



Neutral Citation Number: [2021] EWHC 2030 (Admin)

Case No: CO/908/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/07/2021

Before :

MR JUSTICE GRIFFITHS

Between :

RYAN EVE
- and -
BAR STANDARDS BOARD

Appellant

Respondent

Tom Wilding (direct access) for the **Appellant**
Jeremy Loran (employed barrister, **Capsticks LLP**) for the **Respondent**

Hearing date: 14 July 2021

Approved Judgment

Mr Justice Griffiths :

1. This is an appeal by Mr Eve against the refusal of the respondent (“the BSB”) to grant him any exemption from the vocational component of his training to be a barrister.
2. The refusal was initially communicated to Mr Eve in a letter from the BSB dated 15 April 2020 (“the Original Decision”) signed by Ms Jennie Terry, Senior Authorisation and Supervision Officer.
3. That decision was then reviewed, reconsidered and upheld by the BSB’s IDB Panel (IDB standing for Independent Decision-making Body). The result of that review was sent to Mr Eve on an IDB Panel Decision Sheet dated 27 August 2020 (“the Review Decision”).
4. The grounds of appeal are that the reasoning was inadequate or defective in both decisions.
5. The Bar Qualification Rules and other provisions relevant to this appeal change from time to time. There is no dispute about what they were at the material times.

The law on vocational training exemption

6. In order to be called to the Bar of England and Wales, rule rQ3 of Section B.2 of the BSB Handbook required Mr Eve to complete:
 - i) Academic legal training. This might be obtained, for example, through an appropriate university degree.
 - ii) Vocational training. This was at the material time usually obtained by completing the post-graduate BPTC or Bar Professional Training Course.
 - iii) Qualifying sessions as a student member of an Inn of Court as prescribed from time to time by the BSB. These were sometimes, but not always, delivered in association with dinners taking place at the Inns, whether in the form of lectures or other educational exercises.
7. The possibility of obtaining exemptions such as those sought by Mr Eve arose from the following further provisions:

“rQ7

The BSB may grant exemptions from all or part of the requirements set out in rQ3... above.”

“rQ8

In deciding whether to grant an exemption from part or all of any component of training, the BSB will determine whether the relevant knowledge and experience of the applicant make it unnecessary for further training to be required.”

“rQ9

An exemption from part or all components of training may be granted unconditionally or subject to conditions, which may include in an appropriate case:

.1 a requirement to do training instead of the training prescribed by this Section...”

“rQ10

Where the BSB exempts an individual pursuant to rQ7 above, it may also:

.1 grant exemption in whole or in part from the requirement to attend qualifying sessions; and

.2 specify the period within which any requirement to attend qualifying sessions must be fulfilled, which may be a period ending after the individual concerned has been called to the Bar.”

“rQ11

An application for exemption under this Section must be in such form as may be prescribed by the BSB and contain or be accompanied by the following:

.1 details of the applicant’s educational and professional qualifications and experience that meets the standards required of candidates;...

(...)

.3 any other representations or evidence on which the applicant wishes to rely in support of the application;”

“rQ12

Before deciding whether to grant any exemption under this Section, the BSB may make any further enquiries or require the applicant to provide any further information that it considers relevant.”

8. The evidential burden is on the applicant to show that some or all of the requirements are, in his or her case, “unnecessary” (rQ8), notwithstanding a failure to pass through the prescribed stages of training which are, naturally, carefully devised and, one hopes, rigorously assessed. Whether any particular component is, indeed, “unnecessary” will depend on the applicant’s “relevant knowledge and experience” (rQ8).
9. This burden may be discharged by the applicant providing “details of the applicant’s educational and professional qualifications and experience that meets the standards required of candidates” (rQ11.1) but other material may also be relied on to achieve the desired end, because rQ11.3 refers to “any other representations or evidence on which the applicant wishes to rely”.

10. I have said the evidential burden is on the applicant, because the applicant has to make the application and is required to provide material in support of it. The BSB must have something to go on. However, the BSB is not limited to the material it initially receives from the applicant. The BSB may call for other information from the applicant, or make its own enquiries, which might presumably even be directed to other people: see rQ12, “the BSB may make any further enquiries or require the applicant to provide any further information that it considers relevant.”
11. Moreover, any application does not have to stand or fall as a whole. Even if a full exemption is sought, it may be granted in part: see rQ7 “exemptions from all or part or the requirements” and the reference in rQ8 to “...deciding whether to grant an exemption from part or all of any component of training...” This reflects a long-standing practice in these matters.
12. The applicant in *Doegar v BSB* (judgment of Spencer J, 5 November 2013, unreported) sought exemption from all 12 months of pupillage, which was a requirement of practice, although not of call to the Bar. The BSB granted an exemption of only 6 months. This was upheld by the judge (paras 14-16 and 49 of the judgment). The applicant in *Napier v BSB* (judgment of Sir Anthony May, 13 February 2014, unreported) sought an exemption from all of her pupillage requirements (para 1). The BSB granted only a partial exemption, of 1 month from the second six months (para 2). Sir Anthony May himself considered a variety of evidence which he described as “very impressive” (para 45). This included a reference (para 45) and relevant work experience (para 36) although the applicant had no formal qualifications (para 36). The judge found this all to be of such quality that he extended the exemption from one month to three (which was still, of course, short of the full exemption originally applied for) (judgment para 51).
13. The application may be part of a process, granting exemption conditional on a specified future step. This follows from rQ9, which I have already quoted: “exemption from part or all components of training may be granted unconditionally or subject to conditions, which may include in an appropriate case: (.1) a requirement to do training instead of the training prescribed by this Section...”
14. In *Islam v BSB* (judgment of Sir Robert Nelson, 1 August 2012, unreported), the applicant, who had a third class degree, failed in his attempt to claim that he was in fact of second-class degree standard (para 1 of the judgment). However, he was told that “if he were to pass a post-graduate law degree from a UK University his application for the exercise of discretion would be reconsidered provided he obtained 60% or above in that course” (para 13). The terms of rQ9 allow such an exemption to be granted in advance, by way of condition.
15. Although not part of any rule, the BSB has before me relied, also, on its own published guidance, entitled “General Exemption from Training Requirements Guidelines”, which states:

“The BSB will have principal regard to the following:

1.6.1 The grant of an exemption from part, or all, of any one of the three components of training is a discretionary and

exceptional course, because the BQR [Bar Qualification Rules] provide that the components must be completed in full.

1.6.2 In exercising any discretion whether to grant an exemption, the BSB will determine whether the relevant knowledge and experience of the applicant make it unnecessary for the applicant to undertake such training.

1.6.3 The BSB will have particular regard to the extent to which an applicant demonstrates satisfaction of the Threshold Standard described for each of the competencies of the BSB's Professional Statement. Further details can be found on this page of the BSB's website:

www.barstandardsboard.org.uk/training-qualification/the-professional-statement.html

1.7 Because of the wide-ranging nature of potential circumstances which might suggest that an application is exceptional, it is not possible to set out any definitive guidance as to particular instances when the BSB would be prepared to exercise its discretion and grant an exemption. The BSB will take into account all the particular circumstances of the case in coming to a decision."

16. I do not think the BSB can, by reference to these Guidelines, narrow the consideration mandated by the Rules I have quoted. It may, however, increase the duty on itself, by making commitments it might reasonably be expected to keep, as a matter of consistency, fairness, and policy. I do not think it is strictly correct to say that the Bar Qualification Rules "provide that the components must be completed in full" given that the Rules I have quoted expressly provide for alternative routes to qualification where the specified routes are shown, in a particular case, to be unnecessary to any extent. However, that is perhaps a matter only of loose language, and no reliance was placed on that passage in argument, nor was any specific rule cited in support of it.
17. Similarly, the reference to the grant of an exemption being "exceptional" has the potential to mislead. None of the Rules I have cited use the word. The only question is whether the requirement in question is shown by evidence to be "unnecessary". If it is not, the Rules suggest it may be dispensed with. No doubt any exemption might be described as an exception to the default rules, but the test for the exception in the Rules is "whether the relevant knowledge and experience of the applicant make it unnecessary for further training to be required" (rQ8, already quoted above).
18. The fact that the Guidelines decline, in para 1.7, "to set out any definitive guidance as to particular instances when the BSB would be prepared to exercise its discretion and grant an exemption" make the reasons given for its approach in particular cases important. It is, however, encouraging to applicants that they are assured that "The BSB will take into account all the particular circumstances of the case in coming to a decision." There is no suggestion that one size will fit all. Every case will turn on its own facts.

The law governing this appeal

19. Mr Eve is entitled to appeal the Review Decision (which upheld the Original Decision) by statute, since the BSB is exercising functions delegated from the General Council of the Bar and has by rQ40 of the Bar Qualification Rules granted a right of appeal to the High Court (see section 24(2)(c) of the Crime and Courts Act 2013). Such appeals are, therefore, brought as of right and do not require permission. They are governed, like many appeals from professional disciplinary and other bodies, by CPR Part 52.

20. CPR 52.20 provides:

“52.20— Appeal court’s powers

(1) In relation to an appeal the appeal court has all the powers of the lower court.

(2) The appeal court has power to—

(a) affirm, set aside or vary any order or judgment made or given by the lower court;

(b) refer any claim or issue for determination by the lower court;

(c) order a new trial or hearing;

(d) make orders for the payment of interest;

(e) make a costs order.”

21. CPR 52.21(3) provides:

“The appeal court will allow an appeal where the decision of the lower court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.”

22. CPR 52.21(1) provides that an appeal at this level is usually by way of a review of the decision or decisions below, rather than a rehearing.

The facts

23. Mr Eve is from the Bahamas and began his studies as a distance learner on the Nottingham Trent University LLB course.

24. However, he then transferred to the in-person LLB course at Northumbria University. In July 2014, Mr Eve successfully completed that course and graduated with second-class honours (Class 2:2) as a Bachelor of Laws of Northumbria University. On the face of it, he had therefore completed the Academic Stage of his training for the Bar.

25. He then immediately embarked on further in-person studies to qualify as a barrister by taking the BPTC course at Northumbria University. This would be his Vocational Training.
26. He also completed 4 qualifying sessions with Lincoln's Inn, and was on course to complete the other 7 qualifying sessions subsequently and qualify for call to the Bar of England and Wales. This would entitle him to call to the Bar in the Bahamas as well.
27. By March 2015 he was part-way through his BPTC course at Northumbria University, and had already sat and passed his final exams (not mock exams) in (1) conferencing (2) civil advocacy and (3) criminal advocacy.
28. He then hit a snag. With just three months to go before completion of his BPTC course, Mr Eve was informed that the BSB did not accept that the credits from his distance learning with Nottingham Trent University had been transferred adequately to Northumbria University (para 1 of his witness statement) and that, as a consequence, the BSB required him to withdraw from the BPTC course "with immediate effect".
29. This was a most surprising development given that he had actually graduated from the latter institution. It seems, from Mr Eve's uncontradicted statement in his application to the IDB for a review, that he personally provided Northumbria University "with all of my transcripts and documents that were required during my LLB studies". Nothing in the papers explained why the BSB was not satisfied; or what steps it took to check the position before compelling Mr Eve to end his studies (for which he had been paying a total of \$25,000 per annum) just short of the finishing line. Nor was the BSB able to clarify that point in answer to questions during the hearing.
30. Mr Eve "communicated" with the BSB, "pleading" with them "to investigate this matter with the provider and that it must be some mistake why they cannot find the necessary information". But the BSB were implacable and said that there was "nothing [they] can do". He went back to the Bahamas on 9 April 2015, having been prevented (by the BSB) from completing the BPTC course and sitting his remaining examinations, out of pocket, and "in a very bad state mentally. I felt like the world had come to an end."
31. Mr Eve continued his legal education by taking up a pupillage with Ms Chanta Clare, Senior Counsel in the law chambers of Lincoln Bethel & Co in the Bahamas, although this was not a qualifying pupillage as he could not be called to the Bar of England and Wales without passing the BPTC or obtaining an exemption. He has been working there for six years now, doing a variety of legal work.
32. Time passed, and Mr Eve heard nothing further until, on 22 March 2016, a year after he left the UK, he was told in an email from Northumbria University that they had looked again at his original file (that is, the file upon which he received his original offer to join the LLB course there) and they had decided that his credits were all in order after all. The BSB evidently took the same view. A letter to him from the BSB dated 15 June 2016 (15 months after the original rejection) said:

"I am writing, as requested, to confirm that the Bar Standards Board has recognised your completion of the Academic Stage of training for the Bar, with effect from 23 March 2016."

33. It had all been a mistake – for which Mr Eve was in no way responsible. The BSB had ignored Mr Eve’s warning to them that it was a mistake, and had refused to do anything to investigate or correct it (despite Mr Eve’s pleas to them). How it came to be put right eventually is not clear.
34. Mr Eve’s degree was in order and he had therefore satisfied the requirements of the Academic Stage. His BPTC (the Vocational Stage) could have been completed after all, along with the remaining Qualifying Sessions. Assuming satisfactory results, he would then have been called to the Bar. But it was all rather late now. The BPTC course had ended without him. He was in the Bahamas. He had nothing at all to show for any of his UK studies, or any of his expenditure, since graduating with his LLB. None of it counted as far as the BSB was concerned. Would he have to start the BPTC all over again? Was that practical? Was it affordable? Above all, was it necessary?
35. He turned to the BSB for guidance. He made a number of applications for a variety of exemptions, none of which succeeded. He never gave up. Eventually, he reached the point of making the application for exemption which is the subject of this appeal. This was dated 18 July 2019 and lodged on 20 October 2019. He paid the BSB a fee of £440 for it.

The Application

36. Mr Eve’s application (“the Application”) was submitted on a BSB standard form and sought “full exemptions in the Vocational Component”.
37. The standard form directed Mr Eve to “attach a separate sheet, together with any relevant supporting documentation, setting out full reasons for your application, including any exceptional circumstances that the Committee should take into account.”
38. Mr Eve attached the following to his Application:
 - i) A Personal Statement (pp 53-137 of the Bundle, i.e. 85 pages long). I will say more about this in a moment.
 - ii) A 3 page statement on the headed paper of the Law Chambers of Lincoln Bethel & Co in the Bahamas, from Chanta Clare, Senior Counsel, who had (as I have mentioned) been his pupil supervisor for the previous six years. This both described his skills and experience, from her own knowledge and training of him, and commended him as a candidate who had reached the standards required of a barrister in every respect. She specifically covered his skills and experience in (1) legal knowledge (2) conferencing (3) communication skills (4) ability to apply legal principles to factual issues and provide appropriate solutions to clients (5) drafting, giving examples of contentious and non-contentious drafting, such as agreements, affidavits, pleadings and opinions (6) civil litigation (7) criminal litigation (8) professional ethics (9) advocacy, including experience of the Magistrates’ Court, the Supreme Court (equivalent to the High Court in England) and the Court of Appeal, and referring, also, to his “competent” rating in the finals of the Advocacy component of his BPTC (10) legal research and (11) negotiation.

Mr Eve followed these up with additional documents (according to the Original Decision) on 29 November 2019, which were:

- iii) Proof of his LLB Honours Degree (class 2:2) from Northumbria University in 2014.
- iv) The email from Northumbria dated 22 March 2016 and the letter from the BSB dated 15 June 2016, correcting the original mistake about transfer of credits from Nottingham Trent University to Northumbria University, to which I have already referred.
- v) Confirmation from Northumbria University of his completion of the BPTC modules on civil advocacy, conferencing and drafting.
- vi) Confirmation from Northumbria University of his marks in mock examinations in March 2015 on civil litigation (70%), criminal litigation (75%) and ethics (65%). All these marks exceeded the pass mark of 60%.
- vii) Confirmation from Lincoln's Inn that he had completed 4 Qualifying Sessions, valid for 5 years.
- viii) A conveyance, Darville to Evans (presumably an example of his drafting skills).
- ix) A "Conferencing Session @LBC" (presumably evidence of his conferencing skills at the Law Chambers of Lincoln Bethel & Co).

He supplemented this with more documents (according to the Original Decision) on 2 December 2019, which were:

- x) "drafting mock" (as the Original Decision describes it).
- xi) Affidavit of citizenship Natalie Appleyard (which, again, I take to be an example of his drafting).
- xii) Letter confirming work experience at ZMS solicitors, Leicester, in 2014.

39. The 85-page Personal Statement (item (i) in the list above) began as follows:

- i) Mr Eve referred to the exceptional circumstances of his case ("The BSB is well aware of my past situation..."), which were, indeed, well-known to the BSB (and of which, had it been necessary, they were reminded by the inclusion of their own letter at item (iv) above).
- ii) He referred to the 7 months he had managed to complete on the BPTC and, "after the unfortunate ordeal" (of his incorrect exclusion from the rest of the course) to his subsequent study and training under his pupil supervisor Ms Chanta Clare.
- iii) He stated that he had learned and studied "every module in the vocational component in its entirety" and that he had combined this with reading the Professional Statement, so that he knew the standard to be achieved by a barrister on the first day of practice.

- iv) He then proposed to demonstrate “How I achieved the relevant learning outcomes and competencies of the professional statement in (1) Advocacy, (2) Civil litigation, (3) Criminal litigation, evidence and sentencing, (4) Professional ethics, (5) Opinion writing, (6) Legal research, (7) Redoc [that is, Resolution of disputes out of court], (8) Drafting, and (9) Conferencing skills” (Bundle p 53, with numbers inserted for ease of reference).
40. These categories corresponded exactly (but with the addition of Resolution of disputes out of court at (7)) to the BSB’s own analysis of the Vocational Component in its “Curriculum and Assessment Strategy”, which, on p 4 (Bundle p 226) summarised the Vocational Component as follows:
- i) **Subject: Advocacy**
- Assessment Requirements: One assessment with oral plus written components. Two further oral assessments. All assessments must be passed. Assessments to abide by BSB’s common assessment criteria.
- Who sets the exam?: Provider
- Passing standard: 60%
- ii) **Subject: Civil Litigation**
- Assessment Requirements: One assessment in two parts, sat on separate days. Part 1 is a closed-book exam consisting of multiple-choice questions, including single best answer questions. Part 2 is an open-book exam consisting of multiple-choice questions, including single best answer questions, and rolling case scenarios.
- Who sets the exam? BSB
- Passing standard: Determined by standard setting process
- iii) **Subject: Criminal Litigation, Evidence and Sentencing**
- Assessment Requirements: One closed book examination of three hours, centrally set and marked (electronically). The examination comprises 75 multiple choice questions, including single best answer questions.
- Who sets the exam? BSB
- Passing standard: Determined by standard setting process
- iv) **Subject: Professional Ethics**
- Assessment Requirements: The BSB will provide high-level outcomes for the assessment.

Who sets the exam? Provider

Passing standard: Competent/Not Competent grading

v) Subject: **Opinion Writing**

Assessment Requirements: Assessment to abide by BSB's common assessment criteria.

Who sets the exam? Provider

Passing standard: 60%

vi) Subject: **Legal Research**

Assessment Requirements: To be assessed alongside the assessment of Opinion Writing. Assessment to abide by BSB's common assessment criteria.

Who sets the exam? Provider

Passing standard: Competent/Not Competent grading

vii) Subject: **Drafting**

Assessment Requirements: Assessment to abide by BSB's common assessment criteria.

Who sets the exam? Provider

Passing standard: 60%

viii) Subject: **Conference Skills**

Assessment Requirements: Assessment to abide by BSB's common assessment criteria.

Who sets the exam? Provider

Passing standard: 60%

41. This reflected advice that Mr Eve had received from the BSB. Before submitting the Application he had on 29 July 2019 emailed Sophie Maddison, Senior Supervision and Authorisations Officer at the BSB, asking her what supporting documents he would have to submit in order to be successful in obtaining a general exemption. In her response of 30 July 2019 (which is also referred to in the Original Decision), she referred him to the following three documents:

- i) The BSB's Curriculum Assessment Strategy. This is the document I have just referred to.
- ii) The Professional Statement.

- iii) Section 10 of the BSB’s “Criteria and Guidelines for Transferring Qualified Lawyers”.
42. Whilst, no doubt, well-intended, this advice was not very clear. The documents in question run to 115 pages, many of which were not relevant to the exemption Mr Eve was seeking, and none of which were specific about how he might obtain such an exemption, as none of it was directly applicable to the circumstances of his case. The Curriculum and Assessment Strategy set out qualification routes for people who would not, having followed those routes, require an exemption at all. The Professional Statement was directed to “the knowledge, skills and attributes that all barristers will have on ‘day one’ of practice”, i.e. following pupillage, and did not home in on the requirements, specifically, of the Vocational Stage of training. The BSB’s “Criteria and Guidelines for Transferring Qualified Lawyers” did not apply to Mr Eve, because he was not a qualified lawyer within the meaning of that document.
43. More helpful was an undated email from Ms Maddison in the following terms (quoted in Mr Eve’s first witness statement at para 6):

“In terms of a possible exemption from the civil and criminal litigation aspects of the vocational component of Bar training, we will be looking for you to set out your knowledge and experience in those areas. Pages 9-11 of the Curriculum and Assessment Strategy set out topics of which students should be able to demonstrate a sound understanding and knowledge, relating to civil and criminal litigation. I would therefore advise you to refer to these lists of topics and use these to structure your account of your knowledge and experience, drawing out specific examples from your experience as appropriate.

Separately, I can confirm that applications for general exemption from the vocational component of Bar training have been granted previously.

Second, I appreciate that it is perhaps more difficult to evidence your knowledge and understanding of Professional Ethics, for the purpose of exemption (as opposed to the more traditional skills-based areas such as advocacy or opinion writing). In this area, it is important that you are able to demonstrate your understanding and awareness of the ethical requirements and standards to which barristers at the Bar of England and Wales are subject, as set out in the Professional Statement and the Bar Standards Board Handbook.

For example, you may wish to comment on any personal study of the Professional Statement and/or the BSB Handbook that you have undertaken, or how you have, or would, apply the ethical standards set out in those documents in your current or future legal employment.

In addition, the Curriculum and Assessment Strategy includes guidance on the competences relating to Professional Ethics on pages 21-22 of the document.”

44. In basing his Personal Statement, primarily, on the Curriculum and Assessment Strategy, Mr Eve was, therefore, following the advice the BSB had given to him. He also used the Personal Statement (in conjunction with the other documents I have identified and described at para 38 above) to “structure [his] account of [his] knowledge and experience, drawing out specific examples from [his] experience as appropriate”, as suggested by Ms Maddison in her email at para 43 above.
45. Adopting these principles throughout:
 - i) Advocacy was covered in the Personal Statement at pp 53-56 of the Bundle.
 - ii) Civil litigation was covered in the Personal Statement at pp 57-77 of the Bundle.
 - iii) Criminal litigation, evidence and sentencing was covered in the Personal Statement at pp 78-112 of the Bundle.
 - iv) Professional ethics was covered in the Personal Statement at pp 113-120 of the Bundle.
 - v) Opinion writing was covered in the Personal Statement at pp 121-124 of the Bundle.
 - vi) Legal research was covered in the Personal Statement at pp 125-126 of the Bundle.
 - vii) Resolution of disputes out of court (Redoc) was covered in the Personal Statement at pp 127-129 of the Bundle.
 - viii) Drafting was covered in the Personal Statement at pp 130-133 of the Bundle.
 - ix) Conferencing was covered in the Personal Statement at pp 134-137.
46. In each of these sections of the Personal Statement, Mr Eve both set out his understanding of the principles, and referred to specific examples of his own experience, just as Ms Maddison had suggested. Moreover, there were testimonials to, and there was evidence of, Mr Eve’s skills and experience relevant to some of the headings in the other documents included with his application, as I have mentioned at para 38 above.

The Original Decision

47. There was some delay in the BSB producing its response to the Application. After it had been lodged on 20 October 2019, receipt was acknowledged by the BSB on 28 October 2019. The additional documents had all been lodged by Mr Eve by 2 December 2019. Mr Eve enquired about the progress of his Application on more than one occasion, and he was told that “the team was experiencing a significant backlog of applications” (on 16 January 2020) and (on 28 February 2020) that there were “no updates” because “they are still dealing with the backlog of applications” (para 10 of

Mr Eve's witness statement). A further enquiry (on 8 April 2020) was ignored, and not responded to.

48. On 13 May 2020, Mr Eve sent a further email, expressing frustration about the length of delay and the lack of response. In reply, he received an email on the same day (13 May 2020) saying that a decision had, in fact, been made on 15 April (the date on the Original Decision) and that it had been emailed to him on that day (although it had not reached him), and that, consequently, he only had 2 days left to challenge the decision.
49. The Original Decision consisted of 3 pages. The first page noted the nature of the Application, stating that it was seeking (1) an exemption from the Vocational Stage (2) an exemption from completing any further Qualifying Sessions from his Inn and (3) to be treated as having been called to the Bar on 26 November 2015. The Application itself clearly sought an exemption from the Vocational Stage only. In subsequent papers, Mr Eve suggested that he might also be excused from his unfulfilled Qualifying Sessions and that he should be treated as called to the Bar on the date he would have expected to be called had it not been for his exclusion from the course. He suggested that this would be a fair outcome in view of the mistakes that had been made in his case. However, this was something of an afterthought, and the application for exemption from the Vocational Stage remained front and centre. Mr Eve does not pursue any claim for exemption from Qualifying Sessions or to be granted retrospective call to the Bar in this appeal.
50. Pages 2-3 of the Original Decision were headed "Decision" and began:

"I realise this will come as a disappointment, but your request for exemption from the vocational stage of bar training has been refused for the following reason(s):"
51. It then stated that he had not completed the BPTC and was not, therefore, eligible for Call to the Bar. The writer said that "In deciding this point, I have had reference to the Bar Qualification Rules..." However, Mr Eve had never suggested he had completed the BPTC. The reason he was applying for exemption was so that he would not have to. It is not clear from the materials, or from the Original Decision itself, why the author thought she was "deciding this point", therefore.
52. The Original Decision proceeded, uncontroversially, to state that Mr Eve had completed 4 of the required 12 qualifying sessions with Lincoln's Inn (2 of which are often combined as a double-credit, which may explain the discrepancy between the reference to 11 or 12 Qualifying Sessions in my papers). It then said: "As such, you do not qualify for being Called to the Bar. In deciding this point, I have also considered the above rule..." It is not clear why "In deciding this point", namely, whether Mr Eve should have exemptions, the author of the Original Decision referred only to the circumstances which made exemptions necessary.
53. The next two paragraphs of the Original Decision, rejected any suggestion (which had not been made in the Application form) that Mr Eve should be awarded call to the Bar by the BSB, and stated "I have been unable to verify with your referee when you completed pupillage in the Bahamas". Mr Eve was not claiming that he had completed a qualifying pupillage in the Bahamas, as he had not been called to the Bar in the Bahamas or formally qualified as a lawyer in any jurisdiction. What he had said, in his

Personal Statement, and in the 3-page statement from Ms Chanta Clare (which I have summarised at para 38.ii) above), was that he had for 6 years been her non-qualifying pupil. Both he (in his Personal Statement) and Ms Clare (in her statement) had set out the skills and experience which he had acquired and demonstrated in that capacity, giving specific examples. This was part of the basis upon which he claimed that his “relevant knowledge and experience” made it “unnecessary for further training to be required” within the meaning of rQ8. But there was no further reference to the substance, as opposed to the fact, of his pupillage experience in the Original Decision.

54. After this, the Original Decision moved immediately to its conclusion, saying as follows:

“I have considered your 83-page and 3-page supporting statements for this application. I also note that my colleague Ms Maddison’s email of 30 July 2019 (responding to your query on how to address the General Exemption), referred you to

- the BSB’s Curriculum Assessment Strategy,
- the Professional Statement; and
- section 10 of the Guidance on application for Transferring Qualified Lawyers.

On balance, I am not persuaded that the content of either statement justifies granting an exemption from the vocational stage requirements. In deciding this point, I have had reference to the Bar Qualification Rules:

rQ8 In deciding whether to grant an exemption from part or all of any component of training, the BSB will determine whether the relevant knowledge and experience of the applicant make it unnecessary for further training to be required.

As a result of this decision, you are still required to successfully undertake the Bar Professional Training Course (or its equivalent under the new ‘Future Bar Training’ reforms) to complete the vocational stage of training for the Bar, before commencement of Work-Based Learning (pupillage) stage.”

55. I have quoted this in full, but it will be seen that the only reasoning, apart from the reference to rQ8 which sets the test, is in the sentence: “On balance, I am not persuaded that the content of either statement justifies granting an exemption from the vocational stage requirements”.
56. The reference to “either statement” is obscure. It might suggest that there were two statements under consideration, but that was incorrect on any basis. If the reference was to the BSB materials, including the Professional Statement, which Mr Eve had been referred to by Ms Maddison, there were three of those, and only one of them was a “statement”. If the reference was to the materials submitted by Mr Eve himself, the

author of the Original Decision had listed three of these, not two, as having been submitted originally, and then listed 11 further items which had been provided subsequently. My guess is that the author was singling out the Personal Statement from Mr Eve himself and the 3-page document from Ms Chanta Clare. However, rather curiously, the 3-page document from Ms Clare was not included in the list of submitted materials drawn up on page 1 of the Original Decision, unless it is the document referred to as “Resolution of disputes out of court (Redoc), 3 pages”, in which case the description was incorrect.

Mr Eve’s challenge to the Original Decision

57. Mr Eve exercised his right to a review of the Original Decision. For this, he paid a fee of £200, additional to the fee of £440 he had paid for the Original Decision.
58. His application was made on the BSB’s standard form, which he signed and dated 5 July 2020. He claimed “General exemption for the Vocational training”, which was consistent with his original application for “full exemptions in the Vocational Component”. He did not specifically claim exemption from the Qualifying Sessions, or the Call to the Bar; or, indeed, pupillage (which is a requirement after Call to the Bar).
59. He claimed the review on Grounds of (1) Procedural unfairness (2) Unreasonableness (3) Error of facts (4) No valid reasoning for decision, and (5) Inconsistency in procedures. For details of each of these Grounds he referred to an attached written submission of 7 pages dated 30 June 2020 (“the Review Submissions”). In the Review Submissions he made the following points:-
 - i) Refusing the exemption because he had not completed the BPTC made no sense, “because if I completed the Bar Professional Course, why would I make an application to be exempted from the vocational stage”.
 - ii) He referred to the circumstances in which he had been prevented from completing the BPTC (which were not referred to at all in the Original Decision). He said “I have expressed and explained on many occasions valid reasoning as to why I was unable to complete the BPTC program but, unfortunately, I have been ignored on every attempt”. He then repeated those circumstances, for the benefit of the Review panel, in some detail. It was clear from his account that he was blaming the provider (Northumbria University) and the BSB for what had happened, which he described as “negligent”.
 - iii) He pointed out that the Original Decision was in error when it stated he had completed mocks but no finals on his BPTC course (see para 27 above for the correct position). The error, which was admitted at the hearing before me, although not before the hearing before me, was in a passage in the Original Decision which said: “...you have not completed the... BPTC... you completed three mock exams, but no finals”.
 - iv) He said he was *en route* to complete, also, the balance of his Qualifying Sessions “before I was removed due to negligence”, and that he had been informed by his Inn that “due to Covid-19 pandemic they are formulating an online qualifying sessions program that the team member will update me on”. This seems to confirm that he was not seeking exemption from the balance of his Qualifying

Sessions but only, as he had consistently stated, from the balance of his Vocational Stage (the BPTC).

- v) He corrected the suggestion in the Original Decision that he was claiming to have completed a qualifying pupillage (see para 53 above), repeating (which I think should have been obvious from the documents) that the purpose of referring to his pupillage by himself and by his pupil supervisor in the materials submitted with his Application was to show what skills and experience he had acquired, and how. He said (after making this point more generally): “The reference letter I provided was very clear and it explained all of the experience and knowledge I received while working in chambers.”
- vi) He emphasised that his application and supporting materials had been constructed on precisely the basis that he had been advised to construct them upon (see para 44 above).
- vii) He expressed “no confidence” in the attempt of the author of the Original Decision “to access my application because her reasoning is invalid and is of no value and it also proves that the supporting statements were not analysed nor examined”.
- viii) He said that the contrast between the advice he had received, and his diligent attempt to follow it, and the rejection of his application in the Original Decision “blatantly proves that I did not receive a transparent process.” He said “Mr Terry gave no explanation as to why she came to her conclusion”. The lack of reasoning was a point to which he returned again and again: “It is evident that Ms Terry did not take the time to read nor analyse my application and supporting documents”; “there was no valid reasoning”; “Chambers is of the impression that my application was not assessed because there was no valid reasoning to support Ms. Terry’s statement”; “I want to receive a fair application assessment”; “I applied for an application, paid for the application, and did not get a valid reasoning for the refusal”.
- ix) He returned to the exceptional circumstances in which he had found himself obliged to seek the exemption:

“I was removed from the BPTC course due to negligence and the BSB did not intervene nor rectify the problem after making the final decision. After encountering such a devastating experience I then applied to be exempted from the vocational stage and provided valid evidence and supporting documents after training and studying while gaining experience in chambers. (...) I did not place myself in this situation and I will not be blamed for what transpired. If the negligence did not occur I would have been called to the Bar within the year I was intended to complete the course just like my LLB law course.”

The Review Decision

60. Mr Eve appears to have heard nothing between submitting his application for review, and receiving the Review Decision. The authors of the Review Decision (the IDB) did not make any further enquiries of Mr Eve, or (so far as can be seen) anyone else, as they might have pursuant to rQ12 (quoted in para 7 above).
61. The Review Decision was made by three panel members whose names, for reasons which have not been explained, are redacted out of the document provided to Mr Eve and to the court. None of them has filed evidence to explain either the procedure by which the decision was reached, the investigations and deliberations upon which it was based, or (more fully than in the Review Decision itself), the basis upon which it was made.
62. The document itself is, therefore, not only all that Mr Eve had to go on before bringing this appeal; it is all that the court has to go on as well.
63. The Review Decision is a document of 3 pages, but page 1 contained only administrative details, including a summary of the details of the review being sought, which was correctly identified as “General exemption from training requirements (vocational component)”.
64. A “Decision” box on page 2, with pre-printed text for various outcomes, had the box for “Uphold the Executive decision” ticked.
65. The Review Decision then gave its Reasons, as follows:-

“Uphold the Executive decision

- o Procedural unfairness
- o Unreasonableness
- o Error of facts
- o No valid reasoning for decision
- o Inconsistency in procedures

The Panel considered each of the grounds put forward by you and reviewed the detailed and extensive supporting documentation you provided. The Panel acknowledged your passion for the law and commitment to qualify as a barrister. The Panel could find no evidence to support your claims of procedural unfairness or inconsistency in procedures. In respect of your claims of unreasonableness and valid reasoning for the decision, the Panel considered that in all circumstances the decision was reasonable, and that a clear explanation had already been given by the Executive.

From the papers and the decision letter issued, the Panel considered that the Executive did take all facts into consideration and there was no error in their assessment.

In respect of the substantive application for a general exemption from the vocational component of Bar training, the Panel did review the Executive's findings. After a full and careful consideration of the evidence you have provided, the Panel concurred with the reasons and findings of the Executive. The Panel considered that the Executive's letter of 15 April 2020 was clear and concise in outlining their reasons why the requested exemption was not granted.

Summary:

The Panel agreed that the decision taken by the Executive was in line with the published criteria and guidelines.

For the reasons stated above, the Panel has dismissed the grounds for seeking a review of that decision.

The Panel therefore decided that the Executive decision in respect of the application for general exemption from the vocational component of Bar training was correct and should be upheld."

66. As with the Original Decision, the operative part of the Review Decision so far as reasoning is concerned can be located in relatively few sentences. They appear to be in the following three extracts:
- i) "In respect of your claims of unreasonableness and valid reasoning for the decision, the Panel considered that in all circumstances the decision was reasonable, and that a clear explanation had already been given by the Executive."
 - ii) "From the papers and the decision letter issued, the Panel considered that the Executive did take all facts into consideration and there was no error in their assessment."
 - iii) "...the Panel did review the Executive's findings. After a full and careful consideration of the evidence you have provided, the Panel concurred with the reasons and findings of the Executive."
67. Effectively, therefore, no further reasoning was being provided. It relied on the reasons originally given.

Submissions

68. On behalf of Mr Eve, it is argued that the reasoning both of the Original Decision and of the Review Decision is both inadequate and defective.

- i) Neither decision explains why Mr Eve was not successful. Neither decision engages with any particular element of the documentation he had submitted. Both Mr Eve's conscientious attempt to provide materials of the sort he had been asked to provide, and the exceptional circumstances in which, through no fault of his own, he found himself obliged to seek an exemption, required a less superficial treatment than either the Original Decision or the Review Decision provided. Mr Eve is left with no insight, either into the reasons for not gaining any exemption, or into how he might set about remedying any particular defects in his application and supporting materials.
- ii) The Original Decision perversely relied on the circumstances which made an exemption necessary as a basis for refusing it. It also misstated the facts; in particular, by stating that he had not completed any of his BPTC final examinations. It also failed to mention, or (therefore, presumably) to take into account the circumstances in which he had been prevented from demonstrating that he had met the requirements of the Vocational Stage by a conventional route.
- iii) The failure to provide proper reasons made both decisions "unjust because of a serious procedural or other irregularity" within the meaning of CPR 2.21(3)(b) (para 21 above) and the application should be remitted to the BSB for an entirely fresh consideration, from which there should be a right to seek a review if necessary.

69. On behalf of the BSB, it is argued that the reasons given were sufficient.

- i) The BSB relies on the documents to which Mr Eve was originally referred (para 41 above) and argues that meant that the explanation of what was required was already so clear that the reasons were (as it was put) "front loaded". As a result, the mere reference to those documents (which the Original Decision contained) was sufficient to explain why his Application had fallen short. The Review Decision was therefore entitled to say that the Original Decision was "reasonable" and that "a clear explanation had already been given".
- ii) The BSB suggested that "public bodies have no general obligation to give reasons for their decisions", although "fairness may in some circumstances require it" (Respondent's Grounds for Dismissing the Appeal, para 47).
- iii) The BSB said that Mr Eve had applied for a complete exemption, and it was not therefore obliged to explain why any particular part of his application had fallen short, or to consider granting it in part, or on conditions. Once it had fallen short, it was enough to say just that, and not to go into detail.
- iv) The BSB said that the listing of the materials upon which the Application was based showed that they had been taken into account.
- v) The BSB said that the complaint that part of the Original Letter was circular in its reasoning (see para 52 and para 59.i) above) was unfair. The references to Mr Eve's failure to complete the BPTC or his qualifying sessions demonstrated a methodical approach in setting the scene for the substantive Application for an exemption, and nothing more should be read into them than this.

Discussion and decision

70. I have no hesitation in rejecting the suggestion that the BSB was under no general obligation to give reasons. In considering the Application for exemption, the BSB was discharging a quasi-judicial function, from which there was a right of internal appeal (by of the IDB review) and a statutory right of appeal to the High Court. It was essential that the reasons should be clearly identified and stated, both so that the review body could examine the soundness of the Original Decision, and so that this court could then properly scrutinise the soundness of both decisions,
71. However, the obligation to give reasons was not based only on that. Mr Eve himself was entitled to know, not only that his Application for exemption had been refused, but why. I would say that as a matter of general principle. But the particular facts of his case reinforced it. His was not a gratuitous application; it had been forced on him by a misfortune, indeed an injustice, for which he was not responsible, namely the incorrect decision to prevent him completing his BTPC in the first place. He had paid a substantial fee of £440 for his Application, and he was entitled to have it seriously considered. In order to demonstrate that it had been seriously considered, some reasoning which went beyond stating the conclusion was essential. The materials in support of his Application had been laboriously put together on the basis of Mr Eve's understanding (from Ms Maddison) both that "applications for general exemption from the vocational component of Bar training have been granted previously" and of precisely how he ought to construct them (see para 43 above). An explanation beyond the mere fact that they were considered inadequate was therefore called for.
72. There is also the important point that giving reasons acts as a discipline for the decision maker. Clear reasons, however succinct, not only demonstrate that the decision maker has reached a reasoned rather than an arbitrary or gut-feel decision, but assist the decision maker in doing so. They are, therefore, a component of good decision-making as well as showing due respect for the rights of those affected by the decision. They are also the surest basis for successfully resisting any appeal or other challenge.
73. All these points are supported, with reference to other authorities, by the judgment of the Court of Appeal in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413 per Males LJ at paras 39-46.
74. I therefore turn to the question of whether the reasons given were sufficient.
75. Clear and adequate reasoning is a matter of content, not length. There is a difference between brevity and lack of substance. A long document can contain no substance. Lengthy quotation and identifying materials without discussing them are often the culprits here. On the other hand, a single sentence, or two, may contain substance enough. The clearer the thinking, the easier it is to be precise and, therefore, brief. The more muddled the thinking, the less likely it is that multiplying words will produce a cogent, transparent or persuasive analysis.
76. The level of detail required will depend on the circumstances of the case. In the case of a person who had no good reason for not taking the conventional route through the Vocational Stage, for example, it might be that reasons for refusing to grant an exemption could be shorter than those required by Mr Eve's case. However, reasons must be given in every case.

The Original Decision

77. The Original Decision effectively provided no reasoning at all (see para 55 above). It listed the materials which had been provided but did not engage with them in any way. The list could have been written by someone who had not read the documents. There was certainly nothing in the Original Decision to demonstrate that the author had read them.
78. The generic BSB documents provided in advance did not “front load” the exercise, so as to make reasoning unnecessary (see para 69.i) above). They were not directed to the exercise Mr Eve was trying to perform (see para 42 above) and so they were not easily mapped on to the way in which he had in fact performed it. In any case, Mr Eve had already done his best to make his Application conform to the requirements, particularly, of the Curriculum and Assessment Strategy which he had been told was the most relevant of those documents. Saying that he *had* failed did not explain how or why he had failed. If reasons are obvious, it should be easy to state them. Asking someone to work it out for themselves from a mass of material to which undifferentiated reference is made is not good enough.
79. Was Mr Eve going about his Application in completely the wrong way, so that the whole Application was a non-starter? Or was he going about it in the right way, but not hitting the target? If the latter, was there a *lack* of evidence on any particular point, or was the *quality* of the evidence insufficient? In either case, was the answer the same for each of the 9 areas separately addressed in his Application? It is rather surprising, for example, that no mention is made of any of the studies he had completed, the mock examinations he had passed, and, indeed, the finals he had passed.
80. It was also incorrect for the Original Decision to adopt an all or nothing approach. It does not distinguish between any part of the Application although it was divided into 9 separate areas, with different material, including different evidence and examples, for each. In some cases, Mr Eve had passed an exam. In others, he had provided drafts. In others, he set out his understanding in the form of an examination answer. For many of the areas, he had support from Ms Chanta Clare, who had supervised his work for 6 years. The reasoning in the Original Decision – “On balance, I am not persuaded that the content of either statement justifies granting an exemption from the vocational stage requirements” – conveyed the decision, but not the reasons for the decision.
81. Although Mr Eve had applied for a full exemption, the BSB could have granted an exemption from some requirements and not others. It could also, if it identified particular gaps in his Application, have identified them so that they could be filled. Better still, it could have specified how they could be filled, perhaps by imposing a condition. An all or nothing approach was consistent neither with the rules nor with past practice nor with fairness, justice and common sense in Mr Eve’s case (paras 11-14 above).

The Review Decision

82. The Review Decision doubled-down on the reasons in the Original Decision and added nothing to them, although it was a separate decision. It therefore failed to remedy the lack of reasons in that decision.

83. If anything, the Review Decision was even more defective than the Original Decision, because the anonymised members of the IDB who produced it had the benefit of Mr Eve's specific criticisms of the Original Decision, including his correction of errors of fact (see para 59 above). But the Review Decision did not respond to any of that; it neither accepted nor refuted the points being made. Some of those points were capable of independent research and verification; such as whether Mr Eve had passed three final examinations and not only (as the Original Decision said) mock examinations. Nothing was done in that respect; and Counsel for the BSB rightly accepted at the hearing that he was in no position to say that what Mr Eve said was incorrect.
84. The main reason that Mr Eve was seeking a review was that he was troubled by the lack of reasons given for the Original Decision. It is therefore regrettable that the Review Decision ignored those concerns and, despite saying that it had reached its own conclusions on the evidence as well as conducting a review, neither explained what it understood the reasoning of the Original Decision to mean, nor provided any reasoning of its own (see para 66 above).
85. The failure to provide adequate reasons in both the Original Decision and in the Review Decision was a serious irregularity which rendered both decisions unjust and unsustainable, with the result that the appeal will be allowed.

Relief

86. Mr Eve does not ask me to substitute my own decision for the decisions which fell to be taken by the BSB in this case. The BSB is an expert body, which makes it right for it to make decisions of this sort, at least in the first instance. I will therefore remit the case for fresh determination by a person who had no involvement with either the Original Decision or the Review Decision.
87. Mr Eve is entitled to a fresh start. If the BSB had wished to uphold its decisions by providing more information about its assessment, it could have done so, for example by filing evidence from one or more of the decision makers. Similarly, if the BSB had systematically addressed the criticisms of Mr Eve, and sought to demonstrate that the decisions reached in both cases were not, in fact, wrong, however unsatisfactory the formulation of the Original Decision or of the Review Decision, it could have done that too.
88. It is regrettable that the BSB simply relied on the reasons in the Original Decision, both in the Review Decision and during this appeal. The point of a review is, not only to reconsider a decision, but to provide further process. In the case of a person particularly aggrieved by a lack of reasoning, it is unwise to make no attempt either to explain the original reasons, as the review body understands them, or to provide further or other reasons, even if the original decision is being upheld. In fact, an application which is refused will often call for fuller and more cogent reasoning than an application which is granted, because a disappointed party has a particular interest in understanding why they have not succeeded. Good reasons may not cure the disappointment, but they may cause the disappointed party to accept the outcome. If that had happened in this case, the High Court proceedings might not have been necessary at all. This may have implications, not only for the incidence of costs, but for the basis upon which they should be assessed. I will ask for submissions on the costs, and also about what if

anything should be done about the fees that Mr Eve paid for the decisions which I have found to be inadequate.