Neutral Citation Number: [2015] EWHC 2469 (Ch)

Case No: HC-2014-001146

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Rolls Building
Royal Courts of Justice
Fetter Lane, London, EC4

Date: 21/08/2015

Before :

MASTER MATTHEWS

- -

Between :

BRUCE BAKER	**Claimant/ Respondent**
- and -	
THE BRITISH BOXING BOARD OF CONTROL	**Defendant/ Applicant**

- -
- -

Philip Williams (instructed by **Regulatory Legal Solicitors**) for the **Claimant/Respondent** (as to the application to adjourn only)
Nicholas De Marco (instructed by **Hugh James Solicitors**) for the **Defendant/Claimant**

Hearing dates: 31 July 2015

- -

JUDGMENT

Master Matthews :

Introduction

1. This is my judgment on an application by the Defendant, on a number of grounds, by notice dated 3 February 2015, for an order striking out the claim and/or for summary judgment on it. It arises in a claim commenced by Part 7 claim form dated 7 November 2014, by the Claimant, supplemented by particulars of claim dated 12 January 2015.

2. The Claimant was formerly a professional boxing promoter licensed to manage boxers by the Defendant, which regulates professional boxing contests, tournaments and promotions in the United Kingdom. Following a boxing promotion in 2013, in which the Claimant and other licence holders were involved, but to which involvement the Defendant refused to give consent, the Claimant and those others were charged with misconduct pursuant to its domestic regulations, and summoned to a disciplinary hearing before the Defendant, on 19 November 2013. The allegations were found proved, and on 11 February 2014 penalties were imposed. The penalty on the Claimant was that his licence was withdrawn.

3. The Claimant then appealed, in accordance with the regulations, to a different body, the Stewards of Appeal. He sought the return of his licence pending the appeal, and applied to the High Court on 27 May 2014 for an interim mandatory injunction to that effect. The application was heard on 6 June 2014, by Sir David Eady sitting as a judge of the High Court. By a written decision handed down on 25 June 2014 the judge refused to grant the order sought (*Baker v The British Board of Boxing Control* [2014] EWHC 2074 (QB)). The Claimant was ordered to pay the Defendant £35,000 on account of costs within 28 days. (I record here that a further application, for an extension of time in which to pay the sum on account of costs, was dismissed on 28 July 2014, and the Claimant was ordered to pay the Defendant a further £4000 in respect of costs. The Claimant sought to appeal the second dismissal, but was refused permission by the judge and on paper by the single judge of the Court of Appeal.)

4. There was then a hearing before the Stewards of Appeal on 21 and 22 July, and 2 September 2014. The Stewards of Appeal who sat were nine in total, all qualified lawyers (some retired from practice), seven barristers (including five silks) and two solicitors. A decision was made on 23 September 2014, dismissing the appeals. There was a further hearing for submissions as to sanctions and costs. They made an award on 6 October 2014, confirming the dismissal of the appeals and upholding the decisions of the Defendant in respect of sanctions. They also ordered the Claimant to pay £40,000 towards the Defendant's costs.

5. By the present claim the Claimant challenges the lawfulness of the decision and its consequences.

Procedure

6. Following the service of the Particulars of Claim on or following 12 January 2015, the Defendant filed an acknowledgment of service dated 21 January 2015. Instead

of filing a defence, however, the Defendant issued the present application to strike out the claim and/or for summary judgment on it. The grounds as set out in the notice are:

> (a) in respect of striking out
> "(i) the Court lacks jurisdiction to make the declarations sought because the Defendant's Appeal proceedings that are subject of the claim constituted an arbitration for the purposes of the Arbitration Act 1996 and the Claimant can only challenge such decision under the limited provisions of that act;
> (ii) the Court lacks jurisdiction in any event to make the declarations sought. No cause of action has been disclosed;
> (iii) Further or alternatively, because the claim form and particulars of claim disclose no reasonable grounds for bringing the claim;
> (iv) Further or alternatively, because the claim is an abuse of process being merely an attempt to further delay compliance with the various costs orders made against the claim [sic]."
>
> (b) in respect of summary judgment:
> "That summary judgment be given to the Defendant due to the reasons set out above and because the Claimant has no real prospect of success and there is no other compelling reason to hear the claim."

7. The application is supported by two witness statements of Robert Smith, who is the General Secretary of the Defendant. The first was dated 2 February 2015. I do not know the date of the second, as it is contained in a sealed envelope which I have not yet opened.

8. The application was first listed to be heard on 16 April 2015, before Deputy Master Arkush. But on 13 April 2015 the Claimant's solicitor made a witness statement in support of an application for an adjournment. He explained that, the Claimant having suffered a "mini-stroke" in the context of heart failure and atrial fibrillation, he had been without instructions for some three weeks. In these circumstances, on 15 April, the parties agreed to vacate the hearing of 16 April, and have the matter relisted, the Claimant being directed to file and serve any evidence in reply to the application within 14 days of the date of the order. Deputy Master Arkush made that order by consent on 16 April, though for some reason it was not sealed until 8 May. Ultimately, on 4 June 2015, the matter was relisted for 31 July 2015, before me.

9. However, the Claimant has never in fact filed any evidence in opposition to the Defendant's application as directed by the Master on 16 April. The Claimant applied by notice dated 29 April 2015 for an extension of time in which to serve his evidence. The same witness statement of C's solicitor, dated 13 April, was relied on. The application was listed for hearing but disposed of by consent, and an order was made by Deputy Master Cousins dated 11 June 2015, vacating the hearing of the Claimant's application and adjourning it to be heard with the Defendant's application on 31 July.

10. I note here that, on 11 June 2015, the Claimant was adjudicated bankrupt on a petition presented by the Defendant, based on the unpaid costs orders against the Claimant. On 22 July 2015 the Defendant's solicitors wrote to the Official Receiver's office to make it aware of this litigation and of the hearing listed for 31 July 2015.

11. On 31 July Mr Philip Williams of counsel appeared before me on behalf of the Claimant to seek an adjournment of the Defendant's application, on the grounds of the Claimant's continuing ill-health and counsel's and his instructing solicitor's lack of instructions. The Defendant was represented by Mr Nicholas De Marco of counsel. The Official Receiver was neither present nor represented. At one point in the hearing I adjourned for about ten minutes in order for Mr Williams to obtain a copy of a more recent medical letter which he tendered in support of the application to adjourn. After hearing him and Mr De Marco, I dismissed the application, for the reasons which I then gave.

12. The adjournment application took up about one hour and fifty minutes in total, leaving only about forty minutes remaining of the hearing time allotted. I decided that I would at least try to deal with the first ground advanced by the Defendant in the application notice, and leave the rest to go over to a further hearing on a date to be fixed. If it turned out that this first ground disposed of the case then the Defendant could take a view whether to proceed with a further hearing. Mr Williams excused himself, as being without instructions to proceed further, and left the hearing room. It is right to record the fact that he was acting without fee, and in accordance with his professional obligations as he saw them. I am grateful to him for his involvement, albeit limited.

The Defendant's application

13. I now turn to the substance of the Defendant's application. I begin by considering the matter from the point of view of a striking out.

14. CPR rule 3.4(2) so far as material provides that:

> "The court may strike out a statement of case if it appears to the court –
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim … "

15. Practice Direction 3A, para 1.4 provides in part that:

> "The following are examples of cases where the court may conclude that particulars of claim … fall within rule 3.4(2)(a):
> …
> (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant."

16. Accordingly, although, as para 1.8 of the Practice Direction says, the examples given are only illustrations, in considering this aspect of the matter I should assume the truth of all the allegations of fact in the particulars of claim. Therefore I assume that the Claimant will prove (*inter alia*) that the regulation under which

the Claimant was found to have committed misconduct, 4.12(b), was unlawful, and that the Stewards of Appeal acted perversely and illogically against all the evidence in finding that the regulation had been changed in September 2012 (albeit without communication to him until September 2013).

17. On the other hand it is notable that there is no allegation that the Claimant was not bound by the Defendant's regulations at all. So I am not required to assume that. Indeed, implicit in the allegations made in the Particulars of Claim is one that the Claimant *was* bound by the regulations, although (for a special reason) not the one under which he was convicted of misconduct.

18. The first ground, described as the principal ground, of this part of the Defendant's application (to strike out the claim) was that the hearing and determination of the Stewards of Appeal amounted to an arbitration and an arbitral award respectively within the meaning of the Arbitration Act 1996. By section 58 of that Act, an arbitral award was final and binding, and could be challenged only under another available arbitral process or in accordance with the provisions of sections 67-69 of that Act. In the latter case, a challenge had to be made within the time limit of 28 days of the award stipulated by section 70(3). In addition, the statutory rights of challenge were subject to section 73(1), providing that a party to arbitral proceedings who took part in those proceedings without raising the objection within certain time limits would lose the right to object thereafter.

19. The Defendant's argument was that there was no other arbitral process available, the time limit for any statutory challenge had long since expired, and anyway the Claimant had lost any right to challenge the award by his participation in the process and failure to signal any complaint within the time allowed by section 73. Hence the award was final and binding, and could not be challenged in the present proceedings, which must fail and should be struck out.

20. Mr De Marco made the point that the Claimant must have known that this was the Defendant's view of the legal position because it was the position taken in the failed injunction proceedings before Sir David Eady in June 2014. In his decision at para 37 the judge recorded the argument by the Defendant, although as he said, in para 38, it was not necessary for him to decide the point, because the Claimant's application for an injunction was premature in any event. In this case, however, the argument is made again, and I must now deal with it.

The Defendant and the Regulations

21. The Defendant is a not-for-profit company limited by guarantee, registered in England and Wales. It was incorporated on 11 November 1988, as a successor to the unincorporated association of the same name, formed in 1929. Its Articles of Association (as adopted by special resolution on 4 October 2011) include various objects, including

> "2.4. To encourage, promote, safeguard, control and regulate professional boxing for men and women in the United Kingdom …",

and also

> "2.6. To make, adopt, vary and publish rules, regulations, bye-laws and conditions for the regulation of professional boxing for men and women and to take all such steps as shall be deemed necessary or advisable for enforcing such rules, regulations, bye-laws and conditions."

22. Article 14.1.2 provides in part:

> "The Stewards of Appeal shall be responsible … for hearing appeals from licecnce holders against decisions of Area Councils and/or the Board, including (without limitation) decisions regarding the revocation of licences…"

23. Article 22.2 provides:

> "The Directors shall have power from time to time and at any time to make the Rules and Regulations, and to add to and alter the Rules and Regulations but all such additions and alterations thereto shall be submitted for approval at the next Annual General Meeting following such addition or alteration but any failure to give such approval shall not invalidate anything done prior to the date of such Annual General Meeting which would have been valid had such approval been given. Every Member shall be bound by any alteration of the Rules and Regulations notwithstanding that he may not have received notice of such addition or alteration."

24. The Regulations made by the Defendant and put in evidence before me were those of 2013. I set out some of these below.

25. Regulation 4.1(A) provides in part that:

> "All Promoters, Boxers, Boxers' Managers, Matchmaker, Ring Masters, Whips, Trainers, Referees, Timekeepers, Seconds, and Masters of Ceremonies shall apply for a licence so to act…"

26. Regulation 4.2 provides in part that:

> "All licences shall be issued and held, varied or withheld at the absolute discretion of the Board…"

27. Regulation 4.4 provides in part that:

> "Any person or persons to whom a licence is issued after payment of the requisite fee shall be deemed to be a member of the Company and shall be bound by the Memorandum and Articles of Association and to these Rules and Regulations…"

28. Regulation 24.1 provides that:

> "Any complaint of a Member or differences and questions coming within the provisions of these Rules and Regulations must be lodged with his Area Council or the Board if there is no such Area Council and the fact of membership of the Company shall constitute an agreement to refer all such complaints, differences and questions in accordance with these Rules and Regulations and shall be enforceable as an agreement to refer under the Arbitration Act 1996 or any statutory modification or re-enactment thereof."

29. Regulation 25.1 provides that:

> "The Board or an area Council may require any Member to appear before it in connection with any allegation of misconduct made by any person."

30. Regulation 25.2 provides in part that:

> "The Board or the Area Council shall proceed to determine the matter and if they determine that a Member is guilty of the misconduct alleged, they may make such an order as they in their absolute discretion think fit. The Board or the Area Council shall, without prejudice to the generality of the foregoing, have power to withdraw a licence … and/or to impose such other penalty, including a fine, as they may decide …"

31. Regulation 27.1 provides that:

> "The Stewards of Appeal shall meet from time to time as and when necessary to hear appeals from decisions in accordance with Regulation 28 and the Articles."

32. Regulation 28.1 provides in part that:

> "Any member (an 'Appellant') affected by any decision or order of the Board, any Area Council, or of any sub-committee appointed pursuant to Regulation 24 or 25 … may give notice of appeal in accordance with regulation 28.4 …"

33. Regulation 28.5 provides in part that:

> "Subject as hereinafter provided, every appeal of whatsoever nature and howsoever arising shall take the form of a rehearing…"

34. Regulation 28.10 provides in part that:

> "The Stewards of Appeal may confirm, or vary any such decision or order made by the Tribunal, and every decision of the Stewards of Appeal shall be final…"

35. Regulation 28.11 provides that:

> "Any party to an appeal may be legally represented by Counsel, a solicitor or a Member."

36. As was clear from the written evidence before me, the Stewards of Appeal are not a court of law, and enjoy no statutory recognition or support. As appears from the Articles and the Regulations, they are a body constituted by the Defendant for the purposes of providing a right of appeal to licensees of the Defendant who are aggrieved by disciplinary proceedings conducted by the Defendant against them. They exist and operate by virtue of rules made by the Defendant, a private body. If their hearings and decisions have any legal force, it can only be through contract. As Regulation 4.4 says, the persons who apply for and obtain a licence from the Defendant agree to be bound by those rules.

The Appeal

37. In my judgment, however, even to the extent (if at all) that such persons did not so agree, then if they operated or relied on those rules, as for example by purporting to appeal to the Stewards of Appeal against a disciplinary ruling of the Defendant, such appellants would plainly be offering to the Defendant to engage in the rule-based procedure and the Defendant by engaging with the appellants would plainly be accepting that offer. In my judgment there can be no doubt that the Claimant in this case had agreed, whether generally or *ad hoc*, to follow the procedure laid down in the rules for an appeal.

38. The evidence of Mr Smith (witness statement, para 15) was that the Claimant was the holder of a manager's licence from the Defendant. Paragraph 1 of the Particulars of Claim alleges that the Claimant before the events complained of was "a previous paying licence holder of the defendant". Mr Smith said (witness statement, para 23) that the Claimant was called before the Defendant to answer allegations of misconduct under the Regulations and was convicted, suffering the withdrawal of his licence. The Claimant avers the same in paragraph 12 of the Particulars of Claim. Mr Smith then says (witness statement, para 24) that the Claimant appealed to the Stewards of Appeal under the Regulations. The Claimant confirms this in paragraph 13 of the Particulars of Claim. There is no doubt that the Claimant sought to and did claim the benefit of the appeal procedure set out in the Regulations, which was then followed by both the Claimant and the Defendant.

Was the appeal an arbitration?

39. The question then is whether this agreed procedure constitutes an arbitration for the purposes of the 1996 Act. Mr De Marco cited to me the recent decision of Mr Justice Cooke in *The England and Wales Cricket Board Ltd v Kaneria* [2013] EWHC 1074 (Comm). In that case disciplinary proceedings were taken against a cricketer by the England and Wales Cricket Board ("the Board") in respect of allegations of "match-fixing". The question was whether the appeal tribunal constituted under the Board's rules to hear appeals from disciplinary proceedings was an arbitral panel within section 43 of the Arbitration Act 1996, so enabling the High Court to issue a witness summons in aid of its processes.

40. The judge there considered the earlier decision of Mr Justice Thomas in *Walkinshaw v Diniz* [2000] 2 All ER (Comm) 237 (a case about Formula One motor racing), where the judge had also considered what amounted to an arbitration. That judge in turn had cited a dictum of Lord Justice Hirst in an even earlier case in the Court of Appeal, *O'Callaghan v Coral Racing Ltd*, unreported, *The Times*, 26 November 1988 (a case about the effect of referring disputes in a gaming agreement to a newspaper editor):

> "To my mind the hallmark of the arbitration process is that it is a procedure to determine the legal rights and obligations of the parties judicially, with binding effect, which is enforceable in law, thus reflecting in private proceedings the role of a civil court of law."

41. In *Kaneria* Mr Justice Cooke considered ten factors, drawn from the judgment of Mr Justice Thomas (as he then was) in *Walkinshaw*. As it happened, Mr Justice Thomas only supplied three of them himself. The remaining seven were taken directly from Mustill and Boyd, *The Law and Practice of Commercial Arbitartion in England*, 2nd ed 1989, at page 41. Nevertheless, Mr Justice Cooke proceeded to measure the facts of his own case against these ten factors in order to decide whether the appeal procedure in his own case amounted to an arbitration within the 1996 Act. He held that it did. (Contrast *Walkinshaw*, where in fact the question whether the agreed procedure amounted to arbitration strictly did not arise for decision.)

42. In the present case Mr De Marco invited me to carry out a similar exercise. At my request he sent me written submissions on this after the hearing (copied to the Claimant's solicitors), taking me through the same factors and relating them to the facts of this case. There is an obvious danger of treating the *dicta* of an eminent judge and the words of eminent text-writers as if they expressed a statutory definition. Clearly, they do not. But they do help to focus on the characteristics which go to make up the concept of arbitration. It is at the least a good place to start.

43. I set out the various factors as set out and used by Mr Justice Cooke in *Kaneria*, followed by Mr De Marco's submissions in the present case, below:

(i) It is a characteristic of arbitration that the parties should have a proper opportunity of presenting their case.

> "The appeal takes place as a complete rehearing with evidence and documents and determination by the Appeal Stewards in the context of a hearing of those matters (see, Regulation 28.5 of the Board's Regulations [**184**]). Mr Baker was represented throughout by his solicitors and two counsel, one of which was specialist in the competition law features of his appeal (see **RS1, para 31,** see also Reg. 28.11 [**184**]). Mr Baker was allowed to put forward all of his evidence and arguments and was permitted, through his counsel, to question all of the Board's evidence in cross examination of witnesses."

(ii) It is a fundamental requirement of an arbitration that the arbitrators do not receive unilateral communications from the parties and disclose all communications with one party to the other party.

"No unilateral communications are received by the Appeal Stewards and all relevant communications are disclosed and are common to the parties. This was complied with by the Appeal Stewards, who are very experienced lawyers, and there were no complaints or suggestions by Mr Baker otherwise."

(iii) The hallmarks of an arbitral process are the provision of proper and proportionate procedures for the provision and for the receipt of evidence.

"The Appeal Stewards determine their own procedure (see Reg. 27.2 [**183**] and Art. 14 of the Articles [**135-6**]), but nonetheless the parties had the right to call witnesses, be represented and there is to be a complete rehearing (see, eg. **RS1, para 31**). Proportionate procedures for the receipt of evidence are included with Regs. 28.5-28.7 [**184**]."

(iv) The agreement pursuant to which the process is, or is to be, carried on ('*the procedural agreement*') must contemplate that the tribunal which carries on the process will make a decision which is binding on the parties to the procedural agreement.

"The decision of the Appeal Stewards is final and thus determinative of the rights of the parties without any further appeal under the Board's Articles or its Regulations (see, in particular, Reg. 28.10 [**184**]). The parties have accepted the jurisdiction of the Appeal Stewards and (as in *Kaneria*) it is Mr Baker who instigated the appeal and triggered that jurisdiction. There is no suggestion that its decisions would not be binding."

(v) The procedural agreement must contemplate that the process will be carried on between those persons whose substantive rights are determined by the tribunal.

"This obviously arises in this case. The appeal represented the determination of Mr Baker's substantive rights as against the Board, and was carried out as arbitral proceedings between those two parties."

(vi) The jurisdiction of the tribunal to carry on the process and to decide the rights of the parties must derive either from the consent of the parties, or from an order of the court or from a statute, the terms of which make it clear that the process is to be an arbitration.

"The jurisdiction of the Appeal Stewards derives from the Board's Articles and its Regulations which Mr Baker accepted by virtue of being a licence holder (of a manager's licence) (see Article 22 **[147]**). In any event, as mentioned above, Mr Baker instituted the appeal to the Appeal Stewards and thus consented to their jurisdiction."

(vii) The tribunal must be chosen, either by the parties, or by a method to which they have consented.

"Article 14 of the Board's Articles governs the constitution of the Appeal Stewards. Mr Baker consented to those Articles by virtue of being a licence holder of the Board. In any event, Mr Baker accepted the constitution of the Appeal Stewards, instigated the appeal proceedings and has made no objection as to the composition of the tribunal hearing his appeal."

(viii) The procedural agreement must contemplate that the tribunal will determine the rights of the parties in an impartial manner, with the tribunal owing an equal obligation of fairness towards both sides.

"The Appeal Stewards are composed of highly experienced lawyers, all of whom are independent of the Board (see **RS1, para 31**) and Article 14 of the Board's Articles preserves their impartiality. Various of the Board's Regulations provide for procedural safeguards, such as the appellant's right to a rehearing (Reg 28.5 [**184**]), and right to be represented by counsel (Reg 28.11[**184**]). Mr Smith set out in his statement in support of this Application the nature of the procedure applied in Mr Baker's appeal which proceeded over 3 full days before 9 Appeal Stewards with detailed evidence being given, the parties having full rights of cross examination and legal representation [**RS1, para 31-32**]. Mr Baker did not advance any allegation of procedural unfairness with respect to his appeal or in this case."

(ix) The agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law.

"The parties have agreed, by virtue of Reg 28.10 [**184**], that the decision of the Appeal Stewards is final and binding on the Board, and that the Appeal Stewards have the discretion to make any such order as they see fit. Such agreement has contractual effect and is clearly intended to be enforceable in law."

(x) The procedural agreement must contemplate a process whereby the tribunal will make a decision upon a dispute which has already been formulated at the time when the tribunal is appointed.

"This is clearly the case here. The Regulations provide that any Member of the Board may bring an appeal by way of a written notice against any decision of the Board (Regs 28.1-28.3 [**183–184**]) and it is this dispute which is then the subject of the proceedings."

44. In relation to para (vi) above, I only add that, for the terms of a consent, a court order or a statute to "make it clear that the process is to be an arbitration" does not require express wording to that effect, or the mention of the word "arbitration". In my judgment it is sufficient if it is clear overall from the consent, order or statute

that this is the case. Here, as elsewhere in English law, substance is more important than form.

45. For the sake of completeness I mention that Mr De Marco referred me to a further case, *Smith v The British Boxing Board of Control*, a decision of HHJ Bird sitting as a judge of the Mercantile Court at Liverpool on 13 April 2015. In that case the judge expressed the view, *obiter*, that the Stewards of Appeal of the Defendant constituted "an experienced quasi-judicial body", and referred to their proceedings as an "arbitration". But there was no argument on the point of their actual status. All parties assumed that the Stewards of Appeal were an arbitral panel and that their proceedings amounted to an arbitration within the 1996 Act. So I do not place any reliance on that decision.

46. It is unfortunate that there is no argument from the Claimant on this point. The only evidence filed on behalf of the Claimant is his solicitor's witness statement dated 13 April 2015. The only comment in that statement on the substantive case is contained in para 8, which reads:

> "It is the view of his lawyers and Mr Baker that the Appeal Stewards have made a huge error of fact and law in finding that Mr Baker should have complied with a regulation that he was not aware of or published in any form; the application of these principles have created a situation which needs to be dealt with by the Courts."

47. This paragraph simply does not address the question whether or not the Stewards of Appeal were conducting an arbitration within the 1996 Act. I do not know if this was because the Defendant's view was not resisted, or because it was thought not to be relevant to the purposes of the witness statement, or because of something else, such as pure oversight. But, as I have already said, the present argument was made to Sir David Eady at the hearing in June 2014, and in addition the Defendant's evidence in support of the present application was served on the Claimant in February 2015 (repeating the point at para 40(a) of Mr Smith's witness statement), at a time when it appears (from the Claimant's solicitor's own evidence) that the Claimant was still able to give instructions to his lawyers. Nowhere in the evidence do I see even a bare intimation of a disagreement with the Defendant's view that this was an arbitration. It is a striking omission, on any view.

48. I have attempted to think of arguments which might assist the Claimant in resisting the Defendant's argument that this is an arbitration, but in the light of (i) the Claimant's averred behaviour in engaging with the relevant regulations and (ii) the adversarial process followed in accordance with them (thus "reflecting in private proceedings the role of a civil court of law"), I have been unable to think of any of any weight.

Discussion

49. In my judgment it is clear on the material before me that the proceedings of the Stewards of Appeal in the present case constituted an arbitration within the meaning of the 1996 Act. The ten factors relied on by the judge in *Kaneria* are all

in my judgment present in this case too. The proceedings of the Stewards of Appeal were not the result of the exercise of legal powers of adjudication by the State, nor of a purely internal disciplinary process, but instead the result of a consensual arrangement between the parties. They had all the features of an arbitration, and the award had all the features of an arbitral award. Accordingly, the only challenges that may lawfully be made to the award of the Stewards of Appeal are those provided for in section 58 of the Act, and the present claim (not being one of those) has no foundation in law, and must fail.

50. Now this is not a case in a developing area of law, where the court should be cautious before striking out a novel cause of action. Here the law is clear. Where a dispute is resolved by arbitration, the policy of the law, as embodied in the 1996 Act, is to limit challenges to the result, however fundamental, to the grounds and the time limits laid down by the Act. This provides certainty to the many, at the cost of possible injustice to the few. In my judgment, it is therefore appropriate to strike this case out.

51. As already stated, I have approached this application on the assumption (which of course may turn out to be incorrect) that the Claimant at trial would be able to prove all the allegations which he makes. If he *could* prove them, that would disclose a lamentable state of affairs that should be put right. But it is not the case that English law gives no remedy to a person who finds him- or herself in such a position. As set out in paragraph 18 above, there are means by which arbitration awards may be (and frequently are) challenged. Those means are deliberately limited, for reasons of policy, but are nevertheless designed to relieve injustice where it occurs. It is just that in this case the Claimant did not avail himself of them. Instead he sought to take a different, unsanctioned course.

52. Having reached the conclusion that I should strike out the claim, it is not strictly necessary to go on to deal with the other argument of the Defendant in putting the case, that the Defendant should obtain summary judgment, under CPR rule 24.2. The test for summary judgment is in substance whether the responding party has a real prospect of success, and, if not, whether there is any other compelling reason for the matter going to trial. The court may give summary judgment against a party who has no real prospect of success in his or her claim or defence (as the case may be). This means that the court can deal under this rule with cases where the facts alleged, if proved, would give rise to a cause of action or a defence, but the likelihood of the party proving those facts is so small that he or she has no real prospect of doing so.

53. There is nothing to stop the court also using this rule to deal with cases where even if all the facts alleged were proved the party still would lose, but the existence of CPR rule 3.4 means that it is usually not necessary to do so. In this case, even if the Claimant in his statements of case had asserted that he was not in law bound by the Regulations in the conduct of his appeal, on the material before me I would have held that there was no real prospect of his succeeding on that point, and that there was no other compelling reason for having a trial, and would have given summary judgment for the Defendant accordingly.

54. As discussed at the hearing on 31 July, the remainder of this application will come back before me on a date to be fixed, not before 6 September 2015, but the Defendant may well consider before then that there is no point in the further hearing, and may seek an order immediately to give effect to this judgment. As I indicated, I would be happy to see the parties at 10.30 am on any day when I am otherwise dealing with applications without notice in order to deal with this and to deal with any consequential applications. Obviously any such attendance before me should be on reasonable notice to the other side. I invite counsel to prepare for consideration a minute of order giving effect to this judgment.