

Neutral Citation Number: [2024] EWHC 3450 (Admin)

Case No: AC-2023-LDS-000194

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

Leeds Combined Court Centre
1 Oxford Row
Leeds LS1 3BG

Thursday, 9 May 2024

BEFORE:

HER HONOUR JUDGE BELCHER
(Sitting as a Judge of the High Court)

BETWEEN:

THE KING
(ON THE APPLICATION OF ADAMS)

Claimant

- and -

LEGAL OMBUDSMAN

Defendant

JOHN DAVID WILLIAM ADAMS appeared in person.
MR S KOSMIN (instructed by Legal Ombudsman in-house solicitor, Tobias Haynes)
appeared on behalf of the Defendant
MR R O'BRIEN KC (instructed by Laura Mellstrom) appeared on behalf of the Interested
Party

JUDGMENT ON COSTS
(Approved)

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1. JUDGE BELCHER: I now turn to deal with the applications for costs. The usual order was made when permission was refused on the papers that the Claimant should pay the costs, with summary assessment of costs in favour of both the Legal Ombudsman and the Interested Party. That Order contained the usual provisions that there could be written submissions challenging those orders and reserving the decision the renewal hearing Judge if there was a renewal hearing. Mr Adams filed objections to costs running to several pages. They are at Tab 32 in my bundle. A response to those was filed by the Interested Party which is at Tab 33. The Defendant's response is at Tab 34. The Claimant filed a further response to the objections on costs, and that is at Tab 35. I shall deal with the applications of the Defendant and the Interested Party separately.

2. The Defendant, the Legal Ombudsman Service seeks the costs of the Acknowledgment of Service as ordered previously in the sum of £2,413.83, and it seeks the costs of attendance at this hearing. Mr Kosmin recognises that an order in favour of a Defendant for the costs of attending a renewal hearing is not the norm. The basis for seeking the costs of attendance at this hearing set out in his skeleton. In particular he refers me to the principles in the case of *Mount Cook Land Limited v Westminster City Council*, a costs case reported at [2004] 2 Costs LR 211, which includes that a court considering costs at the permission stage should be allowed a broad discretion to whether on the facts of the case there are exceptional circumstances justifying the award of costs against an unsuccessful Claimant.

3. Exceptional circumstances may consist in the presence of one or more of the features in the following, non-exhaustive list, (a) the hopelessness for claim (b) the persistence in it by the Claimant after having been alerted to facts and or law demonstrating its hopelessness (c) the extent to which the court considers that the Claimant in pursuit of his application has sought to abuse the process of judicial review for collateral ends. The list extends to other matters which are not relevant here.

4. Mr Kosmin relies on that and says the Grounds of challenge are hopeless such that they ought to be certified as totally without merit, which I have done. Secondly, he relies on the persistence of the Claimant in pursuing the matters after being alerted to facts and/or law demonstrating its hopelessness. Mr Kosmin relied on the fact that that there

were previous almost identical proceedings in relation to this matter brought against the solicitors and the Legal Ombudsman. That Grounds were all dismissed. The application for permission in that case was refused on the papers by Jackson J on 18 September 2023 and permission was refused again at the renewal hearing on 5 January 2024, that being a date after these proceedings with which I am concerned were issued, but where they could plainly still have been withdrawn.

5. That is a point I will come back after I deal with the other case law which I have been referred to, which is the case of *R (Karin Harrison) v London Borough of Barnet and others* [2021] EWHC 2789 (Admin) 43. In particular in that case, there was an application at the renewal permission hearing for the Council's costs of attendance, and the exceptional circumstances alleged were the hopelessness of the claim and that an attack had been made on the conduct and integrity of the Council and its officers, and another matter which does not apply here.
6. In his judgment, Knowles J found there were exceptional reasons justifying the award to the Council of its costs of attending the hearing, as well as the preparation of the Acknowledgement of Service and Summary Grounds. Those included that the Claimant's arguments were not just devoid of merit, but could properly be labelled hopeless. Also towards the end of paragraph 43 of his judgment, he says this:

"Perhaps most importantly, she [that is the Claimant in that case] also maintained her serious accusations of misconduct, bias and bad faith against the council and its officers."

That, he thought, was an exceptional circumstance.

7. That is prayed in aid in this case, where, as I have already said in the course of my judgment, there were repeated allegations of dishonesty against the Defendant and indeed the Interested Party. Those are matters which are repeated in the costs submissions made by Mr Adams, including in his most recent submissions where amongst other things he states this at Paragraph 4 of page 287 of the bundle:

"That the Defendant [that is the Ombudsman] who has a known problem with legal professionals that hide behind a legal duty of care when the scheme rules/LSA (2007), clearly expects them to answer complaints raised by beneficiaries, thinks that a slight rewording

scheme rules is more effective than enforcing the actual rules, beggar's belief. When referencing in the Decision that the Ombudsman did not know if duty care was owed to a beneficiary. This was clearly untrue. Just another example of apparent bias”

8. Mr Williams also makes allegations of false statements by the Interested Party. Amongst other things he says it is surprising that counsel, , the Interested Party, advised his client, in other words the executors, on such a dishonest course. There are serious allegations made against both parties in this matter.
9. I have also been referred to an e-mail dated 9 January of this year that is headed “Without prejudice save as to costs”. The team representing the legal ombudsman made a without prejudice offer save as to costs, and invited Mr Adams to withdraw his proceedings, given that by that date there were now two written decisions and a judgment in person refusing permission to bring judicial review. The judgement in person is the judgment I have already referred to of HHJ Davis White sitting as a Judge of the High Court given at a permission renewal hearing in which he rejected a similar, indeed almost identical claim. The offer made was that the Legal Ombudsman would allow Mr Williams to discontinue in return for payment of the costs already ordered. Mr Williams not unreasonably sought clarification as to exactly what was meant by the which costs had already been ordered. That clarification was provided.
10. His response after clarification was given was this, "Thank you for clarifying the matter. I cannot see any exceptional circumstances that would justify your attendance". He then goes again into the question of statistics and how he alleges they show bias, and states that there was nothing in the ruling of his HHJ Davis White to explain the statistics. Then:

"We are quite surprised, particularly given the current and acute awareness of the mistrust in public organisations, and fallibility of the judiciary, particularly around lack of disclosure, that this matter has not been addressed. If you would kindly like to explain these statistics with an innocent and plausible explanation, then I would strongly consider withdrawing my claim. Otherwise, you're more than welcome to put this conversation to the court to explain your exceptional circumstances."

11. Before me and in response to this, Mr Adams says he was willing to negotiate in good faith and he would have withdrawn. In my judgment, I cannot accept that he would

have necessarily have withdrawn if the Legal Ombudsman had explained the statistics with an “innocent and plausible explanation”. I put to him that any explanation that would have been given would not have been believed by him. Of course there was no obligation to give one, but it would not have been believed given his repeated allegations of dishonesty, distrust, and similar matters seen throughout the papers in this case. In the course of him responding to me, he said that everything that was going on simply added to the distrust, which rather makes my point for me.

12. There are very serious allegations of dishonesty made against the Legal Service Ombudsman, including that it was deliberately avoiding deciding matters, and acting in bad faith, allegations which run throughout the claim. Mr Kosmin submitted this case amounts to a judicial review on the basis of disagreement with the Ombudsman, by reason of allegations of bad faith, dishonesty, and bias of both the ombudsman and the Interested Party. In my judgment, that an entirely fair characterisation.
13. At one point he described the Interested Party as perpetrating a scam, together with the solicitor. When I asked him the basis for that, he accepted it had gone too far and withdrew it and apologised. But nevertheless, that was a typical feature of the allegations throughout the papers and was only withdrawn by him today on reflection. He was entitled to reflect and think about the points I have put to him. But he has been dazzled, in my view, by his views that everything here is designed by the Legal Ombudsman and the Interested Party to avoid their responsibilities and therefore must involve bad faith, dishonesty, some form of scam or conspiracy, by simply not deal with his allegations. He is not able to stand back and look at what has happened in the other cases and apply that reasoning to this.
14. I find there are exceptional circumstances, by reason both of the hopelessness of the claim, and the persistence of this Claimant in continuing it, and the constant and repeated allegations of dishonesty, and bad faith,
15. In relation to the -- it has not dealt with me now, in front of me, but in the paperwork, he challenges the actual cost figures claimed for the Acknowledgement of Service by reference to another case he was involved in, where the figure was less, and in the process casts aspersions upon the Ombudsman's legal team suggesting that they are not

sufficiently capable of dealing with it at a cheaper rate. It is well known that it is not simply a question of comparing the costs of one firm against another. Different work is done by different parties for different cases. The work was plainly done diligently, and at very reasonable cost in house. The criticisms are wholly unfair, and I have no hesitation in confirming the figure for the Acknowledgement of Service of £2,413.83. I also order the costs claimed for this renewal hearing of £4,128.20 in favour of the legal Ombudsman

16. In relation to the Interested Party, for today's purposes, and in order to avoid more costs being spent, exercising restraint, and hoping not to inflame matters further, there is no claim for the costs of today. Further the Interested Party is not challenging the assessment of its costs for the Acknowledgement of Service which reduced them by almost half of the sum claimed. Mr Adam's point in relation to the Interested Party is that he considers it was wholly unnecessary for the third party to file any Acknowledgement of Service. That is a matter for the Interested Party to decide. The usual rule is that the Interested Party is entitled to the costs of its Acknowledgement of Service.
17. In his covering letter, Mr Adams says he is struggling to see the motivation of the Interested Party in filing an Acknowledgement to Service. Then he makes points that the Interested Party's beef ought to be with Parliament, which drafted the legislation, adding that he looks forward to the Interested Party addressing those issues. He then states this:

"Had the I.P. chosen to address the complaint, he would have assisted all parties including the instructing executors. I assume the I. P. will indicate whether he intends to be represented in the renewal hearing."

Again, this misses the point. The Interested Party did not have to deal with an approach directly from Mr Adamas for the reasons I have already given, and do not propose to repeat.

18. The Interested Party is entitled to put in an Acknowledgment of Service. He does not challenge, and in my judgment he was right not to do so, the reduction made. The judge who made that reduction, DHCJ Ward, set out very clearly why he had done so.

In those circumstances, I am satisfied that that figure was perfectly properly incurred and I therefore order the Claimant to pay the Interested Party's costs assessed in the sum of £3,547.60. I have not done the exact calculation, but that gives a total figure for costs awarded against Mr Adams of just over £10,000.

19. Very well. I will draw up the appropriate order, I am cognisant that the parties may perhaps have incurred significant further costs in any event, as the hearing has taken longer than anticipated. In those circumstances, I will draw the Order. I thank you both for your assistance. I thank you Mr Adams for your patience and courtesy this morning. Thank you very much.

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(This judgment has been approved by the judge)