

Neutral Citation Number: [2024] EWHC 1788 (Admin)

Case No: AC-2023-MAN-000264

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

Manchester Civil Justice Centre  
1 Bridge Street West, Manchester M60 9DJ

Date: 8 July 2024  
Date handed down :11 July 2024

Before :

**KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE**

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Between :

<b>MS SUZANNE MERRILLS</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES</b>	<b><u>Defendant</u></b>
<b>-and-</b>	
<b>(1) CHESHIRE WEST AND CHESTER COUNCIL</b>	
<b>(2) PARKGATE NURSERIES LIMITED</b>	

**Interested  
Parties**

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**Mr Killian Garvey** (instructed by **Irwin Mitchell LLP Solicitors**) for the **Claimant**  
**Mr Ben Du Feu** (instructed by **Government Legal Department**) for the **Defendant**  
**Mr John Hunter** (instructed by **Aaron and Partners Solicitors**) for the **Second Interested  
Party**

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**COSTS JUDGMENT**

**Deputy High Court Judge Karen Ridge:**

1. This is my ruling on the costs issues which have arisen between the Claimant and the Defendant and between the Claimant and the Second Interested Party (IP2). It follows my judgment on an application for an extension of time by the Claimant and on two identical applications by the Defendant and IP2 for declarations that the court has no jurisdiction in relation to the claim. All three parties have made written submissions on the issue of costs which I have considered carefully.

**Costs claimed by the Defendant from the Claimant**

2. The Defendant was successful in resisting the application for an extension of time and obtaining a declaration that the court had no jurisdiction. As such the Claimant does not dispute the principle that, as the losing party, she should pay the Defendant's costs. However, the Claimant disputes the reasonableness of the Defendant's costs which are claimed in the total sum of £12,963.50 of which some £9,893.50 was claimed by her solicitors. A direct comparison with the level of the Claimant's solicitors' costs cannot be made because the Claimant's solicitors were responsible for the additional preparation of the claim form and court bundles.
3. The greatest proportion of solicitors' costs were incurred by a grade A fee earner. Whilst I accept that an experienced fee earner would have got to grips with the issues quickly and brought her expertise to bear, I agree with Mr Garvey that the issues were narrow and that it was not necessary to use an experienced fee earner for all of the preparatory work, much of which would have been liaising with the Court and other parties in routine correspondence. I have concluded that a reasonable and proportionate amount in relation to solicitors' inter parties costs would be £7,500.00. No VAT is claimed. Counsel's costs and the disbursements are unchallenged and appear reasonable and proportionate.

**Costs claimed by the Second Interested Party from the Claimant**

4. The usual rule in civil proceedings is that costs follow the event. Mr Garvey directs me to *Bolton Metropolitan Borough District Council v Secretary of State for the Environment (Costs) [1996] 1 All ER 184*, as providing authority for the proposition that there is no basis in the present case to divert from a general rule that interested parties do not have their costs paid. In that case the House of Lords pointed out that where there is multiple representation, the losing party will not normally be required to pay more than one set of costs, unless the recovery of further costs is justified in the circumstances of the particular case.
5. The Supreme Court in *CPRE (Kent) v SSCLG [2021] UKSC 36* confirmed that *Bolton* did not lay down any general rules. Moreover, as Mr Hunter points out the *Bolton* case was considering a situation in which the court had reached a view on the substantive merits of the case at the end of section 288 proceedings. In *CPRE (Kent)* it was acknowledged that the *Bolton* case pre-dated the introduction of an acknowledgement of service procedure which introduced a positive obligation on a party to file an acknowledgement of service if they wished to take part in proceedings.
6. The Supreme Court confirmed that case law since 2001 supports the view that CPR part 54 justify an exception from the practice set out in *Bolton* in relation to the costs

of interested parties preparing and filing an acknowledgement of service and a summary of grounds. This is to be contrasted with the costs of an interested party attending the permission hearing when Part 54 Practice Direction provides that neither the defendant nor any interested party need attend a hearing on the question of permission unless the court directs otherwise.

7. The present case is not directly analogous to the above cases and there are no hard and fast rules in such cases in any event, costs are always in the discretion of the court after it has had regard to all of the circumstances.
8. In this case, I consider that the application by IP2 to seek a declaration that the court did not have jurisdiction was a positive step necessary to protect its position. However, once it became apparent that the Defendant was making the same application and putting forward the same arguments, there was no necessity for IP2 to play an active role. It was open to IP2's legal advisors to liaise with the Defendant, ascertain their position and keep a watching brief thereafter.
9. The arguments pursued at the oral hearing on behalf of IP2 were substantially the same as those of the Defendant and the arguments from IP2 did not materially add to matters. Furthermore, I accept Mr Garvey's point that IP2 based part of its application on the argument that it needed to have been served with the claim form and that point was abandoned at the hearing. I bear in mind that the Claimant was put to some additional expense in responding to that point.
10. If the representatives of IP2 had kept a watching brief and liaised with the Defendant (as they clearly had done when one looks at the schedule) they should reasonably have concluded that it was not necessary for them to attend the hearing to pursue the same points. The position of IP2 was known to the court as set out in the application.
11. The costs claimed by IP2 are in the total sum of £24,014.00. Mr Garvey points out that these exceed the Claimant's costs which stand at £20,872.00. I have concluded that it was reasonable to file an acknowledgment of service form and to submit an application for a declaration as to jurisdiction. It is also reasonable for IP2 to recover the reasonable costs related to liaising with the defendant and other parties and those costs which would have been necessary to establish the position of the Defendant and thereafter keep a watching brief on proceedings. It is not possible to assess those costs based on the schedule provided and therefore, unless they can be agreed, the parties are invited to agree directions for the filing of a revised schedule and objections and for summary assessment.
12. As to payment of the Defendant's costs, the Claimant has indicated she wishes to agree a payment plan. In the circumstances the court will direct payment will direct payment within 28 days to facilitate discussions between the parties and allow time for any application for a stay of the costs judgment in the event agreement cannot be reached.
13. I would ask the parties to draw up an agreed order to reflect this ruling.