it both ways. This needs to be dealt with quickly. It is unfortunate that there has been a delay as a result of this application, but you have to face that. I cannot see that it is going to take you long. You have the material together, I assume, in any event, so all you need to prepare is a formal affidavit, produce it, dealing with any points that you feel need to be dealt with otherwise. I cannot see how you can conceivably need more than seven days to do that. 14 days thereafter, and then to be expedited. How long is it going take?

38. MR WOLFE: Half to a day, I suspect.

39. MR JUSTICE COLLINS: The more succinct you are the more likely you are to get on early. At the moment there is nothing in the Crown Office until the end of October, so you are going to have to displace something. I shall order that it be heard as soon as possible and that it must be heard because the child affected must know the position as soon as possible.

MR WOLFE: My Lord, yes.

40. MR JUSTICE COLLINS: But you are going to have to persuade the Crown Office, because the other side is not going to help, to put it in, and so the shorter it is the better.

41. MR WOLFE: I am sure that those instructing me hear your Lordship. It may be that we cannot answer that question principally ----

42. MR JUSTICE COLLINS: Obviously. I am sure that you will take a sensible approach to this, particularly as it is publicly funded on both sides effectively. If the LEA are prepared to provide, and clearly to provide, what the college at any material time considers necessary, which they may agree to do within reason, and it may be that within reason it is possible, then, as it seems to me, it will be pointless to pursue this matter just for the sake of getting a formal statement.

43. Of course, I recognise that you need it to be tied off and that Felicity must not in any way suffer, but it does seem to me, in the circumstances of this case, that there is

scope for sense to break through and for the lawyers to be kept out. It is a bit absurd that we have had two publicly funded opponents for this application. God knows how much it is going to cost the public in the form of the unfortunate Council tax payers of Oxfordshire and taxpayers in relation to the tribunal and you.

44. MR WOLFE: My Lord, yes. I am sure that we all hear your Lordship. My Lord, I also ask that costs be in the cause and for a legal aid certificate.

45. MR JUSTICE COLLINS: You can certainly have legal aid taxation if that becomes necessary. You have won this, have you not, why should you not have your costs in any event? They did not have to oppose you. They chose to do so.

46. MS STEYN: My Lord, on that I would simply say that your Lordship was finding that the Appellants have acted reasonably and did find there were a number of reasons  
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47. MR JUSTICE COLLINS: Maybe, you lost. You did not have to apply and I do not see why the Legal Aid Fund should pay.

48. Mr Litton, you did not have to come here, you chose to.

49. MR LITTON: My Lord, of course we chose to, but we chose to against the backdrop that the 28-day time limit had not been observed.

50. MR JUSTICE COLLINS: That may be, but you know as well as anyone that that is, of course, there to be complied with, but there are circumstances when it can be extended. Why could you not leave Oxfordshire to deal with the matter? Why was there any need for you to come along?

51. MR LITTON: My Lord, because in, as it were, procedural matters the tribunal has a very direct interest.

52. MR JUSTICE COLLINS: No doubt, but you could feed Ms Steyn and her clients with the arguments that you wanted to put forward. I do not see the need for two sets of counsel to come and make the same argument. It is a complete waste of money and the public money at that, is it not?

53. MR LITTON: With respect, the difficulty is this: the tribunal which does not ordinarily take part in applications of this nature and indeed appeals of this nature, and any steps where procedural matters are raised, with respect, has that sort of direct interest in observing the time limits which affect them are properly observed.

54. MR JUSTICE COLLINS: Then you should have asked Oxfordshire to pay you to come along or to share costs.

55. MR LITTON: My Lord, if costs are to be paid, in my submission, the tribunal ought not to be paying the costs, because the tribunal is not going to take any further part in the proceedings.

56. MR JUSTICE COLLINS: No, but you have chosen to take this part.

57. MR LITTON: I would suggest that the appropriate Order, bearing in mind that the application is as a direct consequence of the Applicant's failure to observe the time limits, albeit your Lordship has found for exceptional reasons, and bearing in mind also that of course no application or no notification that the appeal was going to be made was notified to the tribunal, that the first that the tribunal, indeed the LEA, knew of it was when the application was made for an extension of time on 3rd August -- in those circumstances, I would submit that the SENT ought not to be penalised in terms of the costs because they took a responsible view in relation to application.

58. MR JUSTICE COLLINS: I suppose you can say that, certainly in civil proceedings, the practice is that if someone has to apply for leave to do something because they are out of time, they often have to pay even if they win.

59. MR JUSTICE COLLINS: Mr Wolfe, of course you did not make the application; it was of my encouragement. I think, on reflection, you are probably right. I shall say costs in the cause or whatever one says nowadays.

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