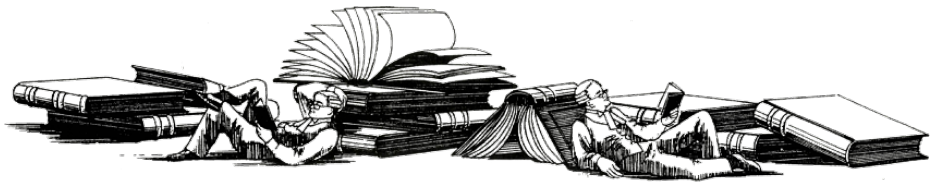

NOTES ON THE STYLE OF THE LAW

The Style of Simler

by

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style analysis judges UKSC appointments judicial style judgments individual style The Rt Hon Dame Ingrid Simler DBE close readings

With the recent announcemnt that the Rt Hon. Dame Ingrid Simler DBE will be joining the UKSC, the time has come to consider the style of our new Supreme. What kind of a writer is Her Ladyship?

Dame Ingrid tends to a terse, clear style, moving from point to point in consecutive shorter sentences rather than in longer or more circuitous routes. Here, for instance, is a typical opening paragraph:

> [1] The Appellant, whom I shall refer to as the Claimant for ease of reference, is a practising Roman Catholic from Sardinia in Italy. He lives in the UK with his wife and family, but each August he and his two brothers return to the area of Sardinia where their mother continues to live in order to be together and to attend religious festivals. He commenced employment with the Respondent on 2 July 1990 and remains employed as a Quality Engineer. He is entitled to 38 days' holiday per year (including Bank Holidays) and between 2009 and 2013 the Respondent permitted him to take five consecutive weeks of annual leave in the summer during which he returned to Sardinia. In March 2013 a new manager, Mr Cross, told him that for the next year he would not be permitted to take five weeks' continuous leave and that it was unlikely that he would be granted more than 15 continuous working days of leave during the summer school holiday period. Although in fact ultimately pre-existing arrangements he had made for a five-week

> holiday in 2014 were honoured his application for annual leave of five weeks in 2015, from 27 July to 2 September, was refused by the Respondent.[1]

However, this is only a general rule. Dame Ingrid is not averse to the odd long sentence where it is appropriate to explain some complex principle. This is good style—one must be flexible a s to the needs of one's content, in order to honour one's text. For instance:

> Where a public body brings enforcement action against a person in a court or tribunal (including a court or tribunal whose only jurisdiction is statutory) the promotion of the rule of law and fairness means, in general, that person may defend themselves by challenging the validity of the enforcement decision or some antecedent decision on public law grounds, save where the scope for challenging alleged unlawful conduct has been circumscribed by the relevant statutory scheme, which excludes such a challenge. The question accordingly is whether the statutory scheme in question excludes the ability to raise a public law defence in civil (or criminal) proceedings that are dependent on the validity of an underlying administrative act.[2]

Meanwhile, where other judges might go for stirring rhetoric, Dame Ingrid has a tendency to stick to the issue at hand. Thus, while liberty of the subject often triggers judges to wax rhapsodically on the subject of ancient rights, Dame Ingrid can simply take it in stride:

> Given that the liberty of the subject is at stake, there is an implied public law duty on the Minister to act with due diligence and expedition in making such a decision within a reasonable time and a similar implied public law duty on the Governor-General to act with due diligence and expedition in deciding within a reasonable time whether to authorise detention.[3]

This can also be seen with regards to Her Ladyship's defence of open justice—clear and to the point, without ornament:

> While settlements are to be encouraged, the public interest in parties settling their disputes does not outweigh the fundamental principle of open justice.[4]

1 *Gareddu v London Underground Ltd* [2017] IRLR 404, para 1, EAT, *per* Simler P (as she then was)
2 *Beadle v HMRC* [2020] WLR 3028, para 44, CA *per* Simler LJ
3 *Ngumi v Attorney General* [2023] UKPC 12, para 37, Bah *per* Dame Ingrid Simler DBE
4 *Fallows v News Group Newspapers Ltd* [2016] IRLR 827, para 26, EAT *per* Simler P (as she then was)

This is to some extend commendable—judges can fall too in love with their own allusions to Runnymede (the Lord Denning comes to mind). Good sweeping rhetoric can be the most moving and powerful legal writing, but bad sweeping rhetoric is the worst legal writing and much more common. Dame Ingrid's approach avoids any risk of this trap. Even when expounding on principles of publci policy, Dame Ingrid keeps things down to earth, without resorting to grand abstract theory:

> However, no general policy or practice has been identified or established by the Claimants to the effect that persons whose removal from the UK cannot be enforced, should, for this reason alone, be granted leave. It is not difficult to see why this should be the case. A policy entitling a person to leave to remain merely because no current enforced removal is possible, would undermine UK immigration law and policy, and would create perverse incentives to obstruct removal, rewarding those who fail to comply with their obligations as compared to those who ensure such compliance. Moreover, in the same way as immigration law and policy may change, so too the practical situation in relation to enforcing removal may change or fluctuate over time so that any current difficulties cannot be regarded as perpetual.[5]

This same quality of clarity gives rise to very citable *dicta* that pops up across the case law. The following *dicta* of Dame Ingrid were all cited in various cases in recent years:

> 'The scope for abuse by an employer of a garden leave provision is well recognised[…]'[6]
>
> 'The words "provision, criterion or practice" are not terms of art, but are ordinary English words.'[7]
>
> '[T]he burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.'[8]

5 R (Hamzeh) v SSHD [2013] EWHC 4113, para 50, Admin *per* Simler J (as she then was)

6 *Finn v Holliday* [2014] IRLR 102, para 57, QBD *per* Simler J (as she the was), quoted as being cited by claimant's counsel in *Faieta v ICAP Management Services Ltd* [2017] EWHC 2995, para 30, QBD *per* Moulder J

7 *Isĥola v TfL* [2020] IRLR 368, para 35, CA *per* Simler LJ, quoted in *Hugĥes v Progressive Support Ltd*, para 32, EAT *per* Eady J (13 May 2023, unreported)

8 *International Petroleum Ltd v Osipov*, para 115, EAT *per* Simpler P (19 July 2017, unreported) quoted as being in the judgment below in *Oxford Saïd Business Schoo*l *v Heslop*, para 79, EAT *per* Griffiths J (11 Nov 2021, unreported)

> '[T]o ask whether a person with the same unmanageable conduct would have been dismissed in the circumstances suggested involves a meaningless comparison that produces the wrong answer. Rather, the focus should have been on the reason for the treatment bearing in mind that there may be more than one.'[9]

This short look is only a peek at Her Ladyship's style, which may grow and develop in the quite distinct position of being a Justice of our apex court. Good style, after all, changes with context. However, speaking generally, this tour suggests we can expect clarity, brevity, plenty of quotable *dicta*, style, which is kept focus more on topical matters than wandering off to allusions or grand statements of personality or principle. This is a style which will never reach the heavens of the greatest ever judgments, but will perhaps deliver more consistent quality, since it can more reliably be called upon in any given case.

9 *General Municipal & Boilermakers Union v Henderson*, para 70, EAT *per* Simler J (13 March 2015, unreported) quoted in *McNicholl v Bank of Ireland*, para 4.7, NIIT *per* Emp. Judge Drennan KC (22 July 2021, unreported)

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