Easter Term
[2018] UKPC 11
Privy Council Appeal No 0077 of 2016

JUDGMENT

Honourable Attorney General and another (Appellants) *v* Isaac (Respondent) (Antigua and Barbuda)

From the Court of Appeal of the Eastern Caribbean Supreme Court (Antigua and Barbuda)

before

Lord Mance
Lord Reed
Lady Black
Lord Lloyd-Jones
Lord Briggs

JUDGMENT GIVEN ON

14 May 2018

Heard on 8 February 2018

Appellants
Sir Gerald Watt, KCN, QC
David Dorsett PhD
(Instructed by Simons
Muirhead & Burton LLP)

Respondent
Justin L Simon QC
Desiree A A Artesi
(Instructed by Simon
Rogers Murdoch)

LADY BLACK:

1. The question that arises in this appeal is whether the fixed date claim which Ms Isaac filed in the High Court of Justice, seeking various declarations and damages, was an application for judicial review for which leave was required under Part 56 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000. The first instance judge, the Honourable Madame Justice Henry, held that it was not, and the Court of Appeal agreed.

Factual background

2. In 2000, Ms Isaac was appointed to be the Executive Secretary of the Board of Education, which is a statutory body established by the Board of Education Act 1994 ("the Act"). Her appointment was by Cabinet and took effect from 1 February 2001.

3. By a letter dated 18 July 2014 from the Secretary of Cabinet, Ms Isaac was informed that she was suspended from her position for 28 days. Ms Isaac returned to her office on 18 August 2014. She found the locks changed and she was denied entry, apparently on the basis that the suspension was not yet at an end because it was to last for 28 working days.

4. The Board of Education issued a press notice that day about the suspension. Ms Isaac considered herself to have been constructively dismissed and caused her legal representative to write to the Chairperson of the Board of Education to say so. She declined to meet with Cabinet to discuss the matter. On 11 September 2014, she filed a fixed date claim form and supporting affidavit, the respondents to the claim being the Attorney General, as the nominal representative of Cabinet, and the Minister of Education, whose portfolio includes the Board of Education (hereafter, when referred to jointly, "the appellants").

5. By the claim, Ms Isaac sought various declarations, plus damages for diminution of reputation, and also, against the Minister, aggravated or exemplary damages. The broad nature of the case upon which Ms Isaac based her claim can be gathered from her supporting affidavit, both in its original form and as amended. She there asserts that the reason for her suspension related to her having declined to follow a directive and a request from the Minister whereas, she says, the Act does not provide for the Minister to exercise any authority over her. In addition, she complains about the way in which aspects of her suspension were made the subject of a press release, rather than being communicated in writing directly to her. She also criticises the investigation carried out

by the Minister into her conduct as Executive Secretary. She says that in the absence of a report from the Board of Education, the Minister could not institute the investigation that he did, and she complains that she was not given any opportunity to respond to matters contained in the investigatory report, which was made public on the radio.

6. The first of the declarations sought was set out in the claim form in this way:

> "A declaration that the decision of the Cabinet to suspend the Claimant from her duties as Executive Secretary of the Board of Education:
>
> (a) was arbitrary, wrong in law, and without legal basis; and
>
> (b) is void and of no effect."

7. The other declarations sought (declarations 2 to 6) reflected the contents of the supporting affidavit. Declaration 2 was that the Minister of Education had no legal authority to issue directives or instructions to Ms Isaac in her role as Executive Secretary of the Board of Education. Declarations 3 to 6 concerned the investigation which the Minister had instituted in respect of her performance of her duties as Executive Secretary. In this respect, Ms Isaac sought declarations to the effect that the Minister had no legal basis for instituting the investigation, that failing to give her the opportunity to be heard in the investigation was contrary to natural justice, and that publishing the report of the investigation without giving her such an opportunity involved "reckless disregard of [her] rights and reputation." It is important to recognise that no claim was included for the quashing of the decision to suspend Ms Isaac, or for an order that the appellants do any act, such as arranging for her to be reinstated in her role as Executive Secretary.

8. An acknowledgment of service was initially filed in relation to the claim form but then, in October 2014, the Attorney General and the Minister applied to the High Court for leave to withdraw the acknowledgment and for Ms Isaac's claim to be struck out. In essence, their argument was that the claim was for judicial review and had been filed without the leave that was required by rules 56.3 and 56.4 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (hereafter "CPR 2000"). Ms Isaac agreed that leave *was* required for an application for judicial review, but argued that her claim was an application for an administrative order other than judicial review, and did not therefore need leave.

9. The appellants' application to strike out the claim was dismissed by Henry J on 29 April 2015 and, on 11 March 2016, the Court of Appeal dismissed the appellants' appeal against her decision. Permission was subsequently granted by the Board of the Privy Council for the present appeal.

The scope of the appeal to the Board of the Privy Council

10. The two issues identified by the parties for the determination of the Board are as follows:

> i) Whether the fixed date claim form filed by Ms Isaac was an application for judicial review?
>
> ii) Whether the nature of the controversy disclosed in Ms Isaac's claim was a private law claim involving an employment dispute, for which the appropriate forum was the Industrial Court, notwithstanding that Ms Isaac was employed by a public authority?

11. The second of the two issues has no doubt been formulated with an eye to the request made by the Board, when granting permission to appeal, that it be addressed on the nature of Ms Isaac's employment and whether her claim should properly be regarded as a private law claim for wrongful or unfair dismissal which should be transferred to the Industrial Court for determination. However, as will be seen, in advancing their appeal to the Board, the appellants themselves rely upon what they say is the private nature of the dispute, falling within the remit of the Industrial Court, rather than the High Court by way of an application for an administrative order.

12. It is undesirable that the Board should become too involved with this second issue at this stage. There are, in fact, ongoing proceedings in the Industrial Court, brought by Ms Isaac against the Board of Education. She filed a Reference in the Industrial Court, naming the Board of Education as her employer, and identifying that there are disputed issues in relation to her constructive dismissal, and her entitlement to compensation and contractual fringe benefits. The Board of Education applied to have the Reference struck out on the basis that it was not the respondent's employer and that she was employed by Cabinet. A decision on that point is awaited.

13. The appellants maintain the position before the Board that the Cabinet was Ms Isaac's employer and say that the Attorney General is ready to be named as the employer in proceedings in the Industrial Court. That is not, however, Ms Isaac's case. In the absence of the awaited ruling from the Industrial Court on the point, it seems to the Board that the present appeal must proceed upon the basis of the contention of Ms Isaac,

as the claimant in an application for an administrative order, that the Board of Education is her employer. Assuming that to be the case, her fixed date claim in the High Court is not against her employer, but against other public bodies, namely the Attorney General as representative of Cabinet and the Minister of Education. As things stand, therefore, her claim has the appearance of a public law claim, rather than a purely private law claim.

The core provisions of the CPR 2000

14. Whether Ms Isaac's fixed date claim is an application for judicial review depends upon rules 56.3 and 56.4 of the CPR 2000, which are to be found in Part 56 of the CPR 2000, which is headed "Administrative Law". CPR 56.1(1) defines the scope of Part 56 as follows:

> "**Scope of this Part**
>
> 56.1(1) This Part deals with applications -
>
> > (a) by way of originating motion or otherwise for relief under the Constitution of any member state or Territory;
> >
> > (b) for a declaration in which a party is the state, a court, a tribunal or any other public body;
> >
> > (c) for judicial review; and
> >
> > (d) where the court has power by virtue of any enactment or at common law to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.
>
> (2) In this Part - such applications are referred to generally as "**applications for an administrative order**".
>
> (3) The term "**judicial review**" includes the remedies (whether by way of writ or order) of -

(a) certiorari, for quashing unlawful acts;

(b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and

(c) prohibition, for prohibiting unlawful acts.

(4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant -

(a) an injunction;

(b) an order for the return of any property, real or personal; or

(c) restitution or damages."

15. CPR 56.3 is headed "Judicial review - application for leave" and CPR 56.3(1) provides:

> "A person wishing to apply for judicial review must first obtain leave."

The rest of CPR 56.3 sets out the way in which an application for leave is to be made.

16. CPR 56.4, which is headed "Judicial review - hearing of application for leave", deals with the hearing of an application for leave to make a claim for judicial review.

17. CPR 56.5 and 56.6 are not directly in point in this appeal. They deal with delay in making an application (CPR 56.5) and the situation where the main relief sought is an administrative order but the claim has not been brought as a claim for an administrative order (CPR 56.6).

18. CPR 56.7(1) deals with the making of an application for an administrative order, providing, in the following terms, that it must be brought by a fixed date claim form which must identify specifically which of the types of administrative order is sought:

> "**How to make application for administrative order**
>
> 56.7(1) An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is for
>
> (a) a declaration;
>
> (b) judicial review;
>
> (c) relief under the relevant Constitution; or
>
> (d) for some other administrative order (naming it); and must identify the nature of any relief sought."

The decisions of Henry J and the Court of Appeal

19. In the High Court, Henry J took the view that there are four types of application which fall within the ambit of administrative law. They are set out in CPR 56.1(1), and include an application for a declaration against a public body (CPR 56.1(1)(b)) and an application for judicial review (CPR 56.1(1)(c)). It seems that the debate focussed upon which of those two types of administrative order application Ms Isaac was making here.

20. Henry J decided that the application was not an application for judicial review. In her view, applications for judicial review are identified by the remedies sought in the application. She appears to have proceeded upon the basis (para 12 of her judgment) that judicial review applications "are claims for the prerogative orders of certiorari, mandamus and prohibition", although acknowledging that a claim for judicial review may also include a prayer for declaratory or other relief. She considered that an in-depth analysis of the nature of the claim is not necessary for the purposes of identifying whether a claim is one for judicial review or not, as an examination of the remedies sought will provide the answer. Given that the relief sought in this case does not include any of the prerogative orders, being limited to declarations and damages, she decided that Ms Isaac was not making a claim for judicial review and did not need leave (para 13 ibid). It was for that reason that she denied the application for the claim form to be struck out.

21. The Court of Appeal underlined the difference between the legal position in England and Wales and the position under the CPR 2000. It stressed the importance of concentrating, therefore, on the CPR 2000, and it declined to be guided by the English authorities, such as *O'Reilly v Mackman* [1983] AC 237; [1982] 3 WLR 1096, to which the appellants invited its attention, although they do not rely upon that authority before the Board.

22. Blenman JA, with whom the other members of the court concurred, examined the issues joined between the parties and had no hesitation in classifying them all as public law issues (para 48 of her judgment), commenting that Ms Isaac was "seeking to obtain relief based on alleged public law infractions by Cabinet" (para 46 ibid). It was "incontrovertible that a claim for a declaration was a specie of administrative order as provided in CPR 56.1(1)" (para 68). In Blenman JA's view, whilst a claimant seeking judicial review could also seek declarations in that application, there was nothing to prevent an applicant simply filing an application for a declaration coupled with a claim for damages (para 70), an application for a declaration being distinct from an application for judicial review in the scheme of CPR 56.1(1) and (2) (para 71).

23. So the question was whether Henry J was correct in her characterisation of Ms Isaac's claim. In submissions before the Court of Appeal, the appellants challenged Henry J's approach to this, arguing that she had been wrong to base her conclusion on the remedies sought. They made a little headway, in general terms, but not enough to bring success in the appeal. Blenman JA thought the judge correct in concluding that an in-depth analysis of the nature of the claim was "not usually" required and that an examination of the remedies sought would "normally" identify whether the claim was one for judicial review or not (para 74), but she acknowledged that judicial review was a wider concept than just a claim for the prerogative orders listed in CPR 56.1(3), which merely identifies *some* of the remedies available on a judicial review application, providing that judicial review "includes" the remedies there set out (paras 69 and 73). From that, it followed that the remedies sought in an application were not necessarily conclusive of whether the claim was for judicial review or not (para 73). But, on the facts of the instant case, Blenman JA agreed with Henry J that Ms Isaac's claim was not a claim for judicial review. It merely sought declarations and damages, and leave was not required (para 74).

The appellants' arguments before the Board

24. The appellants argue that Ms Isaac's claim is, in reality, a judicial review claim and could only be brought as such. But, in a submission which at first sight appears somewhat contradictory, they also argue, as I said earlier (para 11), that the claim is essentially an employment dispute, a private law matter, falling outside the scope of judicial review. I would interpret this submission as focusing upon the situation as it would have been if leave had been sought to bring the fixed date claim, as the appellants

say that it should have been. On their case, the proper forum for an employment dispute such as this is the Industrial Court and leave to make an application for judicial review would inevitably have been refused for that reason.

25. Whether a claim is one for judicial review is not determined purely by the remedies sought, in the appellants' submission. The emphasis should be on substance rather than form. The court has to conduct a proper forensic analysis of the true nature of the claim, so that litigants are not able to get round the procedural safeguards attendant upon judicial review by making their application in another guise. The appellants' counsel, Dr Dorsett, puts it this way in his post-hearing submissions (invited in order to deal with *Belize Bank Ltd v Association of Concerned Belizeans and others* Civil Appeal No 18 of 2007 in the Court of Appeal of Belize, hereafter "the *Belize Bank* case"):

> "A determination of whether a matter is a judicial review matter or not cannot rest solely or essentially upon an examination of the remedies sought. Drafting a claim so that it includes declaratory relief only does not ipso facto make such a claim a non-judicial review claim. That is the heart and soul of the appellants' case."

26. Furthermore, the appellants submit that the ambit of judicial review cannot be defined by procedural rules, but is dependent upon the common law which created the concept. At para 5 of the Case for the Appellants, judicial review "under the common law (and the law of Antigua, by virtue of the Common Law (Declaration of Application) Act)" is said to be:

> "a proceeding in which the legality of or the procedure by which a decision was reached is challenged."

Dr Dorsett adhered to this formulation in oral argument.

27. The appellants submit that, in both form and substance, Ms Isaac is seeking to challenge their decisions on the grounds of illegality and procedural impropriety, and this makes her claim a judicial review claim within paragraph (c) of Rule 56.1(1), not a claim for a declaration within paragraph (b). She cannot avoid this construction by seeking declarations. Indeed, say the appellants, if the court were to declare that the decision of the Cabinet to suspend Ms Isaac was arbitrary, wrong in law, and without legal basis (as Ms Isaac seeks), it would have a duty itself, under section 20 of the Eastern Caribbean Supreme Court Act, to issue an order quashing that decision, and a quashing order is a judicial review remedy.

28. The appellants particularly emphasise that the leave requirement is there to protect public bodies against claims which should not be brought against them, for example because the claims are weak or vexatious or old or where an alternative remedy is available.

Ms Isaac's submissions before the Board

29. In line with the declarations sought in her fixed date claim, Ms Isaac says that a number of public law issues are raised by her claim, namely whether, on the true construction of the Board of Education Act, the Minister of Education has the authority or power to issue instructions to her as the Executive Secretary of the Board of Education and to make recommendations to Cabinet for her suspension, and whether she was entitled to be heard before the publication by the Minister of an adverse investigatory report on her performance of her duties. She underlines that she is seeking declarations on these points, and damages, but no quashing order or coercive order, and she submits that in these circumstances an application for declarations can be made without leave. It is conceded that if, in reality, what she was seeking by way of declaratory relief was a prerogative order, leave would have to be sought. But she submits that the Court of Appeal was right to find that that was not the position and that her claim was not for judicial review. She reinforces the Court of Appeal's view that the English position is not the same because the legal provisions are different.

Discussion

30. There is little decided case law to help determine the issue that is before the Board. Although some cases were cited to the Court of Appeal, that court referred in its discussion and conclusion only to the English case of *O'Reilly v Mackman* (supra), and then only to distinguish it because the law has developed differently in England and Wales from the position in Antigua and Barbuda.

31. It may help to remove *O'Reilly v Mackman* from the equation immediately. *O'Reilly v Mackman* established that, as a general rule, in English law, it would be contrary to public policy and an abuse of the process of the court for a plaintiff complaining of a public authority's infringement of his public law rights to seek redress by ordinary action, such as an application for a declaration, rather than by way of judicial review, thus evading the provisions of Order 53 of the Rules of the Supreme Court, including the need to obtain permission for the bringing of the claim, which were there to protect such public authorities. No doubt in realistic recognition of the fact that the English position cannot be translated to Antigua and Barbuda because the two systems have followed very different paths, the appellants have not sought to advance an *O'Reilly v Mackman* argument before the Board. Their focus is rather upon

establishing that the claim in this case is in fact an application for judicial review, despite only declarations and damages being sought.

32. The Board is not persuaded by the appellants' analysis. For the reasons which follow, it finds itself in agreement with the view of the High Court and the Court of Appeal that Ms Isaac's claim was not for judicial review within CPR 56.1(1)(c), but fell within CPR 56.1(1)(b).

33. It is necessary first to consider what the distinguishing features of an application for judicial review within Part 56 are. It may not harm to start that consideration with a fairly obvious point. Part 56 of the CPR 2000 is concerned with administrative law, as its heading identifies. Four distinct categories of applications for an administrative order are recognised, in CPR 56.1(1), judicial review being merely one of the four. Each of the four categories of application concerns relief falling within the public law sphere, so it is clear that the mere fact that a claim is of a public law type cannot be sufficient to make it a claim for judicial review. Something else must distinguish it as an application for judicial review within CPR 56.1(1)(c), rather than an application for relief under the Constitution within CPR 56.1(1)(a), for a declaration within CPR 56.1(1)(b), or for the quashing of an order etc. within CPR 56.1(1)(d).

34. CPR 56.1(3) is the only guide in the rules to what constitutes an application for judicial review. It focuses on prerogative remedies, and there can be no doubt that the presence or absence of a claim for a prerogative remedy will always be an important, and potentially determinative, consideration in deciding whether or not an application is for judicial review. But it is important to recognise that CPR 56.1(3) does not purport to provide an exhaustive definition of judicial review. It does not say that the question whether an application is for judicial review can be definitively determined by simply looking to see whether one of the prerogative remedies there listed is sought. It only says that "the term 'judicial review' *includes*" (my emphasis) certiorari, mandamus and prohibition. As the Court of Appeal observed, remedies which are not on the list, can be sought in a judicial review application. And allowance also has to be made for the possibility that an application which says nothing at all about prerogative remedies is, in fact, an application for judicial review, although that will, of course, depend on the particular circumstances of the case. Plainly, CPR 56 cannot be interpreted so narrowly as to permit a claimant to avoid the leave requirement in CPR 56.3 simply by formulating his or her claim for relief in declaratory terms, when the application is in fact for judicial review. The Board therefore accepts the appellants' argument that in some cases it may be necessary to look carefully at the substance of the application, rather than the form in which it is cast.

35. Having said that, the Court of Appeal must be right in saying that an in-depth analysis of the nature of the claim will not normally be necessary, because generally the nature of the remedies actually sought *will* identify whether the application is for

judicial review. Furthermore, in those cases where more rigorous scrutiny is required, going behind the form of the application and probing its substance, an analysis of what remedies the claimant is, in reality, pursuing will still play an important part in the exercise. The court will have to approach its task having firmly in mind the list set out in CPR 56.1(3), because that list of the principal judicial review remedies serves to indicate the shape of the concept of judicial review within CPR 56, and there is, in truth, little else to assist in the quest.

36. The appellants complain that procedural rules cannot define the scope of judicial review. They are right, of course, to highlight the limitations on the proper role of procedural rules. However, in the case of CPR 56, the rules are not seeking to make substantive changes to the common law relating to judicial review. They seek to define a category of case (the category identified for the purposes of the rules as "judicial review") in which special procedural provisions apply, particularly the requirements set out in CPR 56.2 to 56.4, including the requirement for leave.

37. Acknowledging that where a party is a public body and the situation falls within CPR 56.1(1)(b), a declaration can be sought without leave, the appellants submit that, for the application to fall within CPR 56.1(1)(b), it has to be "in substance a different type of application from that brought under CPR 56.1(1)(a) … or CPR 56.1(1)(c)". That has the appeal of logic but it does not help greatly in defining the attributes of a judicial review application.

38. Seeking for further assistance on the point, the appellants invite attention to the judgment of Lord Kerr of Tonaghmore JSC in *General Medical Council v Michalak* [2017] UKSC 71; [2017] 1 WLR 4193, drawing from it the proposition that judicial review "is a proceeding in which the legality of or the procedure by which a decision was reached is challenged" which, if successful, generally results in the High Court either declaring the decision to be unlawful or quashing it. This also does not advance matters a great deal, because Lord Kerr was not seeking to define judicial review in general terms or, of course, looking at the concept of judicial review as it has developed in Antigua and Barbuda. He was dealing with a particular question arising under section 120(7) of the Equality Act 2010 and was looking at judicial review as it exists in England and Wales, with a view to answering that particular question, namely whether judicial review could be classed as "an appeal or proceedings in the nature of an appeal" arising "by virtue of an enactment", thus removing the jurisdiction of the employment tribunal in that case. In reality, there is therefore little assistance to be found in *Michalak* in identifying judicial review for the purposes of the CPR 2000.

39. The *Belize Bank* case came to light during oral submissions to the Board and is worth mentioning here, not least because it shows a similar approach in the Court of Appeal of Belize to that taken by the Court of Appeal in the instant case. The Belizean Supreme Court Rules are identical in all material respects to the Eastern Caribbean

Supreme Court Rules applicable in the present case, save as to some numbering of sub-paragraphs. The *O'Reilly v Mackman* argument that the claimants, having sought declaratory relief in relation to public law issues, were obliged to proceed by way of judicial review, was rejected by the Court of Appeal of Belize. It distinguished the English law position as very different, for reasons which it set out. It favoured a liberal rather than a restrictive interpretation of Part 56 of the Belizean Rules, rejecting the submission that the Belizean equivalent to CPR 56.1(1)(b) should be limited to declarations concerning private rights, and holding that claimants seeking declaratory relief in relation to public law issues were not obliged to bring judicial review proceedings.

40. It is interesting to note the following comment in the conclusion of Carey JA, with whose judgment Sosa JA and Morrison JA agreed, the latter also adding reasoning of his own. Responding to a suggestion that unless the declaration remedy was limited to private rights, the judicial review process would become redundant, Carey JA said:

> "As [counsel for the claimants] observed in her skeleton argument, the aspect of judicial review which no other remedy possesses is, that the decision can be questioned and the claimant not left to depend on the goodwill of the public authority to respect the court's declaration."

41. It can be seen from para 7 of Carey JA's judgment and para 30 of Morrison JA's that the submission made by counsel for the claimants differentiated between cases in which the claimants sought to have a decision or action quashed (which would require judicial review) and cases where, like her clients, the claimants are content merely to obtain a declaration of the illegality of government action, in which case a declaratory judgment could be sought. Carey JA's apparent endorsement of the boundary that counsel drew supports the notion (see para 35 above) that, when scrutinising the substance of an application to see whether it is properly classed as a judicial review application, it will be of central importance to consider whether relief in the form of any of the orders listed in CPR 56.1(3) is sought.

42. In the present case, looking behind the form of the relief expressly sought in order to ascertain what remedies Ms Isaac is actually pursuing, it can be seen that she is not asking for relief of a type listed in CPR 56.1(3) or even akin to it. The declarations that Ms Isaac seeks relate to the legalities of past actions. By the time she issued her fixed date claim, on 11 September 2014, she had taken the view that her employment was over, and was proceeding on the basis that she had been constructively dismissed. Like the claimants in the *Belize Bank* case, she does not seek any form of mandatory order (for example, an order for her reinstatement in her former post), nor does she seek to have any continuing or threatened unlawful act prohibited, or any act (such as her suspension) quashed. Her claim against the respondents is for declarations that at the

material time, now in the past, they acted inappropriately in the various ways specified in her claim form, together with damages to compensate her for the loss arising from that inappropriate conduct.

43. As to the appellants' argument that, whatever Ms Isaac claims, or more particularly does not claim, the court would be obliged, by section 20 of the Eastern Caribbean Supreme Court Act, to grant further relief which would take the case into the territory of judicial review in any event, that does not advance their position on the facts of this appeal. Whatever further relief might be appropriate in the separate Industrial Court proceedings, the matters which Ms Isaac has placed before the court in her administrative law action are not such as to require the court to go further than Ms Isaac herself requests.

44. Accordingly, it cannot be said that Ms Isaac is, in reality, seeking remedies of a judicial review nature. And even looking more widely than the nature of the remedies sought, there is nothing about her application which dictates that it be treated as a judicial review application within CPR 56.1(1)(c) rather than an application within CPR 56.1(1)(b). True it is that, as the appellants point out, her claim is concerned with the legality of events and the procedure by which decisions were reached in the public law sphere, but, given the structure of CPR 56, allowing as it does for the making of public law applications in four different ways, including merely by seeking declarations rather than judicial review, that is not sufficient to channel the application into CPR 56.1(1)(c) rather than CPR 56.1(1)(b).

45. In short, therefore, the Board shares the view of the courts below that Ms Isaac's fixed date claim was, in reality as in form, merely for declarations and damages, and was not an application for judicial review for which leave was required. The Board therefore humbly advises Her Majesty that the appeal should be dismissed. Subject to any written submissions received within 14 days of the delivery of the Board's judgment, the appellant should pay the respondent's costs of the appeal to the Board.