



LEGAL BRIEFING

Without good reason

Halifax Life Limited v The Equitable Life Assurance Society

Mr Justice Cresswell, [2007] EWHC 503 (Comm)

The Facts

The claimant brought proceedings seeking a declaration that an expert determination was not final and binding because the expert had materially departed from the terms of reference and had failed to provide adequate reasons.

The Issue

Had the expert departed from his terms of reference in a material way but failing to give reasons for his determination?

The Decision

The Judge held that providing an expert had stay within his terms of reference then the expert determination would be binding. He then considered the need for the giving of reasons. He referred to the case of *South Bucks DC v Porter (2)* [2004] 1 WLR 1953, in which Lord Brown at paragraph 36 stated:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for a decision.

Mr Justice Cresswell held that the requirement for the giving of reasons concentrated the decision-maker’s mind. He went on to state at paragraph 53:

A requirement to give reasons concentrates the mind: if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not. Where there is a contractual requirement that reasons are to be given, it is not enough to say that the reasons can be inferred.

In this case the expert had provided a short determination on the issues and had not fully set out his reasons. Mr Justice Cresswell held that it was no longer satisfactory for the expert to determine the matter by the giving of reasons. He held that in the absence of an agreement between the parties as to the identity of a new umpire, then the president of the Institute of Actuaries should be called upon by the parties to appoint a new expert.

Comment

This is an interesting decision by the Commercial Court which affects adjudication. Although the decision related to the need for the giving of reasons in an expert determination, the case is equally applicable to adjudication. Mr Justice Cresswell held that the decision of the expert could not stand because the expert failed to give adequate reasons. The giving of

reasons focuses the decision-maker's mind. Because the reasons were inadequate, the judge ordered that a new expert be agreed between the parties, or if they could not agree an expert, then the Institute of Actuaries was to appoint an umpire.

Arguably where an adjudicator is required to give reasons, then those reasons must be intelligible and deal with all of the main issues. As a minimum, the reasoning should identify the analysis and basis upon which the decision is made. This case supports the argument that an adjudicator's decision would not be enforceable where inadequate reasons had been given.

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