



NCN: [2022] UKFTT 452 (GRC)
Case Reference: EA/2021/0302

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Considered on the papers in chambers

**Decided on: 07/12/2022
Decision given on: 07/12/2022**

Before

TRIBUNAL JUDGE CL GOODMAN

Between

AMIT MATALIA

Appellant

and

**(1) THE INFORMATION COMMISSIONER
(2) THE UNIVERSITY OF CAMBRIDGE**

Respondent(s)

Ruling on Costs

Decision: The Second Respondent's application for costs to be awarded against the Appellant is refused.

1. In this Decision, I will refer to the First Respondent as the Commissioner and the Second Respondent as the University, as I did in the Decision issued on 27 July 2022.
2. The University applied on 10 August 2022 for its costs of and incidental to the proceedings in this appeal pursuant to Rule 10(1)(b) of The Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009.

3. The University asked for a decision to be made on the papers and I find that it is fair and in the interests of justice to do so. The Appellant has provided a detailed response to the application, including in relation to his earnings and ability to pay.

The relevant law

4. Section 29 of the Tribunals, Courts and Enforcement Act 2007 provides that, subject to Tribunal Procedure Rules:

“(1) The costs of and incidental to all proceedings in the First-Tier Tribunal... shall be in the discretion of the Tribunal in which the proceedings take place”

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.”

5. Rule 10(1) of The Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 provides that:

“...the Tribunal may make an order in respect of costs... only –

... (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings;”

The proceedings

6. The proceedings were brought by the Appellant pursuant to section 57 of the Freedom of Information Act 2000 (“FOIA”) against the Commissioner and its Decision Notice dated 6 October 2021. In that Decision Notice, the Commissioner found that the Appellant’s request for information from the University was vexatious under section 14(1) FOIA.
7. The University applied to be joined as a second respondent to the appeal. Its application was granted by a Registrar on 4 November 2021.
8. A full day’s oral hearing of the appeal was held on 7 June 2022. The Commissioner did not attend. The Second Respondent was represented by counsel and solicitors. The Appellant was not represented.
9. The Tribunal dismissed the appeal, finding that the Decision Notice was in accordance with the law. The Upper Tribunal refused the Appellant’s application for permission to appeal on 28 October 2022, finding that his application was totally without merit pursuant to Rule 22(4A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Application of Rule 10(1)(b)

10. In considering whether the Appellant acted unreasonably in bringing or conducting the proceedings, I have interpreted the word “unreasonably” in line with the observations of the Tribunal in *Seeveratnam v Charity Commission*, CA/2008/0001 (applied to Rule 10(1)(b) by the Tribunal in *Royal Mail Group Limited v ICO*, EA/2010/2005):

“The Tribunal has adopted the ordinary meaning of the word “unreasonable” for the purpose of interpreting rule 10(1)(c) of the Rules, being “not in accordance with reason, irrational” (as defined by the Oxford English Dictionary).”

11. I have also taken into account the guidance of the First Tier Tribunal (Immigration and Asylum Chamber) in *Cancino v Secretary of State for the Home Department* [2015] UKFTT 59 (IAC) in relation to the identically worded Rule 9(2)(b) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, which was cited with approval by the Upper Tribunal in *Kirkham v Information Commissioner (Recusal and Costs)* [2018] UKUT 65 (AAC).
12. The Tribunal observed in *Cancino* that “Orders for costs under Rule 9 will be very much the exception, rather than the rule and will be reserved to the clearest cases.” [paragraph 10 of headnote]. They referred to the observation of the Court of Appeal on the meaning of “reasonable” in *Ridehalgh v Horsefield* [1994] Ch 205 that:

“the acid test is whether the conduct permits of a reasonable explanation” [at paragraph 16 of *Cancino*]
13. The onus is on the party making the application for costs [paragraph 18]. Unrepresented litigants “must, on the one hand, be permitted appropriate latitude. On the other hand, no unrepresented litigant can be permitted to misuse the process of the Tribunal” [paragraph 26].
14. I also took into account the observation of the First-tier Tribunal in *European Environmental Controls Limited v The Office of Fair Trading*, [2010] UKFTT 408 (GRC), that:

“whether a party has acted unreasonably in bringing, defending or conducting proceedings has to depend on the facts of each case, with there being no hard and fast principle applicable to every case” [paragraph xx].

Conduct of Proceedings

15. I considered first whether the Appellant acted unreasonably in the way in which he conducted the proceedings i.e. from the moment when he filed his notice of appeal.

16. In its application, the University refers to a number of findings of fact made by the Tribunal about the Appellant's conduct. Those findings relate to the Appellant's conduct in a period before the appeal was brought (indeed before the Decision Notice was issued), not his conduct in the course of the proceedings.
17. The University refers to accusations of dishonesty and racial discrimination made by the Appellant against the University and its staff in the course of the proceedings.
18. These accusations are hurtful and distressing for the University's staff. The Tribunal found no evidence to support them. Other Tribunals have found no evidence to support similar accusations in other proceedings. However, I find on balance and in the circumstances of these particular proceedings, that they do not amount to conduct which is so unreasonable as to be irrational or not permitting of reasonable explanation. I take into account that the Appellant was not represented and that his accusations may be based on a genuinely held belief. The Appellant described in his response to the application his personal experience of racism as a child and how this informs his perceptions of unfair or differential treatment.

Bringing of Proceedings

19. I find the University's submissions in relation to the bringing of proceedings more compelling, in particular in light of the Tribunal's findings that the Appellant was engaged in a "longstanding and intransigent vendetta" against the University, that he was "unreasonably persistent" in pursuing requests for information through appeals to the Tribunal, and Upper Tribunal Judge Wikeley's observation that he has pursued "*by way of FOIA litigation, his own private grievance against the public authority and CEM*" [paragraph 34, UA-2022-000620-GIA]. The Appellant has brought five appeals against the University in relation to FOIA requests.
20. However, I am not satisfied that the issues in this appeal were necessarily the same as in other appeals. Both a Registrar and a Judge refused the University's applications for this appeal to be heard with the Appellant's appeal reference EA/2021/0075, with Judge Oliver noting that "although both cases involve the issue of vexatiousness, they involve different requests on different topics". This appeal concerned a request for annual information which the Appellant made every year and to which the University had previously acceded. The Appellant also submitted that he felt that he needed to bring this appeal to refute suggestions made by the University to the Commissioner that he intended to use the information to approach pupils about the content of the CEM 11+ tests, an issue which had been the subject of previous litigation and injunctions against him. These were two reasonable explanations for bringing the appeal and I find that even though his appeal failed, his conduct in bringing it was not necessarily "irrational".
21. I have concluded that in all the circumstances the bringing of this appeal by the Appellant was not "unreasonable" for the purposes of Rule 10(1)(b), taking into account that the onus is on the University and that an order for costs should be made

only in the clearest cases. The University has not provided any authority where costs have previously been awarded pursuant to Rule 10(1)(b) in relation to the mere bringing of an appeal. I note that the University “put on notice” the Appellant that his appeal would fail and that it anticipated seeking a costs order in these proceedings, but find that this cannot be equated to persisting with litigation in “the teeth of legal advice” from one’s own advisors.

22. My decision to dismiss this application is based on the facts and circumstances of these particular proceedings. Nothing in my decision prevents another judge reaching a different decision about the awarding of costs against the Appellant in other proceedings, based on the facts and circumstances of those proceedings.
23. The application for costs is refused.

District Tribunal Judge CL Goodman

7 December 2022