



Neutral Citation Number: [2024] EWHC 1584 (Admin)

Case No: AC-2023-LON-003429

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

Tuesday, 25th June 2024

Before:
FORDHAM J

Between:
LONDON BOROUGH OF BARKING AND
DAGENHAM
- and -
ZANNAT ARA AZIZ

Appellant

Respondent

Ashtons Legal LLP for the Respondent
Nick Ham (instructed by Legal Services, LBBD) for the Appellant

Determination on the Papers
Written submissions: 23.5.24, 7.6.24 and 11.6.24

Approved Judgment on Costs

FORDHAM J

FORDHAM J:

Introduction

1. This costs judgment is the loose end arising out of the main judgment in this case, handed down on 21 May 2024, [2024] EWHC 1212 (Admin) at §55. The Appellant had unsuccessfully prosecuted the Respondent in the magistrates' court for breach of an enforcement notice. The Appellant then unsuccessfully appealed by case stated to this Court. The Respondent's solicitors have made an application, supported by written submissions, seeking her costs from central funds. I directed that that would be determined on the papers and remain satisfied that no hearing is necessary or appropriate.

Costs in the Magistrates' Court

2. I have been told that the Magistrates' Court made a defendant's costs order, dealing with the costs in that court. I confirmed to the parties (3.6.24) my understanding that there is already that freestanding defendant's costs order. The subsequent submissions for the Respondent (7.6.24) make clear that what is being sought is an order in respect of the Respondent's legal costs in the High Court.

The 1985 Act

3. Section 16(1)(c) of the Prosecution of Offences Act 1985 provides:

Where ... (c) a magistrates' court dealing summarily with an offence dismisses the information; that court ... may make an order in favour of the accused for a payment to be made out of central funds in respect of his costs (a "defendant's costs order").

Section 16(5)(a), (6) and (6A) provide:

(5) Where (a) any proceedings in a criminal cause or matter are determined before a Divisional Court of the [King]'s Bench Division ... the court may make a defendant's costs order in favour of the accused. (6) A defendant's costs order shall, subject to the following provisions of this section, be for the payment out of central funds, to the person in whose favour the order is made, of such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings. (6A) Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant's costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.

4. Section 16A(1)-(4) provide:

(1) A defendant's costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused's legal costs, subject to the following provisions of this section. (2) Subsection (1) does not apply where condition A, B, C or D is met. (3) Condition A is that the accused is an individual and the order is made under – (a) section 16(1), (b) section 16(3), or (c) section 16(4)(a)(ii) or (iii) or (d). (4) Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were – (a) proceedings in a magistrates' court, or (b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence)...

Cases and Commentary

5. As explained in Lord Howard of Lympne v DPP [2018] EWHC 100 (Admin) at §8 the effect of s.16A is that, since 1 October 2012, s.16 has permitted an accused to claim out of pocket expenses only from central funds; s.16A abolished the right to claim legal costs from central funds in an ordinary case, except to the extent that any of the conditions set out in s 16A applied. That was fatal to costs from central funds in Howard, where the successful case stated appellant had been convicted in the magistrates' court.
6. In Bahbahani v Ealing Magistrates' Court [2019] EWHC 1385 (Admin) [2020] QB 478 at §88: "It is – rightly – common ground between the parties that these are 'proceedings in a criminal cause or matter' and that accordingly this court has the power, pursuant to section 16 of the 1985 Act, to make a defendant's costs order in favour of the claimant. Such an order would be for such amount as the court considers reasonably sufficient to compensate the claimant for any expenses incurred by him in the proceedings. However, the effect of section 16A of the 1985 Act is that such an order would be limited to the claimant's out of pocket expenses and could not include any amount in respect of his legal costs." That was fatal to costs from central funds in Bahbahani, where the successful judicial review claimant had been convicted in the magistrates.
7. Blackstone's Criminal Practice says at §D33.4: "Legal costs from central funds are not available for a successful case stated in the Administrative Court because of the provisions of the Prosecution of Offences Act 1985, s.16A."

Appellant's Position

8. The Appellant originally supported an order for the Respondent to have its costs out of central funds but, having had its attention drawn to these cases and this commentary, submits on reflection (11.6.24) that the Court had no jurisdiction. It is common ground that no jurisdiction can be conferred by consent.

Discussion

9. Originally, I was being invited to make an order for costs out of central funds by reference to the Howard case. In a first set of written submissions (23.5.24), the Respondent's representatives argued as follows: "The exclusion of legal costs under s.16A does not apply as Condition B (s.16A(4)(a)) is met. The Respondent was a defendant/individual who was acquitted in the Magistrates' Court and is therefore entitled to seek recovery of costs incurred." I am unable to accept that submission. The problem is that s.16A(4)(a) applies only to costs incurred in the magistrates' court (incurred in the court below, in magistrates' court proceedings). As I have explained, there was a freestanding defendant's costs order in the magistrates' court. Section 16A
10. In further submissions (7.6.24), the Respondent's representatives argue that a defendant's costs order is available in respect of costs incurred in the High Court, on the following basis: that s.16A(4)(a) serves to identify the defendant – whether convicted or acquitted – in respect of whom costs can be ordered; that the statutory objective was to provide a route to recovery of legal defence costs; that the provisions should be construed holistically and purposively; that s.16A(4)(a) identifies relevant "proceedings"; and that s.16(5)(a) then operates to allow a defendant's costs order to be made when those "proceedings" – in which the person was a defendant – come to be

“determined” in the King’s Bench Division; so that costs can be recovered in the Divisional Court.

11. I am unable to accept those further submissions either. Section 16A(1) plainly excludes “the accused’s legal costs”, subject to a Condition applying. There is a Condition – Condition A – which allows access costs orders under provisions within s.16; but s.16(5)(a) is not in the list. There is then a Condition – Condition B – which brings in “the legal costs” which were incurred in certain courts, but not the High Court. Otherwise, a costs order from central funds could have been made in Howard, and again in Bahbahani. As the Respondent’s representatives rightly recognise, the costs jurisdiction cannot turn on whether the defendant who succeeds in the High Court was convicted or acquitted in the magistrates’ court. The position is as described in the cases and commentary. Legal costs from central funds are not available for successfully resisting a case stated appeal in the High Court.

Single Judge

12. Section 16(5)(a) refers to a Divisional Court. This case stated appeal was determined by me as a single judge. The Administrative Court JR Guide 2023 says this §25.11.4: “There is no power for a single judge to order costs be paid out of central funds. Where a claimant seeks an order for costs from central funds when appearing before a single judge, the judge will adjourn the matter to be considered on the papers by a Divisional Court, constituted by the single judge who heard the case and another judge.” But this course can be warranted only where there is jurisdiction. Here, it is clear and settled that there is no jurisdiction to order the legal costs, incurred in the High Court, which are sought. In those circumstances, it would be inappropriate to make arrangements to convene a Divisional Court and I have not done so. I dismiss the application for costs.

21.6.24