Neutral Citation Number: [2014] EWHC 182 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 05/02/2014

Before :

THE HON. MR JUSTICE POPPLEWELL

- -

Between :

The Queen (on the application of Lincoln Crawford OBE)	**Claimant**
- and -	
The Legal Ombudsman	**Defendant**
-and-	
Mr Sadik Noor	**Interested Party**

- -
- -

Mr Anthony Speaight QC (instructed by **Weightmans LLP**) for the **Claimant**
Ms Samantha Broadfoot (instructed by **The Office of the Legal Ombudsman**) for the **Defendant**
Mr Sadik Noor (in person**) Interested Party**

Hearing date: 31 January 2014

- -

Judgment

The Hon. Mr Justice Popplewell :

Introduction

1. The Claimant, Lincoln Crawford OBE, is a barrister of over 35 years call. He seeks to challenge by way of judicial review, the decision of the Legal Ombudsman ("The Ombudsman") dated 22 April 2013. The decision determined a complaint by Mr Sadik Noor about the service provided to him by Mr Crawford at a conference which took place on 27 September 2012. Mr Noor had paid £780 (including VAT) in advance for advice at the conference. The Ombudsman held that only limited advice had been given, as a result of which half the fee should be repaid. The ground of challenge is that the decision was *Wednesbury* unreasonable. Permission was granted by Eder J on 11 September 2013.

Narrative

2. The material before the Ombudsman revealed the following.

3. Mr Noor approached Mr Crawford to advise him on a public access basis in relation to a dispute with his employer, the UK Border Agency. Mr Crawford provided him with a client care letter dated 24 September 2012 which set out the scope of work. Its relevant part provided:

> "The work which you are instructing me to undertake is to provide *an initial advice in conference*. I am happy to read the documents you emailed to me and to look at the two files you are bringing with you, and to discuss the case in conference for the proposed fee of £650 plus VAT £780."
>
> (italics in the original)

4. The background to the matters upon which advice was being sought emerges most clearly from the e-mail dated 5 November 2012 from Mr Andrew Hogarth QC, Mr Crawford's head of chambers, in which he addressed Mr Noor's subsequent complaint about Mr Crawford's conduct of the conference. He said:

> "The position appears to be that this is the third set of proceedings brought by you against your employers, the first was a DDA claim, which failed because the Tribunal concluded that you were not disabled. The second failed because the ET, EAT and Elias LJ concluded that issue estoppel prevented a reopening of that issue. The third proceedings, which appears to be the one upon which you sought Mr Crawford's advice also raised DDA issues but here it was felt that the Tribunal should consider whether there had been a change in your condition since the original hearing in (?) 2005 rather than assume that issue estoppel prevented you from bringing a claim. The case has therefore been remitted to the Reading ET for hearing

…

You approached Mr Crawford under the direct access scheme seeking initially advice from him in respect of the latest in a series of complaints which you have made against your employers. In that complaint you allege that your suspension followed by a transfer to a different type of work amounted to a dismissal and that it was connected either with your disability or was an act of victimisation following the earlier unsuccessful proceedings which you had brought against your employers."

5. The conference took place on 27 September 2012 at Mr Crawford's chambers at 12 King's Bench Walk. Prior to preparation of the client care letter, Mr Noor had already emailed some documents to Mr Crawford. Mr Noor then sent a long witness statement in advance of the conference. Mr Noor brought a file of further papers with him to the conference.

6. The material before the Ombudsman contained differences in the respective accounts of what occurred at the conference. These were reflected in the correspondence exchanged between Mr Crawford and Mr Noor shortly after its conclusion. It is common ground that after the conference had been taking place for a period of time, but prior to its conclusion, Mr Crawford left the room. Whilst Mr Crawford was out of the room Mr Noor collected his papers and left the building. The nature and flavour of the dispute as to what happened is contained in the following exchanges.

7. Following the conference, Mr Crawford wrote a letter the same day in which he said:

"Given that the recent problem you faced with your employer was a disciplinary charge of misconduct, I find your conduct of sneaking off with your file and the papers you had sent to me in advance of the conference, while I was out of the room, disturbing and very troubling.

Your case concerned a large number of grievances and Tribunal claims against your employer. In order to assess the time it would take for an initial meeting with you, you sent me 3 documents, (a) an EAT judgment of HHJ McMullen QC dated 30 July 2012 (b) Consolidated Particulars of claim and (c) a draft List of Issues. I was able to see from those documents that the factual background to your case was very involved, and even on the few documents you sent, a considerable amount of time was needed to prepare your case.

….

…..On Thursday 27 September 2012, the morning of the conference, you brought a large lever arch file of documents for me to consider at the conference, which I considered with you.

> Your current position is that as a consequent (sic) of your misconduct at work, you are now demoted and are awaiting – at home – a different job which your employer promised to try and find for you. Your current claim for unfair dismissal relates to your demotion. I therefore suggested to you that that claim would have to be withdrawn because you are not dismissed. I then discussed with you that I will have to read all the documents very carefully before I am able to advise you properly, but that a possible way forward was by negotiations. You said that you would be happy if the matter was settled without you having to go to court.
>
> In preparing your case and the time spent in conference this morning amounted to over 5 hours (sic).
>
> I then left the room to get you a receipt for the money you paid into my account – that receipt is herewith enclosed. However, when I returned with the receipt you had taken your files and the papers I had worked on and made your escape through the basement door.
>
> …
>
> My clerk rang your mobile and when you finally answered he passed the phone to me. When I questioned your conduct, you said that you did not want to pay for the time it would take me to read your file so you left. I asked you why you did not wait until I returned with your receipt. You said that you felt "uncomfortable" to do so."

8. The following day, 28 September 2012, Mr Noor emailed his reply which included the following:

> "I paid a sum of £650 plus £130 VAT to be advised legally for 3 hours on consolidated claim before ET. We meet (sic) on that basis …
>
> On the day of the meeting you turned up late (at around 1130) and asked me to talk you through the matters on a file I provided, which I did. During that time you made notes and constantly read your emails/texts. I ploughed on regardless covering the main gist of the claims. At around 1 pm, you told me that you needed two days to read through the file which I brought with me in order for you to write my witness statement which you stated was "copy and paste" work. You asked me to pay you in account. By now you seem to have made your mind (sic) and was clear I needed to pay for two days work. You did not tell me how much that would cost, but I assumed it would in thousands of pounds (sic). You went to your office to get client letter, asking me to have tea from the machine which I did. I waited for roughly half an hour before I decided to leave as I was not prepared to sanction a further two days work from you and was very much pissed off. It occurred to me that I had wasted my money and time for

> nothing and it was clear you wanted more money. I walked out of the room I was in and met a young fellow … whom I asked the exit and he led me to the exit and opened the door for me. I asked him to tell you I had left. With me were my files. I left your notebook and pen on the table.
>
> The truth is you met with me for barely two hours during which time no advice whatsoever was offered despite sending you a copy of list of issues, the consolidated claim and draft witness statement prior to the meeting. Your letter confirms the same. The thrust of my claims is disability discrimination. You did not say a word about it despite several prompts. Unfair dismissal was a very minor point that I raised and you concurred. You seemed interested in find out whom the judges were (sic), noting their names down and telling me how friendly you were with them. You never dwelt at the substantive matter on which I sought advice …"

9. On the same day Mr Crawford wrote back saying:

> "I do not accept your lame excuse for your despicable conduct and I am considering what action to take. I spoke to you on the phone in the presence of my clerk and you said nothing about how you were treated.
>
> I had arranged the conference at short notice to facilitate you because you said you wanted it soon …
>
> At the conference we discussed your disability. You told me … that you did not want to disclose [your dyslexia] to your employer when you first started work. We then discussed the history of the depression which you said further disabled you. I therefore find it astonishing, but not surprising that you now claim we did not discuss your case in the context of disability.
>
> You were well look (sic) after by the clerk when you arrived at chambers. I was not late and none of your feeble excuses cut any ice with me".

10. Mr Noor then invoked the chambers' complaints system by writing to Mr Hogarth QC as the Head of Chambers on 5 October 2012. He sought a refund in full on the grounds that no advice had been given and none of the agreed services had been provided in consideration for the sums paid. In a letter dated 5 November 2012 Mr Hogarth QC rejected Mr Noor's complaint.

11. Mr Noor then made a complaint to the Ombudsman, of which Mr Crawford was notified on 8 November 2012. Ms Garcha was the relevant employee in the Ombudsman's office charged with investigating the complaint. By an email of 19 November 2012 Ms Garcha informed Mr Crawford that the complaint was that "a 3 hour meeting only lasted 2 hours" and that "no advice was provided". She requested that Mr Crawford provide copies of the complaint file, the client care

letter, notes of the meeting on 27 September, documents about the costs information and a break down of the bill.

12. Mr Crawford's response by e-mail the same day suggests that he misunderstood the role of the Ombudsman and mistakenly thought it involved reviewing the chambers' complaints procedure, rather than investigating the substance of the complaint. It suggested that the requests should be addressed to Mr Noor. Ms Garcha responded on 26 November 2012 offering to contact the complaints handler for chambers, but indicating that the documents requested were still required. Mr Crawford's response two days later was again that it was Mr Noor who should be providing the information. Ms Garcha tried again in an email of 30 November 2012 saying that it was important to point out that the Ombudsman was committed to handling service complaints fairly and impartially and in doing so considered the viewpoint and evidence of both parties when conducting an investigation and reaching a final decision. She asked Mr Crawford to ensure that the requested documents were provided by a particular date and warned that if not received by then the investigation would proceed with the possibility of making adverse inferences where supporting documentation was not provided. Mr Crawford responded promptly rejecting the suggestion that he was refusing to cooperate but maintaining his refusal to provide any further documents.

13. On 21 January 2013 Ms Garcha made a report recommending that the complaint should be dismissed on the grounds that a reasonable level of service was provided. This was provided to the parties and commented upon by Mr Noor. Ms Garcha issued a final recommendation report on 5 February 2013 maintaining her recommendation.

14. The case was then passed to the Deputy Chief Legal Ombudsman for a decision. By a letter of 5 March 2013 he issued his provisional decision ("the Provisional Decision") to the parties. Having set out some of the background to the dispute, the critical part reads as follows:

> "Mr Crawford has failed to provide a copy of his note of the meeting on 27 September saying that it is for Mr Noor to provide the evidence in support of his complaint. I would have expected Mr Crawford to have taken notes during the meeting including details of any advice provided and to follow that up in writing so there could be no confusion as to what the advice was that given (sic). Apart from anything else this is good practice and in the absence of decent file notes would have cured that deficiency (sic). In the absence of any such notes, I am unable to say with certainty what was discussed at the meeting and whether any advice was provided. However, I cannot see why, if he had a note to show that Mr Noor was provided with advice, Mr Crawford would not have provided this. I am satisfied that he has had ample opportunity to produce that evidence and in these circumstances it is reasonable to infer that Mr Noor was provided with little substantive advice. That said, I have to take account of the fact that Mr Noor left the meeting whilst Mr Crawford was out of the room. As a consequence, the meeting did not come to a

natural conclusion and Mr Crawford did not have an opportunity to provide any kind of summing up.

I am satisfied that Mr Crawford failed to provide more than limited advice on Mr Noor's potential claim and that this amounted to poor service. I consider that it is fair to work on the basis that Mr Crawford did some preparation for the meeting, albeit there was only a day or so between Mr Noor contacting him and the meeting taking place. On that basis and taking into account that the meeting ended when Mr Noor left chambers, I am satisfied that it is not appropriate for Mr Crawford to charge the full £780.

Therefore, my provisional decision is that I find that there has been poor service that does require a remedy and would direct that Mr Crawford refund Mr Noor £390 being 50% of the amount paid."

15. Following further comments received from Mr Crawford, Mr Hogarth QC, and from Mr Noor, the Ombudsman issued his final decision on 22 April 2013 ("the Final Decision"). It provided:

" …I have considered carefully the comments I have received from you, your Head of Chambers and from Mr Noor. Having done so, I have decided that my provisional view is reasonable and I will therefore adopt this as my final decision.

I set out below my final decision in this matter:

In my provisional decision I found that Mr Crawford had failed to provide more than limited advice on Mr Noor's potential claim and that this amounted to poor service. In particular my conclusion was based upon the lack of notes of Mr Crawford's meeting with Mr Noor on 27 September 2012 and upon his failure to follow up the meeting in writing so that there could be no confusion as to the advice given. I also took account of the fact that Mr Noor left the meeting before it could come to a natural conclusion as a consequence of which Mr Crawford did not have an opportunity to provide any kind of summing up.

Dealing first with the comments received from Mr Noor, he has said that he cannot see any link between the lack of advice and his premature departure from the meeting. He asserts that if he had stayed, Mr Crawford would simply have demanded more money and would not have provided any advice. I am unable to say with certainty what would have happened had the meeting continued but I am satisfied that it would not be fair or reasonable to assume that Mr Crawford would not have offered any advice.

Mr Noor suggests that he should not have to pay for Mr Crawford's preparation for the meeting and as well as a full refund should receive payment for the time and effort wasted whilst seeking advice from Mr Crawford. I am satisfied that it is reasonable to suppose that Mr Crawford did some preparation for the meeting and that it is appropriate that Mr Noor should pay for this. I do not accept Mr Noor's suggestion that he should receive payment for wasted time and effort.

Turning now to the comments raised by Mr Crawford and his Head of Chambers, he has said that pointing out to a client the reality of their position does not amount to inadequate service and does not become so because a client chooses to leave a meeting. My finding of poor service does not relate to the legal content of any advice which may or may not have been provided to Mr Noor. That would be matter for the professional judgement of Mr Crawford which it would not be appropriate for me to challenge. Rather, it relates to Mr Crawford's failure to provide more than limited advice to Mr Noor in spite of having accepted instructions to provide initial advice and discuss the case in conference and having been paid a significant amount of money to do so.

Mr Crawford has said that he would not expect to take notes during an "exploratory" conference with a lay client and would do so only once satisfied that he had understood the outline of a client's case or when giving formal advice. It was of course Mr Crawford's prerogative to decide whether or not to take notes during the meeting with Mr Noor. However it seems to me that had he done so or had at least have written notes after the meeting, there would have been evidence of what was discussed and the extent of advice provided. This would have negated the need to draw inferences from the lack of decent file notes and may even have avoided a finding or poor service.

Therefore, my final decision is that I find that there has been poor service that does require a remedy and direct that Mr Crawford refund Mr Noor £390, being 50% of the amount paid."

The Law

16. The Legal Ombudsman scheme was created by Parliament by Part 6 of the Legal Services Act 2007 ("the Act"). Section 122 requires the Chief Ombudsman to be a lay person, but permits assistant ombudsmen who have power to determine complaints to be legally qualified, as occurred in this case. Section 113(1) indicates that the purpose of the scheme is to enable complaints to "be resolved quickly and with minimum formality by an independent person". Section 137(1) provides that a complaint is to be determined "by reference to what is, in the opinion of the ombudsman making the determination, fair and reasonable in all the circumstances of the case".

17. In the Scheme Rules made pursuant to s.133 of the Act, Rule 5.17 provides that the Ombudsman will try to resolve complaints at the earliest possible stage by whatever means considered appropriate, including informal resolution.

18. Rule 5.24 provides amongst other things that the Ombudsman may include/exclude evidence which would be inadmissible/admissible in court; make a determination on the basis of what has been supplied; and draw inferences from any party's failure to provide information requested.

19. Rule 5.37 provides:

> "In determining what is fair and reasonable, the ombudsman will take into account (but is not bound by):
>
> (a) what decision a court might take;
>
> (b) the relevant Approved Regulator's Rules of Conduct at the time of the act/omission; and
>
> (c) what the ombudsman considers to have been good practice at the time of the act/omission."

20. These provisions illustrate two important aspects of the scheme:

(1) It is intended to resolve complaints swiftly and informally. In order to achieve this, the Ombudsman will often have to do the best he can on limited material and without hearing detailed evidence. To assist in these objectives, he can rely on evidence which would not be admissible in court, and may draw adverse inferences from failure to provide information or documents.

(2) In resolving complaints by reference to the statutory criterion of what is fair and reasonable in the circumstances, the Ombudsman is afforded a considerable latitude of discretion. The test is what "in his opinion" is fair and reasonable. He is not bound by the Approved Regulator's code of conduct, although he must take account of it. He may apply his own standards of what he considers to have been good practice at the time.

21. In exercising powers of review, this court does not put itself in the position of the Ombudsman and test the reasonableness of the decision against the decision the Court would make. It does not review the merits of the decision as if it were exercising the statutory powers itself. To do so would be to subvert the intention of Parliament in vesting the Ombudsman with the function of administering the scheme. His decision may only be overturned as unreasonable if it is unreasonable in the *Wednesbury* sense (***Associated Provincial Picture House Ltd v Wednesbury Corporation*** [1948] 1 KB 223). There are a number of different formulations of this well-known and oft-applied test. A common modern formulation is that the decision must be outside the range of reasonable responses open to the decision maker (see e.g. ***Boddington v British Transport Police*** [1992] 2 AC 143 at 175H per Ld Steyn). This is a high threshold, particularly in the context of a scheme intended to resolve complaints swiftly and informally in which the decision maker is afforded a wide discretion to do what he thinks is fair

and reasonable in all the circumstances. One way in which a decision may pass the threshold is if it is irrational in the proper sense of the word, that is to say if its reasoning is not logically capable of supporting the conclusion (see e.g. ***R v Parliamentary Commissioner for Administration, ex parte Balchin*** [1998] 1 PLR 1, 13E-F per Sedley J and ***R (Norwich and Peterborough Building Society) v Financial Ombudsman Service Ltd*** [2002] EWHC 2379 (Admin) at [59] per Ouseley J).

Analysis

22. Mr Speaight QC submitted that the following facts were not in dispute on the material before the Ombudsman.

    (1) The engagement was expressly recorded in the client care letter as being for "an initial advice", and was to be given in conference i.e. orally.

    (2) The engagement, again reflected in the client care letter, involved Mr Noor bringing documents to the conference which Mr Crawford had no opportunity to consider in advance.

    (3) Mr Noor presented himself as a law graduate. Mr Speaight QC submitted that this justified Mr Crawford in assuming that Mr Noor would appreciate the limitations involved in giving initial advice orally at a conference without prior sight of all the material documents.

    (4) The conference lasted about one and a half to two hours, during which there must have been considerable discussion of Mr Noor's case.

    (5) Mr Crawford said that he would need to read the documents in order to advise fully. This submission did not accurately characterise what was common ground. Mr Noor's account was that the purpose which Mr Crawford gave for his having to read the documents was to prepare a witness statement.

    (6) Mr Noor left prematurely. Mr Speaight QC submitted that he thereby deprived himself of the advice which can be expected to come by way of summary and orally at the end of an initial advice given in conference.

    (7) Mr Noor took with him all the papers apart from Mr Crawford's notebook i.e. all the copies of the emails and other documents provided prior to the conference which Mr Crawford had printed out and worked on, as well as the file of documents Mr Noor brought to the conference.

    (8) Mr Crawford's advice was subsequently confirmed in writing in that in his correspondence he confirmed that he had advised that the unfair dismissal claim would have to be abandoned, that a negotiated solution was desirable and that he would have to read the documents brought to the conference before he could give more definitive advice.

23. Ms Broadfoot added to these what she submitted were the following undisputed facts:

(1) Mr Noor had paid in advance for the advice;

(2) Mr Noor's complaint was that he had received no advice on the matter he had come to be advised about, namely disability discrimination. Ms Broadfoot submitted that this was a negative which Mr Noor could not substantiate by proof, whereas it could be controverted, if untrue, by Mr Crawford explaining what advice he had given and providing supporting evidence in the way of notes.

(3) Mr Crawford never engaged with the Ombudsman process for that purpose. He refused to provide any documents. He never said whether or not he did in fact have any notes evidencing advice given. Ms Broadfoot submitted that save for his assertion that he advised on unfair dismissal and needed time to give further advice, he did not assert that he had given any advice; and that in particular he did not assert that he had given any advice in relation to the disability discrimination claim. This was not, however, an accurate characterisation of the undisputed facts, as I explain below.

24. The Provisional Decision and Final Decision fall to be read together, not least because the latter adopts the former. At the heart of the challenge to the Final Decision was the submission that the Ombudsman's process of reasoning was in three stages: first that Mr Crawford had not provided any note of the conference or advice thereafter which evidenced what advice was given; secondly, that the inference to be drawn from that failure was that he had provided only limited advice; thirdly that the provision of only limited advice constituted poor service for which Mr Crawford should be deprived of half the fee. Mr Speaight QC submitted that the second stage was illogical and irrational: a barrister in Mr Crawford's position would not be expected to have a note of the advice given orally in conference (a) because if he took a note it would record what he was being told, not what he was saying and (b) because such notes as would be taken would be for the barrister's use and benefit, not for the use and benefit of the client; a failure to provide the Ombudsmen with a note of the advice allegedly given cannot support an inference as to whether any and if so what advice was given; there may have been no note, or the note may have been so slight that Mr Crawford was embarrassed to produce it.

25. Decisions of the Legal Ombudsman are to be read with a degree of benevolence (see ***R (Siborurema) v Office for the Independent Adjudicator*** [2007] EWCA Civ 1365, [2008] ELR 209 at [79]) and should not be construed as if they were statutes or judgments, nor subjected to pedantic exegesis (see ***Osmani v Camden LBC*** [2005] HLR 325 at [38(9)] per Auld LJ). Nevertheless I find it impossible to read the Final Decision in any other way than as adopting this illogical process of reasoning as the sole basis for its conclusion. The illogicality is pointed up in the wording of the passage whose sentences I have numbered for ease of exposition:

(1) Mr Crawford has said that he would not expect to take notes during an "exploratory" conference with a lay client and would do so only once satisfied that he had understood the outline of a client's case or when giving formal advice. (2) It was of course Mr Crawford's prerogative to decide whether or not to take notes during the meeting with Mr Noor. (3) However it seems to me that had he done so or had at least have written notes after the meeting,

there would have been evidence of what was discussed and the extent of advice provided. (4) This would have negated the need to draw inferences from the lack of decent file notes and may even have avoided a finding or poor service.

26. Sentence (4) confirms that an adverse inference has been drawn from the absence of a note, as is also apparent from the terms of the Provisional Decision. Yet sentence (2) recognises that Mr Crawford was entitled not to have made a note, and sentences (2) and (3) recognise that he may not have done so, which was what Mr Crawford was saying was the position for the reasons summarised in sentence (1). If, as the Ombudsman recognised as at least a possibility, Mr Crawford did not make a note, no inference can logically be drawn as to what it would have revealed if taken, or as to the substance of what occurred at the conference. No inference can logically be drawn as to the extent of the advice given by Mr Crawford from his failure to supply a note to the Ombudsman if there was no note taken. Yet the failure to provide the Ombudsman with a note is the only ground identified for concluding that the advice given was "limited" and the service poor.

27. Miss Broadfoot submitted that the Decision can be supported on the basis that Mr Crawford had not asserted that he had given the disability discrimination advice which was at least in part the advice which he had agreed to provide; and in those circumstances the Ombudsman was entitled to conclude, doing the best he could to achieve a swift and informal decision on the material he had, that Mr Noor's account was to be preferred and that the advice covered by the client care letter had only been provided to a limited extent.

28. There are three difficulties with this submission. The first is that even on the most benevolent reading it is not the process of reasoning which was adopted by the Ombudsman, as the terms of the Provisional and Final Decisions make clear. The second is that the Decisions do not identify what advice was given and what advice was not given which ought to have been given. They do not explain in what respect the advice given was "limited" or what is meant in saying that there was "little substantive advice". There is no indication of what advice the Ombudsman concluded had been given, by comparison with what advice he concluded ought to have been given, which was an essential step in deciding whether it was fair and reasonable to deprive Mr Crawford of half his fee for deficiencies in the scope of that advice. Thirdly, and contrary to Ms Broadfoot's submission, the material before the Ombudsman did include an assertion by Mr Crawford of advice he had given in relation to disability discrimination. The submissions made to the Ombudsman on behalf of Mr Crawford following the Provisional Decision were in the form of an email of 7 March 2013 from Mr Hogarth QC addressed to Ms Garcha and a letter dated 18 March 2013 from Mr Crawford which adopted it "in its entirety". Mr Hogarth QC's 7 March email first made a reference back to his email of 5 November 2012 in which he had said:

> "Was the demotion, which was substituted for dismissal on appeal motivated by your disability complaints or connected with them in some way? It seems to me to be profoundly unlikely that it was given that….the case that your actions amounted to misconduct was very strong and that the penalty against you was reduced on appeal.

> Mr Crawford was quite correct to focus on the unfair dismissal claim. What, I think, he was pointing out to you, is that if the employer has good reason to discipline you and strong evidence to support his bringing of disciplinary action but imposes a mild penalty, it is unlikely in the extreme that he was acting from ulterior motives. Whether or not you are now disabled, and without seeing the medical evidence I can not form a view on this, the disability which you have is not connected with your demotion.
>
> Mr Crawford appears to have told you this and it was obviously not the advice you wished to hear; …"

The 7 March email included the following passage:

> "It seems clear that Mr Crawford pointed out to him that if an employer has overwhelming evidence of misconduct, if the misconduct is serious, and if all he does is demote the employee there is very little prospect of showing that he has been victimised because he is disabled or has brought previous proceedings.
>
> Mr Noor did not like being confronted with reality and whilst Mr Crawford was not in the room collected his files and left."

Conclusion

29. The decision of the Ombudsman is irrational and must be quashed. The matter will be remitted for further consideration in the light of this judgment.