



Neutral citation number: [2025] UKFTT 00074 (GRC)

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

**Appeal Reference: EA/2023/0202
Decision given on: 3 February
2025**

Before
Judge Stephen Cragg K.C.

Sitting in Chambers on 7 August 2024 and 24 January 2025

Between

Paul Carlier

Appellant

and

**The Information Commissioner
Financial Conduct Authority**

Respondents

DECISION AND REASONS ON COSTS APPLICATION

1. The Appellant's application for costs is refused.

2. We allowed the Appellant's appeal against the Information Commissioner's decision notice which had concluded that the Appellant's request for information was vexatious.
3. The Appellant has now made an application for costs in relation to the appeal. His application for costs begins:-

....I have very recently come in to possession of entirely new testimony and evidence that proves that certainly the 2nd Respondent FCA have been guilty of 'Unreasonable Behaviour' [and indeed substantially worse behaviour] from the outset in respect to these FOIA requests and throughout these legal proceedings pursuant to them.

6. The evidence also rather demonstrates that the behaviour of the 1st Respondent, the Information Commissioner, was rather more than 'regrettable' and that it also was deliberately 'Unreasonable behaviour'.

4. The Appellant lists the 'new evidence and testimony' and concludes that 'It is now proven that EVERY allegation I have made in my complaints to the FCA in respect to my personal case since 2015 were true'.
5. He says that he submits 'this application for costs against the 2nd and potentially the 1st Respondent for both 'Wasted Costs' and 'Costs for Unreasonable behaviour'.
6. The FCA complains that the application for costs is out of time, and asks for the opportunity to make submissions if the application is, nevertheless entertained.

7. I am prepared to extend time for the application to be made on the basis that the Appellant says it is based on ‘new’ material. I am aware that the FCA opposes the application, but I do not think it is necessary to consider further submissions from the FCA to deal with this application, or from the Commissioner.

The Law

8. Proceedings before the First-tier Tribunal do not generally involve costs orders against the parties. However, there is a provision in rule 10 (1)(b) of the Tribunal’s Rules, giving the Tribunal power to award costs against a party who acts unreasonably in bringing, defending or conducting the proceedings.
9. Rule 10 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 relies on the statutory authority of s.29 of the Tribunals, Courts and Enforcement Act 2007. It provides, materially, as follows:

Orders for costs

10.—(1) ... the Tribunal may make an order in respect of costs... only—

- (a) Under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs;
- (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings;..
- (c) ...
...

(2) The Tribunal may make an order under paragraph (1) on an application or on its own initiative.

10. There is some case law which sets out the approach to be taken by the Tribunal. Thus, the Decision of the Upper Tribunal (Lands Chamber) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC) applied the Court of Appeal's judgment in *Ridehalgh v Horsefield* [1994] Ch 205. I note in particular the test set out at paragraph 28 of the Upper Tribunal's Decision in *Willow Court*, described as follows:-

At the first stage, the question is whether the person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.

11. The authorities provide a definition of “*unreasonable conduct*” as involving conduct which is vexatious, designed to harass the other side, and does not permit of a reasonable explanation.

12. The Upper Tribunal's conclusion in *Willow Court* was that, only if the first stage test was met, should the Tribunal go on to consider stage two (whether it ought to make an order for costs in the light of the unreasonable conduct found to have occurred). If the answer to that question is yes, then it must move to stage three (to consider in what terms the order should be made). Stages two and three involve the exercise of judicial discretion.

Decision

13. As will be seen from the Tribunal's decision this was a difficult case to decide when considering whether the Appellant's request was vexatious. We said:-

40. The Tribunal has found this a finely balanced case. We take on board all that the FCA has said about the burden that the Appellant's frequent engagement with it over a period of years has placed upon the resources that the FCA. The requests which are the subject of this appeal are unnecessarily lengthy and convoluted as the FCA says. We are concerned about some of his tone and language when his avowed aim is simply seeking information. There is evidence of persistence in the face of explanations provided by the FCA and limits on what information the FCA can provide.

14. We also said that the Tribunal's decision to allow the appeal was made with "some hesitation..." and that it was a decision made only by "a narrow margin...".

15. The first stage of the *Willow Court* test is to consider whether there is a reasonable explanation for the conduct complained of. Applying an objective test, in my view it would be impossible to say that the FCA or the Commissioner acted unreasonably in defending these proceedings by maintaining the position that the request was vexatious.

16. There were valid reasons for arguing that the request was vexatious (as explained in the Tribunal's decision) largely based on the burdensomeness of the requests on the FCA and it was not

unreasonable for the FCA or the Commissioner to defend the appeal, albeit unsuccessfully.

17. The fact that the Appellant's underlying dispute with the FCA continues (based on new evidence or otherwise) is not something which affects this decision. Any application for costs is limited to considering a party's conduct as part of the appeal proceedings as set out at rule 10(1)(b) of the Tribunal Rules.

18. As I have found that the FCA and the Commissioner did not act unreasonably in defending the proceedings, I do not need to continue to consider whether a costs order should be made or the terms of any order. As the case does not come within the categories in rule 10(1)(b) of the Rules, there is no general discretion for the Tribunal to award costs on any other basis.

Postscript

19. The above reasoning was written on 7 August 2024. However, I am told that because of an administrative oversight the decision was not issued. That has given me the opportunity to consider further representations made by the Appellant.

20. Firstly, the Appellant sought to supplement his costs application in documents attached to an email dated 7 August 2025 (not seen by me before the reasons above were formulated), which made reference to actions of the FCA and the Commissioner after the decision in this case was promulgated.

21. Secondly, there is an email dated 17 January 2025 which attached part of a formal whistle-blower disclosure document sent to the Commissioner dated 9 January 2025, along with other documents.

22. It does not seem to me that any of these subsequent matters change my findings above that the FCA and the Commissioner were not unreasonable in defending this appeal (albeit unsuccessfully), on the ground that the requests were vexatious, largely based on a claim of burdensomeness of the requests.

23. Therefore, no order for costs is made against the FCA or the Commissioner and the application is dismissed.

24. I also note that the Appellant has made a claim for contempt of court against the FCA, supplemented by his emails of 7 August 2024 and 17 January 2025. It seems to me that that application should be referred to the Registrar and, if appropriate, case management directions given.

Stephen Cragg KC

Judge of the First-tier Tribunal

Date: 24 January 2025.