Neutral Citation Number: [2023] EWHC 3213 (Admin)

Case No: CO/3104/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/12/2023

Before :

LORD JUSTICE WARBY
and
MRS JUSTICE MCGOWAN

- -

Between :

THE COMMISSIONER OF POLICE OF THE METROPOLIS	**Appellant**
- and -	
IDREESS MALIK	**Respondent**
-and-	
EALING MAGISTRATES' COURT	**Interested Party**

- -
- -

Russell Fortt and Conor Monighan (instructed by **The Directorate of Legal Services at the Metropolitan Police**) for the **Appellant**
Malik Aldeiri (instructed by **JD Spicer Zeb Solicitors**) for the **Respondent**

Hearing date: 18 October 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 14 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE WARBY and MRS JUSTICE McGOWAN:

1. This is an appeal by the Commissioner of Police for the Metropolis from the decision of Ealing Magistrates' Court to make a costs order against the Commissioner and in favour of the respondent, Idreess Malik, in the sum of £17,487 plus VAT. The case stated poses two questions for our decision:

   (1) Having regard to the test contained within *R (Perinpanathan) v City of Westminster Magistrates Court* [[2010] EWCA Civ 40, [2010] 1 WLR 1508] were [the magistrates] entitled to award costs based on the findings that [they] made?

   (2) Was the amount of costs awarded just and reasonable for the reasons [the magistrates] gave and on the facts [they] found?

2. By the end of the hearing it had been realistically conceded on behalf of the respondent that the amount awarded was not just and reasonable, but excessive and unwarranted. The respondent's liability to his legal representatives had been capped by agreement at £7,400 inclusive of VAT. No order for costs in excess of that sum could lawfully have been made, having regard to the indemnity principle. It follows that the answer to the second question is no. We shall need to explore and comment upon how the magistrates came to make an order in the sum we have mentioned. But that aspect of the case is not decisive of the outcome of this appeal. That is because, for the reasons we shall explain, the answer to the first question is also no. The magistrates failed properly to apply the principles identified in the *Perinpanathan* case. A proper application of those principles in the circumstances of this case leads inevitably to the conclusion that there should have been no order as to costs.

The facts

3. The order was made in proceedings under the Stalking Protection Act 2019. The Act gives magistrates' courts power to make "stalking protection orders" (SPO's). Section 1 of the Act provides that a chief officer of police may apply to a Magistrates Court for an SPO in respect of a person:

   > "if it appears to the chief officer that (a) the defendant has carried out acts associated with stalking, (b) the defendant poses a risk associated with stalking to another person, and (c) there is reasonable cause to believe the proposed order is necessary to protect another person from such a risk..."

4. The essential chronology as set out in the Case Stated is this:

   (1) On 26 October 2021, the Commissioner filed a complaint seeking both interim and final SPO's in respect of the respondent.

   (2) The complaint alleged that the respondent had stalked a work colleague from May 2019 until the complaint was laid. The behaviour alleged included making withheld number calls to her mobile, making heavy breathing calls from a withheld number, sending her boyfriend images which had her face superimposed upon a naked body, placing condoms in her car and watching her in his car or following her.

(3) The complainant contacted the police about withheld calls in October 2019. The respondent was given a verbal warning by the police in November 2019. The behaviour continued and the respondent was arrested on 12 October 2021. In November 2021 the police decided to take no further action in relation to the criminal investigation.

(4) The complaint was first listed for a hearing at Uxbridge Magistrates' Court on 9 November 2021, when an interim SPO was made, and the case was adjourned. At the final contested hearing on 23 February 2022 the application for a final SPO was refused. The respondent applied through his solicitors for costs against the Commissioner. The application was adjourned.

(5) The application was heard on 6 May 2022 when the bench was satisfied that an order for costs should be made and, having considered what it was just and reasonable to award, made an order in the sum we have mentioned.

The law

5. Costs in proceedings of this kind are governed by s 64(1) of the Magistrates' Courts Act 1980 which provides that:

> "On the hearing of a complaint, a magistrates' court shall have power in its discretion to make such order as to costs … as it thinks just and reasonable …"

6. Guidance on the exercise of this discretion is to be found in a number of authorities. *City of Bradford Metropolitan District Council v Booth* [2000] 164 JP 485 ("the *Bradford* case") was an appeal by case stated against a decision on costs made by magistrates in proceedings challenging a vehicle licensing decision of a local authority. At [22] Lord Bingham CJ, with whose judgment Silber J agreed, held that the justices had misdirected themselves by relying on a principle that costs should follow the event. At [23] Lord Bingham summarised "the proper approach to questions of this kind" in three propositions:

> "(1) Section 64(1) confers upon a magistrates' court to make such order as to costs as it thinks just and reasonable. That provision applies both to the quantum of the costs (if any) to be paid, but also as to the party (if any) which should pay them.
>
> (2) What the court will think just and reasonable will depend on all the relevant facts and circumstances of the case before the court. The court may think it just and reasonable that costs should follow the event, but need not think so in all cases covered by the subsection.
>
> (3) Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to

> the particular complainant in the particular circumstances if an order for costs is not made in his favour; and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged."

7. *R (Cambridge City Council) v Alex Nestling Ltd* [2006] EWHC 1374 (Admin) was another Divisional Court decision about the costs of an appeal against a local authority licensing decision, this time an application by a pub landlord for an extension of the hours for providing alcohol and live music. At [11] Toulson J, with whom David Richards LJ agreed, observed that the guidance in the *Bradford* case is applicable in cases of that kind, where there is a statutory appeal from a decision of a local authority and the court has a broad discretion as to costs. He went on to say that although the court's power to award costs in such circumstances is not as a matter of strict law confined to cases where the local authority acted unreasonably and in bad faith "the fact that the local authority has acted reasonably and in good faith in the discharge of its public function is plainly a most important factor." At [12] Toulson J commented that:

> "When Lord Bingham referred to the need to consider the financial prejudice to the particular complainant in the particular circumstances he was not … implying that an award for costs should routinely follow in favour of a successful applicant; quite to the contrary."

8. In *Baxendale-Walker v Law Society* [2007] EWCA Civ 233, [2008] 1 WLR 426 the Court of Appeal upheld a decision of the Divisional Court that in making a costs order against the Law Society in disciplinary proceedings brought by the society against a solicitor the Solicitors Disciplinary Tribunal had erred in the exercise of the wide costs discretion conferred upon it by 47(2) of the Solicitors Act 1974. The Court approved the following summary of the correct approach, based on the *Bradford* case and other authorities:

> "Absent dishonesty or a lack of good faith, a costs order should not be made against such a regulator unless there is good reason to do so. That reason must be more than that the other party had succeeded. In considering an award of costs against a public regulator the court must consider on the one hand the financial prejudice to the particular complainant, weighed against the need to encourage public bodies to exercise their public function of making reasonable and sound decisions without fear of exposure to undue financial prejudice, if the decision is successfully challenged."

Key reasons for this conclusion were that the Law Society was exercising regulatory functions in the public interest and cases would not come before the Tribunal unless they were brought by the society. As the court put it at [38], "For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage."

9. The most recent decision in this line of authority is *Perinpanathan*. That case was concerned with a costs decision made in proceedings upon a complaint brought unsuccessfully by the Commissioner for the Metropolitan Police. The Commissioner applied to the Westminster magistrates under the Proceeds of Crime Act 2002 ("POCA") for the forfeiture of £150,000 in cash which the claimant's daughter had brought into the country. The magistrates accepted the claimant's contention that the cash was hers and that she had a lawful purpose for possessing it. They applied the factors identified by Lord Bingham in the *Bradford* case and refused an application for costs on the footing that the police at all times had reasonable grounds for their suspicion that the cash had been intended for use in unlawful conduct. The Divisional Court dismissed an application for judicial review. Goldring LJ said this:

> "29. I accept that there is a difference between administrative decisions such as those referred to in the *Bradford* case and the present case. The distinction is limited, however. In one case a police officer (at possible risk to someone's livelihood) is saying that the person will not have an on-licence, for example. In the other, he is saying the person will not have his (or in this case her) money returned. In taking both decisions, it is crucial that the police act honestly, reasonably, properly, and on grounds that reasonably appear to be sound. In both cases there is a need to make and stand by honest, reasonable and apparently sound decisions in the public interest without fear of exposure to undue financial prejudice, in one case if the decision is successfully challenged, in the other if the application fails. There is a real public interest that the police seek an order for forfeiture if they consider that on the evidence it is more probable than not that the money was intended for an unlawful purpose. It would be quite contrary to the public interest if, due to fear of financial consequences, it was decided not to seek its forfeiture, but simply return the money. The public duty requires the police to make an application in such circumstances.
>
> 30. In short, I have come to the conclusion that while the police's obligation is not on all fours to that which they have in licensing or firearms cases, those situations are sufficiently analogous to suggest that a similar approach should be followed. The rationale lying behind cases such as the *Bradford* case, in other words, applies equally to cases such as the present."

10. The Court of Appeal dismissed an appeal against that decision. After a thorough review of the authorities the court agreed that the approach identified in the *Bradford* case and applied in *Baxendale-Walker* was equally applicable in this different context. Stanley Burnton LJ and Lord Neuberger MR gave substantive judgments, with each of which Maurice Kay LJ agreed. At [40] Stanley Burnton LJ drew the following relevant propositions from the authorities:

> "(1) As a result of … *Baxendale-Walker* … the principle in the *Bradford* case … is binding on this court … Quite apart from authority, however, for the reasons given by Lord Bingham CJ I would respectfully endorse its application in licensing

> proceedings in the magistrates' court and the Crown Court. (2) For the same reasons, the principle is applicable to disciplinary proceedings before tribunals at first instance brought by public authorities acting in the public interest: see *Baxendale-Walker* …. (3) Whether the principle should be applied in other contexts will depend on the substantive legislative framework and the applicable procedural provisions. (4) The principle does not apply in proceedings to which the CPR apply. (5) Where the principle applies, and the party opposing the order sought by the public authority has been successful, in relation to costs the starting point and default position is that no order should be made. (6) A successful private party to proceedings to which the principle applies may none the less be awarded all or part of his costs if the conduct of the public authority in question justifies it. (7) Other facts relevant to the exercise of the discretion conferred by the applicable procedural rules may also justify an order for costs. It would not be sensible to try exhaustively to define such matters, and I do not propose to do so."

11. At [41] Stanley Burnton LJ held that in cases to which the principle in the *Bradford* case applies it is "clear that the financial prejudice necessarily involved in litigation would not normally justify an order". He approved what Toulson J had said on that issue in the *Cambridge City Council* case at [12]. At [43]-[45] Stanley Burnton LJ explained why the principle extended to the circumstances of the case before the court. The application of the principle was consistent with the applicable costs provision, namely s 64 of the 1980 Act; the circumstances were such that "the police, acting responsibly, effectively had no choice but to institute these [forfeiture] proceedings … they should not have been deterred … by concerns as to their liability for the costs of the claimant" and there was "nothing in [POCA] to indicate that the principle in the *Bradford* case … should be inapplicable". He agreed with the passages we have cited from the Divisional Court's decision.

12. At [75]-[76] Lord Neuberger held that the effect of the authorities was "encapsulated in Lord Bingham CJ's principles" which were well founded. He went on:-

> "76…. In a case where regulatory or disciplinary bodies, or the police, carrying out regulatory functions, have acted reasonably in opposing the grant of relief, or in pursuing a claim, it seems appropriate that there should not be a presumption that they should pay the other party's costs.
>
> …
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> 77. The effect of our decision is that a person in the position of the claimant, who has done nothing wrong, may normally not be able to recover the costs of vindicating her rights against the police in proceedings under section 298 of the 2002 Act, where the police have behaved reasonably. In my view, this means that magistrates should exercise particular care when considering whether the police have acted reasonably in a case where there is an application for costs against them under section 64. It would be wrong to invoke the wisdom of hindsight or to set too exacting

> a standard, but, particularly given the understandable resentment felt by a person in the position of the claimant if no order for costs is made, and the general standards of behaviour that can properly be expected from the police, it must be right to scrutinise their behaviour in relation to the seizure, the detention, and the confiscation proceedings, with some care when deciding whether they acted reasonably and properly."

13. This is how the authorities stood at the time of the proceedings in the Ealing Magistrates' Court. Since then, in *Competition and Markets Authority v Flynn Pharma* [2022] UKSC 14, the Supreme Court has affirmed the validity of the principle applied in the cases we have cited whilst emphasising its limits. As Lady Rose stated at [97] (with the agreement of the other members of the court):

> "… there is no generally applicable principle that all public bodies should enjoy a protected status as parties to litigation where they lose a case which they have brought or defended in the exercise of their functions in the public interest. The principle supported by the *Booth* line of cases is, rather, that where a public body is unsuccessful in proceedings, an important factor that a court or tribunal exercising an apparently unfettered discretion should take into account is the risk that there will be a chilling effect on the conduct of the public body, if costs orders are routinely made against it in those kinds of proceedings, even where the body has acted reasonably in bringing or defending the application. This does not mean that a court has to consider the point afresh each time it exercises its discretion in, for example, a case where a local authority loses a licensing appeal or every time the magistrates dismiss an application brought by the police. The assessment that, in the kinds of proceedings dealt with directly in *Booth, Baxendale-Walker* and *Perinpanathan*, there is a general risk of a chilling effect clearly applies to the kinds of proceedings in which those cases were decided and to analogous proceedings."

14. As Lady Rose explained at [98], the Supreme Court departed from the decision and reasoning of the Court of Appeal in *Flynn Pharma* because it involved an illegitimate jump

> "… from a conclusion that in some circumstances the potential chilling effect on the public body indicates that a no order as to costs starting point is appropriate, to a principle that in every situation and for every public body it must be assumed that there might be such a chilling effect …"

The costs application in this case

15. Mr Fortt for the Commissioner told us - and it has not been disputed - that the reason why the costs application was adjourned on 23 February 2022 was that the respondent's legal representatives had not served a statement of costs. Such a statement was served on 26 April 2022. It was in form N260 entitled "Statement of Costs (Summary

Assessment) CPR PD44 para 9.5". As far as we can determine that was not required by any order. And these were not proceedings governed by the Civil Procedure Rules. It was however a convenient format to adopt.

16. The statement identified the grand total claimed as £32,161.92. This included £12,845 for work done on documents, which was itemised in a numbered Schedule. There was also a further charge of about the same again for other work, some minimal travel costs, and VAT in the sum of £5,360.32. The statement was signed by Mr Zeb of the respondent's solicitors over the standard printed wording of form N260:

> "The costs stated above do not exceed the costs which the (party) is liable to pay in respect of the work which this statement covers Counsel's fees and other expenses have been incurred in the amounts stated above and will be paid to the persons stated."

But an asterisk added to this standard rubric took the reader to a rider stating that "The fixed fee agreed with our client for all work is £7,400 INCL. VAT".

17. The costs hearing on 6 May 2022 was before an entirely different bench from that which had heard the original complaint ("the new bench"). What happened at the hearing is set out in the Case Stated in this way:

> "We had not heard the application for the stalking protection order. We did not read the justices reasons for refusing the original application for a Stalking Protection Order. The legal adviser advised us that we should not consider the evidence adduced before the earlier bench lest the costs hearing be turned into a review of the merits of the substantive decision. This advice was accepted."

The new bench does seem to have been told something about the reasons why the SPO had been refused by the earlier bench. The Case Stated records that the order was refused "as the justices were not satisfied that the defendant had committed the acts alleged or that some of the acts amounted to stalking." But that is all.

18. A skeleton argument submitted on behalf of the Commissioner identified *Perinpanathan* as the leading authority in relation to "unsuccessful applications by public authorities". The case was relied on for the propositions that (i) the court should start from the presumption that no order for costs should be made (ii) the financial prejudice necessarily or normally involved in litigation would not generally justify an order for costs and something over and above that has to be shown; and (iii) in deciding whether the public authority acted reasonably and properly it would be wrong to invoke the wisdom of hindsight or to set too exacting a standard; but, particularly given the understandable resentment that would be felt by the successful party if no order for costs was to be made, the behaviour of the public authority should be scrutinised with care. The skeleton argument went on to quote the third of Lord Bingham's propositions in the *Bradford* case. It was submitted that no order for costs should be made: in bringing the proceedings the Commissioner had made honest, reasonable, proper and apparently sound decisions in the public interest and the respondent had not suffered any such financial prejudice as would justify an order for costs. Alternatively, it was said that the amount sought was not just and reasonable. Reliance was placed on the

respondent's failure to provide timely information about his costs, the ambiguity of the statement that was ultimately served, and contentions that insufficient evidence had been provided and some of the items in the Schedule did not relate to work done on documents.

19. The respondent's submissions, as summarised in the Case Stated, were these:-

    a. The respondent had been investigated by the police and no further action was taken in the criminal investigation. The application for costs was well founded as, at the final hearing, the justices found no evidence to substantiate the allegations.

    b. The respondent had paid £7,400 to his solicitors, having been suspended from his work.

    c. The costs applied for were just and reasonable. They related to the preparation of the respondent's defence. They were fair and proportionate, as there had been a number of hearings in the case.

20. The Case Stated sets out the new bench's reasons for making its order as to costs:

> "We were of the opinion that in considering whether the police acted in a just and reasonable way in pursuing this application, we should have regard to the fact that there had been a number of discussions between the respondent's solicitor and the officer in the case regarding the strength of evidence prior to the final hearing. We also had regard to the financial prejudice and the impact upon the respondent as well as the need to encourage public authorities to make sound decisions in the public interest. We considered Mr Malik's suspension from his employment and the fact he had paid £7,400 in legal costs because of the potential impact that an order being made would have had upon his livelihood. We were satisfied that an order for costs should be made. In terms of the amount to order we considered what was just and reasonable to award. Having considered the schedule of costs we determined that the order should be made in the sum of £17,487 plus VAT, having disallowed the items listed at 2, 9, 10, 11, 12, 13, 14 and 17 of the schedule."

Discussion

21. The principles identified in the *Bradford* case have not previously been held to apply to a case of the present kind. In our judgment, however, the Commissioner was correct to submit that they do apply. That is not because the role of the police in making an application for an SPO is akin to the administrative function of licensing with which the *Bradford* and *Cambridge* cases were concerned. Nor is there any very precise analogy to be drawn between the application in this case and the pursuit of an application under POCA of the kind considered in *Perinpanathan,* though the two are more closely comparable. The reason for extending the *Bradford* approach to this case is the one identified in *Perinpanathan*: the underlying rationale applies equally. We would identify that rationale as the important public interest in ensuring that public authorities are not deterred from discharging the functions conferred upon them for fear

that they will be at risk of a substantial costs order even if they act in good faith, reasonably and properly. That is a longer way of describing the "potential chilling effect" referred to by Lady Rose in *Flynn Pharma.*

22. We bear in mind that police forces have to make decisions about the allocation of resources. That does not of itself distinguish them from many other public bodies. But police functions are of special importance to the physical and in some cases psychological wellbeing of the population. And some of those functions involve the protection of vulnerable groups or individuals who are likely to be ill-equipped to take action on their own behalf. The functions conferred on the police by the Stalking Protection Act fall into that category. The long title of the Act states the obvious: it was enacted "to protect persons from risks associated with stalking". The Explanatory Notes provide further context. They explain that the SPO is "a new order" available on application by the police to a magistrates court which is "designed for use particularly in cases where existing interventions are not always applicable" namely cases of "stranger stalking" (when the stalking occurs outside a domestic abuse context or the perpetrator is not a current or former intimate partner of the victim; cases where the criminal threshold has not, or has not yet, been met or the victim does not support a prosecution. Paragraph 4 of the Notes states that "the intention of this Act is to provide the police with an additional tool with which to protect victims of stalking and to fill a gap within the existing protective order regime."

23. The policy considerations leading to the implementation of the Act are summarised in the introductory paragraph on "Policy Background" in the Notes: "the need for earlier intervention in stalking cases, in order to protect victims and to address emerging patterns of behaviour in perpetrators before they become entrenched or escalate in severity". The allegations in this case were troubling and escalating in severity. Applications for protective orders of this kind fall outside the ordinary run of legal proceedings brought by the police. In the ordinary way, the police are not exposed to the risk of costs orders. It is not difficult to see that such exposure would be liable to have a chilling effect on the willingness of the police to make such applications

24. We also note that the *Bradford* principles have been deemed applicable by judges of the Administrative Court in other cases more closely analogous to those of the present case: see *Manchester City Council v Manchester Magistrates' Court* [2009] EWHC 1866 (Admin) [19] (Burton J) and *Chief Constable of Warwickshire v MT* [2015 EWHC 2303 (Admin) [21] (Hickinbottom J). In the first case the Council had withdrawn an application for an Anti-Social Behaviour Order. In the second the Chief Constable had withdrawn an application for a Sexual Offences Protection Order.

25. The Commissioner's skeleton argument for the costs hearing summarised the proper legal approach to the costs application in a fashion that was fair and accurate and consistent with the authorities cited. The Commissioner's legal submissions on that point do not appear to have been disputed by counsel for the respondent. Nor have they been disputed in this court. Whether the magistrates accepted them as an accurate summary of the approach they should adopt is rather less clear. Their reasons do not expressly say so. We are inclined to think however that the magistrates did intend to apply that approach and believed that they were doing so. But we are in no doubt that they erred in several respects.

26. First, the magistrates' starting point was wrong in law. The new bench began by asking itself whether the police had acted "in a just and reasonable way". That is not the starting point identified in the authorities. It is not the test which the Commissioner had identified in the skeleton argument, although the magistrates appear to have thought it was. Nor is this an entirely accurate statement of the criterion of reasonableness which is discussed in the cases.

27. More significant, in our view, is the next point. The only matter which the magistrates identified as going to whether the police had acted in a "just and reasonable" way is the fact that "there had been a number of discussions" about the strength of the evidence before the final hearing. The mere existence of such discussions clearly cannot count in favour of making a costs order. Implicit in the magistrates' reasoning is, we think, a finding that the police acted unjustly or unreasonably in taking the case to a final hearing despite these discussions. We are unable to see how the new bench could properly have reached such a conclusion.

28. The new bench did have the respondent's submission that the case had failed because there was "no evidence" to support it. That however was an inherently improbable proposition, more likely to be rhetorical than an accurate statement of fact. It was not supported by the limited information which the new bench had about the proceedings and the reasons why the application failed (paragraph [17] above). The procedural chronology demonstrated that an interim SPO had been granted. That could not have happened if there was "no evidence" to support such an order. What the new bench was told about the reasons for the failure of the application at the final hearing is consistent with a conclusion that, in the view of the earlier bench, some of the conduct alleged did not qualify as "stalking" and the evidence identifying the respondent as the wrongdoer did not meet the criminal standard of proof. (*Jones v Birmingham City Council* [2023] UKSC 27 suggests that the true position may be that the civil standard applies but that decision was not handed down until late July 2023. When this case was before the magistrates it was generally considered that the criminal standard applied and the statutory guidance issued under s 12 of the 2019 Act said that this was "likely" to be so). The new bench had no other material to work with for this purpose. It had, on advice, deliberately shut its eyes to the reasons given by the earlier bench for refusing the application and to the evidence adduced before the bench that made that decision. It was in no position to carry out the careful scrutiny referred to in *Perinpanathan.* In these circumstances we conclude that the new bench had no basis on which to reach any conclusion that the police had acted unreasonably in proceeding with the case.

29. Thirdly, we are not satisfied that the magistrates took proper account of the policy factors mentioned in the authorities as grounds for making no order as to costs. The reasons do mention "the need to encourage public authorities to make sound decisions in the public interest" but that is a partial and inaccurate quotation of the relevant proposition. In context, it appears more likely to have been treated as a reason for making an order rather than for not making one.

30. Fourthly, the new bench took a legally mistaken approach to financial prejudice. It did not explicitly ask itself whether the case was one in which the costs incurred went beyond what is inherent in responding to such an application or whether the respondent would suffer hardship. We are not persuaded that it did so at all.

31. If we are wrong in that, and the new bench did consider the question of financial hardship, then it did so on a false premise. The new bench plainly proceeded on the basis that the respondent was liable for the full amount of the costs set out in the statement submitted by his solicitors. That was wrong as a matter of law. It is a basic principle that costs are awarded by the court "as an indemnity only" and a party cannot recover from his opponent any more costs than he is liable to pay his solicitor: *Gundry v Sainsbury* [1910] 1 KB 645 (CA). That is the reason for the standard rubric on form N260. All of this is well known. Mr Aldeiri has submitted to us that charges of £32,161.92 plus VAT fairly reflected the hours devoted to the case and the true cost to the respondent's solicitors. But the solicitors had made an express agreement to limit their charges to less than 25% of that sum. As Mr Aldeiri has accepted in this court, the indemnity principle applied; the solicitors were not entitled to go behind or around the agreement they had made with the respondent. The respondent himself had no reason to want to do so. The costs statement therefore should have been confined to £7,400 or £6,167 + VAT, which is the same thing. The way the statement was in fact presented was at best confusing. It is possible that the magistrates overlooked the indemnity principle but we think the more likely explanation for their error is that they were confused. The case stated suggests that in argument at the hearing the submission was that the total VAT-inclusive sum of nearly £40,000 was a reasonable sum to charge.

32. Two other aspects of the "impact upon the respondent" are referred to in the magistrates' reasons: the respondent's suspension from his employment and the fact that he paid £7,400 because of the potential impact an order would have had on his livelihood. We have found it hard to see the force of these points. The case stated tells us nothing more about the respondent's suspension from work. It does not say that the respondent suffered financially as a result. As for the payment of £7,400, that represented the respondent's liability to his solicitors for the costs of defending the SPO proceedings. The fact that he had paid it adds nothing to the issue of financial prejudice. The fact that he paid it to avoid an impact on his livelihood does not appear to add much if anything either.

33. For all these reasons the costs order made by the magistrates cannot stand. Mr Aldeiri, whilst conceding that the quantum cannot be justified, has sought to persuade us to do no more than vary the order downwards to £7,400. His argument has been that the decision to make an order was justified given the evidence in the case and the way in which it was pursued. He has invited us to review and assess for ourselves the strength of the evidence and the conduct of the application. But that is not a permissible approach to an appeal by case stated. What we do have, as a result of an order for directions made earlier in the present proceedings, is a summary of the evidence relied on by the Commissioner. This is part of the Case Stated, and therefore a matter to which we can have regard. It is clear from this material that the Commissioner relied on several witness statements from the complainant "in which she explained how and when the respondent had been stalking her". There was video evidence from a dashcam placed in the complainant's car, other video material, screenshots of number withheld calls showing what was admitted to be the respondent's number, and witness statements from the Detective Constable who had overseen the investigations. Mr Aldeiri has not come close to persuading us that the police adopted an unreasonable or improper approach. Rather the contrary. So far as we can judge from the material that has been placed before us the application was properly brought on the basis of admissible evidence and properly pursued to the final hearing.

34. Nor are we persuaded by Mr Aldeiri's alternative submission that we should remit the case to the magistrates' court for a fresh decision. In all the circumstances that would be disproportionate and wasteful. The respondent and his solicitors had a full and fair opportunity to present their case on costs before the magistrates and another in this court where they have attempted to re-run the merits. That has increased the time and costs incurred on both sides. But it has also put us in a good position to decide whether a costs order should be made.

35. We start from the presumption that there should be no order as to costs in such a case. We note that there has been no allegation of bad faith or impropriety. The respondent has entirely failed to show that the application was brought or pursued unreasonably. The highest Mr Aldeiri was prepared to put his case in the end was that the attitude of the officer in the case was "perhaps misguided and needed more thought and care". We are not persuaded that even this is an allegation with real prospects of success. Nor has the respondent shown any other good or sufficient reason for departing in this case from the ordinary starting point of no order. The true financial impact on this respondent is not exceptional. It is clearly much less than it could have been. Nothing in the circumstances has been identified that would make it unduly harsh for the respondent to bear that burden in full.

36. We therefore quash the costs order made by the magistrates and substitute no order as to costs.

37. We add this. In the draft of this judgment we identified grounds for concern about the following: (1) a confusing costs statement was relied on before the magistrates in support of an application for costs in a sum more than four times the amount for which the respondent was liable to his solicitors; (2) the solicitors took no action to correct the magistrates when, in reliance on that statement, they made an order for costs that was nearly three times the sum for which the respondent was liable; and (3) the solicitors persisted until the hearing before us in maintaining that the full sum was recoverable. We have received responses from J D Spicer Zeb Solicitors, who represented the respondent throughout, and Mr Malik Aldeiri who represented him at the final hearing of the SPO application and in this court. We are satisfied that all concerned now understand the indemnity principle and its implications. We accept the solicitors' unreserved apology and do not consider the court needs to take any further action.