Case No: QB/2015/0269

[2015] EWHC 3306 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE SENIOR COURTS COSTS OFFICE
(MASTER HAWORTH)

The Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 22nd October 2015

Before:

MR JUSTICE HICKINBOTTOM

Between:

THE PUBLIC SERVICES OMBUDSMAN FOR WALES

Appellant/Paying Party

- and -

PATRICK HEESOM

Respondent/Receiving Party

Vikram Sachdeva QC (instructed by **Browne Jacobson LLP**) appeared for the Appellant

Martin Westgate QC (instructed by **Howe & Co Solicitors** and **Robins Costs Consultants Ltd**) appeared for the Respondent

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Judgment
(As Approved)

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MR JUSTICE HICKINBOTTOM:

Background

1. From 1990, Patrick Heesom ("Mr Heesom") was a local councillor, first on Clwyd County Council and then, following the reorganisation of local authorities in Wales, on Flintshire County Council ("the Council").

2. In 2009, a complaint was made to the Public Services Ombudsman for Wales ("the Ombudsman") about Mr Heesom's conduct as a councillor, under the procedure set out in the Local Government Act 2000 ("the 2000 Act"), which still applies in Wales although no longer in England. In a lengthy report, the Ombudsman found that there was evidence of breach of the Council's Codes of Conduct serious enough to warrant reference to the Adjudication Panel for Wales for adjudication by a case tribunal.

3. The matter was referred. The proceedings before the case tribunal were substantial, occupying nearly 60 hearing days over many months. In two decisions, issued in June and August 2013, the case tribunal published its findings in relation to fact, breach and sanction. It found Mr Heesom had committed fourteen breaches of the Codes of Conduct, and it disqualified him from being a local councillor for thirty months.

4. By section 79(15) of the 2000 Act, an appeal against the case tribunal's decisions lies to "the High Court". Mr Heesom exercised that right by lodging an Appellant's Notice in the Administrative Court Office at the Royal Courts of Justice on 9 August 2013. The proceedings were served on the Ombudsman on 15 August 2013.

5. On 26 August 2013, the Ombudsman applied "to transfer the case to Cardiff". The Adjudication Panel, which, with the Council, had been added to the claim as defendants, supported that application. Correspondence between the parties ensued. The Ombudsman said in a letter dated 31 October 2013 that he took the view that the case should be transferred to Cardiff Civil Justice Centre, and it would be up to the Administrative Court in Cardiff to decide where the case should be heard – but, the Ombudsman said, he had no objection to it being heard in North Wales. Howe and Co, for Mr Heesom, responded that same day saying that, in their view, the case should be heard in North Wales and the administration of the case should be transferred to the Administrative Court Office in Cardiff; and they had no objection to such a direction being made, if permission to appeal were granted. The following day, the Ombudsman responded, in substance agreeing with that suggestion. On 7 November 2013, Howe and Co wrote to the Administrative Court Office at the Royal Courts of Justice to that effect.

6. On 15 November 2013, Supperstone J granted permission to appeal, removed the Adjudication Panel and the Council as defendants, and made an order in the following terms:

> "The hearing of the appeal to be transferred to Cardiff with a direction that the appeal be heard in North Wales."

The claim was duly transferred to the Administrative Court Office in Cardiff, where it was administered, a number of orders for directions being made there following transfer.

7. I heard the substantive appeal in Mold over four days in April 2014, and I delivered a reserved judgment on 15 May 2014 (now reported as [2014] EWHC 1504 (Admin), [2014] 4 All ER 269). I allowed the appeal in part, overturning three of the case tribunal's findings of breach; and, in respect of sanction, concluding that a period of disqualification was warranted, but the period imposed was manifestly excessive. I substituted a period of eighteen months. Following consideration of written representations in relation to costs, on 4 June 2014 I ordered the Ombudsman to pay Mr Heesom 35 per cent of his costs of the appeal.

8. A bill of costs for detailed assessment was prepared by Mr Heesom's costs lawyer/draftsman, John Robins of Robins Costs Consultants Ltd ("Robins"), and served on the Ombudsman on 4 September 2014. The full sum, including VAT, was £1,949,259.60, 35 per cent of which is £682,240.86. On 16 October, points of dispute were served on behalf of the Ombudsman, which indicated that the Ombudsman accepted a full bill of only £213,215.36, 35 per cent of which is £74,625.38. A response to those points of dispute was served on 12 November 2014. An interim payment of £100,000 on account of costs was made voluntarily.

9. Given the difference between the parties, they were unsurprisingly unable to agree the amount of costs that should be paid. On 29 December 2014, Robins on behalf of Mr Heesom sent the detailed bill to Cardiff Civil Justice Centre, for the costs proceedings to be issued there. Accompanying that bill were (i) an application for a further interim payment of £160,000, and (ii) an application to transfer the assessment proceedings to the Senior Courts' Costs Office ("the SCCO"). However, on 17 February 2015 these documents were returned unissued, with a letter explaining that "these should be filed at [SCCO]". Mr Robins duly filed them there.

10. On 8 April 2015, a one-day hearing of preliminary issues was listed in the SCCO before Master Haworth, for December 2015. One of the preliminary issues, as I understand it, is in respect of the proportionality of the bill as a whole.

11. On 6 May 2015, the Ombudsman filed an application for the transfer of the assessment proceedings from the SCCO to "the Cardiff District Registry"; or, alternatively, if the matter were retained by the SCCO, for an order that the assessment hearing be in Wales.

12. Service of that application on Mr Robins caused him to telephone Cardiff Civil Justice Centre for further details as to why it had been thought by the court that the assessment must be lodged in the SCCO; and he followed that up on 11 May 2015 with an email essentially to the same effect. The following day, 12 May 2015, he received a response from David Gardner, the Administrative Court Office Lawyer assigned to the Cardiff Administrative Court Office. The email read:

> "I have been forwarded your email below by the Administrative Court Office Wales staff for advice.
>
> The advice of the Administrative Court Office is that all applications for a detailed assessment of costs arising out of

> Administrative Court proceedings must be lodged in the [SCCO]. The reasoning behind this advice is as such:
>
> 1. CPR 47.4(1) requires all applications for a detailed assessment of costs to be lodged in 'the appropriate office'.
>
> 2. The meaning of 'appropriate office' is outlined in CPR PD 47 paragraph 4.
>
> 3. All five offices of the Administrative Court Office (that is to say Birmingham, Cardiff, Leeds, London and Manchester) are part of 'the Administrative Court Office' and as such Administrative Court claims are not covered by the directions in CPR PD 47, paragraphs 4.1(a) and (b). Thus the direction in CPR PD 47, paragraph 4.1(c) applies and the application for a detailed assessment must be lodged in the SCCO.
>
> I hope this assists. Please feel free to contact the Administrative Court office or me if you have any further queries."

I shall return to the relevant provisions of CPR Part 47 shortly.

13. However, to complete the chronology, the applications to transfer and for a further payment were set down for hearing before Master Haworth on 13 May 2015. At that hearing, he found that (i) the assessment proceedings were correctly filed in the SCCO; (ii) there were no good grounds for transferring the assessment to Cardiff or for the SCCO to hear the assessment in Wales, whether in Cardiff or Mold; and (iii) in addition to the payment on account already made, an interim costs certificate in the sum of £100,000 should be issued. The Master gave permission to appeal in respect of the venue issues, but refused permission to appeal against the interim certificate.

14. In an Appellant's Notice dated 8 June 2015, but issued on 9 June, the Ombudsman pursued the appeal in respect of venue, and renewed his application for permission to appeal against the interim certificate. Those are the applications before me now.

15. Mr Vikram Sachdeva QC has appeared for the Ombudsman, and Mr Martin Westgate QC for Mr Heesom. At the outset, I thank them for their helpful contributions.

The Application for an Extension of Time

16. In the absence of a specific order of the court to the contrary, CPR rule 52.4(2)(b) requires an appellant's notice to be filed within 21 days of the decision of the lower court that the appellant wishes to appeal. The decisions of Master Haworth that the Ombudsman wishes to appeal were made on 13 May 2015. Any appellant's notice therefore had to be filed on or before Wednesday 3 June. As I have indicated, it was not in fact filed until Tuesday 9 June.

17. The reasons for that delay, such as are given, are set out in the notice itself. A Litigation Assistant from the Ombudsman's solicitors attended the Royal Courts of Justice on the afternoon of 3 June 2015, the last day for filing the appellant's notice. She did not have a happy time. She first attended the Administrative Court Office, where she had to wait for some time because the office was extremely busy. When she eventually spoke to a clerk, she says she was told that the appeal had to be lodged in the Civil Appeals Office. She went there, and waited again. When she arrived at the front of the queue, she says she was told that the correct place to lodge the documents was the Senior Courts' Costs Office. She went to there; but, unfortunately, by the time she arrived, the counter was closed. Therefore, during the course of the afternoon, she had managed to pay the appeal lodgement fee – and the papers were stamped to confirm that she had done so – but she had not in fact filed the appellant's notice.

18. If the Litigation Assistant correctly recites what she was told by the various offices she attended, she was unfortunately misinformed. The destinations table, set out in paragraph 3.5 of CPR PD 52A, makes clear that an appeal from a Master in a case such as this is to a High Court Judge, and the appeal should have been lodged with the High Court Appeals Office. As I have indicated, it was not in fact lodged there until 9 June 2015, by when it was six days late. The fact that it is dated 8 June – and the evidence of the solicitors is that it was filed on 8 June – might possibly be explained by late lodging that day, and sealing the following date; but, in any event, the difference between filing the notice on 8 or 9 June 2015 is not material.

19. In support of the application for an extension of time, Mr Sachdeva submitted that, in the context of this appeal, that delay was neither serious nor significant, no prejudice to Mr Heesom has been caused, and an appropriate extension should be granted. In opposing it, Mr Westgate submitted in his skeleton argument that, simply because a time limit for appealing is missed by only a short period, that does not mean that the breach of rules is not serious or significant. In this case, he emphasised, there has been no explanation as to why the Ombudsman's solicitors left it until the last minute – or, at least, the last afternoon – to file the appeal, in circumstances in which they appear to have been unfamiliar with the correct place to issue it. He submitted, with some force, that there has also been no explanation as to what happened between 3 June (when the appellant's notice ought to have been lodged, and there was the attempt to do so that I have described), and 8 or 9 June (when it was actually filed). Furthermore, a preliminary hearing has been listed for December 2015 to deal with several issues of principle and, if the venue appeal before me succeeds, then that date will be lost and further delay occasioned whilst a hearing date is found in Cardiff or Mold.

20. The correct approach to an application under CPR rule 3.1(2)(a) for an extension of time prescribed by rule 52.4(2) for filing a notice of appeal was recently, and helpfully, considered by the Court of Appeal in R (Hysaj) v Secretary of State for the Home Department [2014] EWCA Civ 1633; [2015] 1 WLR 2472. The Vice President (Moore-Bick LJ), giving the judgment of the court, confirmed that such applications should be approached in the same way, on the basis of the same principles and with the same rigour as an application for relief from sanctions under CPR rule 3.9. The proper approach in relief from sanction cases was set out in Denton v T H White Ltd [2014] EWCA Civ 906; [2014] 1 WLR 3926 at [24]:

> "A judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the 'failure to comply with any rule, practice direction or court order' which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate 'all the circumstances of the case, so as to enable [the court] to deal justly with the application…'."

In Hysaj, at [38], this guidance was expressly held to be applicable to applications for extensions of time for filing a notice of appeal.

21. Consequently, the first question for consideration in this case is whether the delay was serious (which focuses primarily on the length of the delay) or significant (which focuses primarily on the effect of the delay on the proceedings). The delay was a short period, being six days. I accept Mr Westgate's submission that no good reason has been put forward for the delay that in fact occurred. As Moore-Bick LJ stressed in Hysaj (at [52]), "ignorance of the relevant rules and procedure will rarely, if ever, provide a good reason for failing to comply promptly, especially where professional lawyers are involved". That the Litigation Assistant did not know where to file the appeal in this case is not, in my view, a good reason for the delay. In any event, the delay between 3 and 8-9 June is entirely unexplained.

22. However, critically, the delay has not prejudiced Mr Heesom and I am unpersuaded that it has had any real detrimental effect on the proceedings. Mr Heesom would have been expecting an appeal top be pursued: the Master himself gave permission. Even if, as Mr Westgate submits, the December hearing date of preliminary issues may be jeopardized if the venue appeal is ultimately successful – and it cannot be assumed that it will be delayed – that is a consequence of the time which it has taken to determine this appeal, rather than the six days' delay in issuing it.

23. Mr Westgate did not press his opposition to an extension in his oral submissions today, relying upon his skeleton argument. In my view, his reticence was warranted. I do not consider the delay in this case was either serious or significant; and, in my judgment, there is no good ground for refusing an extension of time.

24. In all of the circumstances, an appropriate extension of time should be granted; and I do grant an extension, such that the Ombudsman's notice of appeal was filed in time.

The Venue Appeal

25. I have described how the costs assessment ended up being issued in London: Robins attempted to issue the assessment proceedings in Cardiff, but were redirected by that court to the SCCO.

26. Decisions in relation to venue are, of course, within the sphere of case management; and it is trite law that an appellate court should not interfere with case management decisions by a judge who has applied the correct principles and taken into account all

relevant matters (and no irrelevant matters), unless the decision is "so plainly wrong that it must be regarded as outside the generous ambit of discretion entrusted to the judge" (Walbrook Trustees (Jersey Ltd) v Fattal [2008] EWCA Civ 427 at [33] per Lawrence Collins LJ).

27. Mr Sachdeva submitted that, in this case, the Master did err in principle, because he proceeded on the basis that the cost assessment proceedings were properly filed in the SCCO whereas they ought properly to have been filed in the Cardiff District Registry. The Master therefore embarked upon the exercise of his discretion on the basis of a false starting point. In any event, Mr Sachdeva submitted, he erred in the exercise of that discretion, e.g. by proceeding on the basis that, unlike the substantive claim, costs proceedings have no "local flavour". Even if the costs proceedings were properly commenced in the SCCO, the Master erred in exercising his discretion not to transfer them to Cardiff or, alternatively, in not directing that the assessment be heard in Wales.

28. Mr Westgate did not agree. He submitted that the costs assessment proceedings were correctly filed in the SCCO because (i) the substantive claim was never transferred to Cardiff: the Order of Supperstone J, properly construed, only directed that the hearing take place in Wales; and (ii) if it was transferred, then the costs assessment was in any event properly lodged in the SCCO, essentially for the reasons given by Mr Gardner to Robins in May 2015 – and the decision of the Master not to transfer the proceedings to Cardiff fell well within his wide case management discretion. In particular, the costs proceedings did not have any "local flavour", in the sense that they would be of no real interest to people in Wales, whether it be in Cardiff or Mold – or at least the Master did not err in concluding that they did not. Counsel and solicitors for both the paying and receiving party are London-based, and it would very substantially increase the costs of the assessment hearing if it took place in London. It is clear from the Master's judgment that he regarded that factor as important, if not crucial. Mr Westgate submitted that he was entitled to proceed on that basis.

29. This appeal requires some brief consideration of the structure of the courts as well as the relevant Civil Procedure Rules.

30. The Administrative Court does not exist as a distinct court. Like its predecessor, the Crown Office List, it essentially provides a separate list for judicial reviews and other public law claims and appeals, which are managed separately and differently from other High Court actions and are set down for hearing before a specialist judge in a separate list. However, despite these distinct arrangements, the Administrative Court is an integral part of the Queen's Bench Division, as are other specialist lists that are referred to as "courts", such the Technology and Construction Court and the Planning Court (which is effectively a sub-list within the Administrative Court).

31. The Civil Procedure Rules are somewhat coy as to the claims that should be issued, managed and heard in the Administrative Court. Paragraph 2.1 of CPR PD 54A does provide that claims for judicial review are to be dealt with in the Administrative Court. However, with three specific exemptions[1], the Civil Procedure Rules do not

[1] Namely (i) appeals under section 289(6) of the Town and Country Planning Act 1990 and section 65(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (see CPR 52DPD.27); (ii) appeals from decisions of the Law Society or the Solicitors' Disciplinary Tribunal under the Solicitors Act 1974 and other statutes (see CPR 52DPD.28); and (iii) appeals from decisions of the Bar Standards Board and Disciplinary

specifically allocate appeals that are directed by statute to the High Court to the Administrative Court. Public law cases, such as statutory appeals, appear to be allocated to the Administrative Court largely by convention and practice.

32. The venue of Administrative Court claims is dealt with in CPR PD 54D. The intention behind that practice direction is set out in paragraph 1.2:

> "This Practice Direction is intended to facilitate access to justice by enabling cases to be administered and determined in the most appropriate location. To achieve this purpose it provides flexibility in relation to where claims are to be administered and enables claims to be transferred to different venues."

33. Paragraph 2 of practice direction provides as follows:

> "2.1 The claim form in proceedings in the Administrative Court may be issued at the Administrative Court Office of the High Court at
>
> (1) the Royal Courts of Justice in London; or
>
> (2) at the District Registry of the High Court at Birmingham, Cardiff, Leeds, or Manchester unless the claim is one of the excepted classes of claim set out in paragraph 3 of this Practice Direction which may only be started and determined at the Royal Courts of Justice in London.
>
> 2.2 Any claim started in Birmingham will normally be determined at a court in the Midland Region (geographically covering the area of the Midland Circuit); in Cardiff in Wales; in Leeds in the North Eastern Region (geographically covering the area of the North Eastern Circuit); in London at the Royal Courts of Justice; and in Manchester, in the North Western Region (geographically covering the Northern Circuit)."

We are not here concerned with any of the excepted classes of claim in paragraph 3 of the practice direction.

34. By paragraph 5.1 of CPR PD 54D, proceedings may be transferred from the Administrative Court Office at which the claim form was issued to another office, such transfer being a judicial act. Paragraph 5.2 provides that the general expectation is that proceedings will be administered and determined in the region with which the claimant has the closest connection, subject to various considerations which are there set out.

Tribunals of the Council of the Inns of Court under section 24 of the Crime and Courts Act 2013 (see CPR 52DPD.28.1),

35. Turning to the venue for cost assessment proceedings, CPR rule 47.4(1) and (2) provide:

> "(1) All applications and requests in detailed assessment proceedings must be made to or filed at the appropriate office.
>
> (Practice Direction 47 sets out the meaning of 'appropriate office' in any particular case)
>
> (2) The court may direct that the appropriate office is to be the [SCCO]."

36. Paragraph 4 of CPR PD 47 provides, so far as relevant to this appeal:

> "4.1 For the purposes of rule 47.4(1), the 'appropriate office' means —
>
> (a) the district registry… in which the case was being dealt with when the judgment or order was made or the event occurred which gave rise to the right to assessment, or to which it has subsequently been transferred;
>
> (b) …
>
> (c) in all other cases, including Court of Appeal cases, the [SCCO].
>
> …
>
> 4.3(1) A direction under rule 47.4(2)… specifying a particular court, registry or office as the appropriate office may be given on application or on the court's own initiative.
>
> (2) Unless the [SCCO] is the appropriate office for the purposes of rule 47.4(1) an order directing that an assessment is to take place at the [SCCO] will be made only if it is appropriate to do so having regard to the size of the bill of costs, the difficulty of the issues involved, the likely length of the hearing, the cost to the parties and any other relevant matter."

37. Mr Westgate submitted, first, that the substantive claim in this case was never transferred to Cardiff. However, in my respectful view, that argument has no force. The parties agreed that, were permission to appeal to be granted, the case should be transferred to Cardiff for case management to take place there, and the hearing should take place in North Wales. Although Supperstone J's order refers to "the hearing" being transferred to Cardiff, it clearly means the claim; because the same paragraph goes on to deal with the hearing – which, he directed, should be in North Wales. I am

unconvinced that Supperstone J was labouring under the misapprehension that Cardiff is in North Wales; or that there was any internal inconsistency in the order. Properly construed, the order achieved that which the parties had agreed, namely the transfer of the case to Cardiff (District Registry), with an eminently sensible direction that the hearing be in North Wales.

38. Mr Westgate submitted, in the alternative, that the "appropriate office" for filing the cost assessment proceedings in any Administrative Court claim, whether that claim is managed or heard in London or one of the English regions or Wales, is the SCCO; because, even where such a claim is managed in one of the out-of-London Administrative Court Offices and heard out-of-London, it is not being "dealt with" in a "district registry" as properly construed, the Administrative Court being in effect a single, essentially London-based, entity. In any event, he submitted, its out-of-London offices do not cover the same areas as district registries. For example, the Administrative Court Office in Cardiff deals with Administrative Court claims from across Wales, and indeed now also the Western Circuit. The substantive claim here was managed from the Cardiff Administrative Court Office but heard in Mold, which has its own distinct district registry.

39. In his oral submissions before me today, Mr Westgate has focused upon the term "the district registry" in paragraph 4.1(a) of CPR PD 47. He says, as appears to be the case, that that provision was first included in the relevant practice direction in 1999, as part of the new, post-Woolf Report rules – and, consequently, at a time before the regionalisation of the Administrative Court. He submitted that, properly construed, "district registry" there should be restricted to the district registries as they deals with private law claims, and should not be extended to claims issued or transferred out of London in the Administrative Court.

40. Those submissions, which to an extent reflect the comments of Mr Gardner to Mr Robins in May 2015, have some force; but ultimately I am not persuaded by them.

41. As I have indicated, the Administrative Court is not a discrete institution or entity, it is a list within the Queen's Bench Division that is subject to particular practices and procedures and dealt with by specialist judges, including specialist Masters. A claim issued in the Administrative Court Office in the Royal Courts of Justice is issued in the High Court (Queen's Bench Division) at the Royal Courts of Justice. In my view, equally, a claim issued in the Administrative Court Office in Cardiff is issued in the Cardiff District Registry of the High Court (Queen's Bench Division). There was a period in which Administrative Court claims could be lodged in Cardiff for issue in London – and they were simply sent to London for issue, the Cardiff office effectively being a mere post box facility – but that practice ceased on the advent of the various fully-fledged out-of-London offices, which each had and has the ability to issue, manage and hear Administrative Court claims.

42. It is clear from paragraph 2.1 of CPR PD 54D, which I have already quoted, that a claim form in Administrative Court proceedings may be issued in "the Royal Courts of Justice or… *the District Registry of the High Court* at Birmingham, Cardiff, Leeds or Manchester…" (emphasis added). Just as those claims may be issued in those district registries, when an Administrative Court claim is "transferred" from (say) the Royal Courts of Justice to "Cardiff" it is, in my judgment, transferred to the Cardiff District

Registry of the High Court. If the Administrative Court were some sort of single London-based entity, as Mr Westgate suggests, there would be no need formally to transfer claims by way of a judicial order.

43. That out-of-London Administrative Court claims are dealt with by out-of-London Administrative Court Offices through the relevant district registry is, in my view, not only clearly recognised by CPR PD 54D paragraph 2.1, but also in paragraph 4.1 of that same practice direction:

> "During the hours when the court is open, where an urgent application needs to be made to the Administrative Court outside London, the application must be made to the judge designated to deal with such applications in *the relevant District Registry*." (emphasis added)

44. I have today been referred to U v Liverpool City Council (Practice Note) [2005] EWCA Civ 475 at [48], which, Mr Westgate submitted, urged caution when considering CPR Practice Directions. In particular, it says:

> "It is sufficient for present purposes to say that a practice direction has no legislative force. Practice directions provide invaluable guidance to matters of practice in the civil courts, but in so far as they contain statements of the law which are wrong they carry no authority at all."

However, as that passage itself makes clear, CPR Practice Directions may (and, often, do) give helpful guidance; and they are, of course, drafted by the Civil Rules Committee which also drafts the Rules themselves. Rightly, in my respectful view, it is at least clearly assumed in CPR PD 54D that, when they issue proceedings, out-of-London Administrative Court Offices do so through the district registries of which they are an integral part.

45. Mr Westgate relied upon the fact that, historically, detailed assessments of costs in Administrative Court claims have always been dealt with by the SCCO, i.e. Mr Gardner's email to Robins quoted in paragraph 12 above accurately set out that which occurs in practice. Certainly, I have been unable to identify any such cost assessment which has been dealt with out of London. However, for the reasons I have given, if that has been what has happened historically, I consider that practice to have been wrong.

46. Of course, simply because an Administrative Court claim is issued in or transferred to Cardiff District Registry does not mean that it has to be heard in Cardiff. Paragraph 2.2 of CPR PD 54D (quoted in paragraph 33 above) makes clear that any claim started in Cardiff will normally be determined at a court "in Wales"; and the Administrative Court in Wales regularly sits outside Cardiff. Mr Heesom's statutory appeal, heard in Mold, is but one example. The court sits in Wales wherever is generally most convenient, for the court, parties and the interested public.

47. Consequently, in my view, an Administrative Court claim that is issued in or transferred to the Administrative Court Office in Cardiff is a case "being dealt with" in

Cardiff District Registry for the purposes of paragraph 4.1 of CPR PD 47; and therefore the "appropriate office" for filing cost assessment proceedings under rule 47.4(1) is that district registry. Although primarily a matter of construction of the relevant CPR rules and practice directions, it comes as some comfort that the construction I favour gives a result which reflects the importance of local justice and the general principle that all aspects of public law claims involving Welsh public bodies should be managed and heard in Wales.

48. CPR rule 47.4(1) requires such proceedings to be issued in the appropriate district registry: it is mandatory – all applications and requests "must" be made or filed in the appropriate office. However:

    (i) under rule 47.4(2), the court may direct that the appropriate office in a particular case is the SCCO: in other words, there is specific provision for transfer of a costs assessment from outside London to the SCCO; and

    (ii) as I have emphasised, just because the assessment is in a particular district registry that does not require any assessment hearing to be at a particular venue: for example, the court can direct that an assessment in the Cardiff District Registry will be heard in, say, Mold.

49. As will be apparent, in my judgment Master Haworth did unfortunately err in construing the relevant provisions of the CPR.

50. In considering what should be done in that event, Mr Sachdeva submits that I should make a declaration that the costs assessment ought to have been issued in Cardiff, waive that defect and now send the matter to Cardiff to be dealt with there now. He accepts that Mr Heesom could make an application in the Cardiff District Registry for the transfer of the assessment to the SCCO; but, if he wishes to do that, he must take his chances there. It would, he submits, not be appropriate for me to come to an assessment as to whether such a transfer should be made.

51. Mr Westgate submitted that, even if he were wrong in relation to the construction issue (as I have now found him to be), Master Haworth took into account the relevant factors as set out in CPR PD 47 paragraph 4.3(2) and, having done so, concluded that the SCCO is the appropriate forum for this costs assessment. He went so far as to submit that, even if the Master had construed the provisions correctly, he would inevitably have come to the same conclusion as to venue. Furthermore, he submitted that the matter has by now been significantly progressed in London, the application to transfer was made relatively late, and to change venue now would seriously disrupt the progression of the assessment.

52. However, in respect of what should happen in this assessment now, I consider Mr Sachdeva's submissions to be sound. I am afraid I cannot accept the submission that, if the Master had started from the correct point so far as construction of the procedural provisions are concerned, he would necessarily have come to the same conclusion.

53. In any event, I accept Mr Sachdeva's submission that the Master unfortunately erred in proceeding on the basis that "there is no local flavour in a costs matter," by which I understand him to have meant that the importance of localness of justice does not apply

to costs assessments. I accept Mr Westgate's submission that costs assessments comprise often lengthy and (at least to the layman) tedious detailed arguments; and it is unlikely that members of the public – or many of them – would wish to attend such proceedings. However, in this case, a Flintshire County councillor is contending that his bill of costs for appealing his disqualification properly amounted to nearly £2m, of which nearly £700,000 should be borne by the public purse. I do not accept that that matter will necessarily be of no interest locally in Flintshire.

54. For those reasons, although I shall hear submissions in relation to the precise form of the order, the proposed relief suggested by Mr Sachdeva is broadly, in my view, appropriate.

The Costs Appeal

55. Finally, I turn to the costs appeal.

56. In addition to the court's powers to order costs on account of CPR rule 44.2(8), CPR rule 47.16 gives the court a power "to issue an interim costs certificate for such sum as it considers appropriate", and order that paying party to pay the costs so certified within a particular period. In practice, trial judges usually use the power to make an order for payment on account, and costs judges issue interim certificates. Mr Heesom's application for an additional payment towards his costs over and above the £100,000 already paid was therefore treated by the Master as an application for an interim certificate.

57. In issuing that certificate, the Master noted that a detailed bill had been lodged and points of dispute and replies filed. He noted that there was "a huge gap in terms of costs" between the receiving and paying parties – which is no understatement - and he specifically referred to the point made to him by Mr Sachdeva, that he was required to exercise particular care in allowing further sums because he had not yet carried out an item by item assessment or seen the file including the backup documents in respect of the bill and points of dispute (a point emphasised by Christopher Clarke LJ in Excalibur Ventures LLC v Texas Keystone Inc [2015] EWHC 566 (Comm) at [23], to which Mr Sachdeva has referred me). In his judgment, the Master specifically referred to that point.

58. The Master concluded, at [11], as follows:

> "Looking at matters in the round together with a point of dispute and replies, costs judges are well used to dealing with these types of applications and it seems to me that there is scope here for a further interim payment to [Mr Heesom], albeit not in the sum that [he seeks]. Being cautious, considering the bill, the points of dispute [and] replies and generally looking at a possible outcome at detailed assessment, I am going to award an interim certificate of £100,000."

59. The effect of the costs payments now required to be made, a total of £200,000, means that the full aggregate bill would have to be assessed at no less than £571,428. Mr Sachdeva submitted that the Master was not in a position to conclude that the costs that

would be allowed would approach that level. As I have indicated, if the Ombudsman's points of dispute are fully accepted, the amount due to Mr Heesom would be only about £75,000.

60. However, as CPR rule 47.16 makes clear ("the court may… issue an interim certificate for such sum as it considers appropriate…"), the court is given a very wide discretion indeed to award an interim certificate, even though there has been no assessment on quantum. Costs judges are especially experienced in considering bills of costs and points of dispute, and assessing an appropriate sum to include in an interim costs certificate in the form of a rough calculation as to the minimum amount the receiving party is likely eventually to be awarded.

61. I appreciate that the Ombudsman does not agree with the Master's assessment; but for the Master to assess the appropriate amount of £200,000 to be paid "on account of costs" before the full assessment on a bill of nearly £2m does not on its face appear to be obviously excessive. The Master clearly considered the matters he was bound to consider, notably the bill, points of dispute and points of reply. He does not appear to have taken any immaterial considerations into account. He – as an experienced costs judge – was in a very good position to make the assessment of an appropriate amount. Nothing in the submissions of Mr Sachdeva persuades me that that assessment was in any way arguably wrong in principle or irrational.

62. Therefore, in respect of the costs appeal, I refuse permission.

(After further submissions on costs.)

63. Having dealt with the substantive issue before me, the only matter that now remains outstanding relates to the costs of this appeal and also the costs below.

64. In respect of the costs of this appeal, as a matter of principle, the Ombudsman is entitled to his costs of the venue appeal, having been successful in it; and he is not, of course, entitled to his costs of pursuing the interim certificate appeal.

65. The statement of costs amounts to just over £19,600 in total. Counsel's fees for the hearing appear high, but I do bear in mind that the fee earners in relation to this matter are lower grade and certainly lower hourly rate than those employed by Mr Heesom.

66. In all the circumstances, I think it would be appropriate to reduce the amount of profit costs as follows. I am afraid that I do not consider that the solicitors should be paid in respect of travelling and attending this hearing, and overall the hours spent on preparation are somewhat high. Given that I am not going to reduce Counsel's fees at all, I would reduce those solicitors' costs by about £3,700, which would leave the bottom line at about £16,000.

67. I do not reduce that figure for the delay in bringing the appeal, but it does have to be reduced to reflect the failed interim certificate appeal. In respect of this appeal, I will order that Mr Heesom pays the Ombudsman's costs, which I will summarily assess in the sum of £14,000.

68. In relation to the costs below, the Master made an order that the Ombudsman pay Mr Heesom's costs. In fact, following this appeal, each party effectively succeeded in one of two issues before the Master. I am informed, and accept, that the work done on each of those issues was approximately the same; and, in those circumstances, I will quash the order for costs below, and replace it with an order that there be no order for costs.