



Neutral Citation Number: [2020] EWHC 3369 (Admin)

Case No: CO/1930/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2020

Before: HHJ Karen Walden-Smith, sitting as a Judge of the High Court

Between:

MAKANJU AWODOLA

Claimant

- and -

**ASSOCIATION OF CHARTERED CERTIFIED
ACCOUNTANTS**

Defendant

**JOSHUA HITCHENS and SIÂN MCGIBBON (instructed by ADVOCATE) for
the Claimant**

PAUL OZIN QC (instructed by ACCA) for the Defendant

**Judgment Approved by the court
for handing down**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 1030 on Wednesday, 9 December 2020.

HHJ Karen Walden-Smith, sitting as a Judge of the High Court:

1. Further to my handing down of the judgment in this substantive judicial review, the parties required further time for the making of submissions relating to costs and, with respect to the Defendant, making an application for permission to appeal. As a consequence of that requirement for further time, initially required by the Defendant and then by the Claimant in response, there has been a consequential delay in providing this judgment on the issues of costs and application for permission to appeal, which I will deal with in turn.

Costs

2. The Claimant succeeded in his substantive claim for judicial review, and seeks an order for costs. He was mainly acting as a litigant in person but was represented at the hearing by both Mr Hitchens and Ms McGibbon who acted pro-bono. The Claimant seeks a costs award in the sum of £12,610 calculated as 400 hours of work on documents, 12 hours attendance at hearing and travel and waiting time and 228 hours in attendances. The Claimant says that this total of 640 hours is divided into 160 hours pre-permission and 480 hours after permission, a total claim of £12,160.00 at £19 per hour. In addition, the Claimant seeks a payment of £2,100 plus VAT to the Access to Justice Foundation by way of a pro-bono costs order under section 194 of the Legal Services Act 2007 to represent the costs of Counsel at the hearing and in drafting costs submissions.
3. The Defendant provided a detailed analysis of the costs and how the costs claimed should be considered by the court. The costs to be awarded must be considered within the ambit of the provisions as to the court's discretion set out in CPR r.44.2.
4. CPR r.44.2(2) provides that if a court decides to make an order about costs (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but (b) the court may make a different order. CPR r.44.2(4) provides that in deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including – (a) the conduct of all the parties; (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and (c) any admissible offer to settle (which is not a Part 36 offer). In considering conduct the court will consider conduct before as well as during the proceedings, whether it was reasonable to raise, pursue or contest a particular allegation or issue; the manner in which a party pursued or defended its case on a particular issue and whether a claimant had exaggerated its claim. CPR r.44.2(6) allows for a variety of different orders to be made by the court.
5. In this case, the Claimant succeeded in its substantive claim. The manner in which the case was presented by the Claimant when acting in person caused difficulties – both with respect to the manner in which the documentation was presented and in the way that his arguments were presented. Even taking into account the fact that the Claimant is not a trained lawyer, the volume of documentation and the confusion it created was beyond what might have been expected. Insofar as he is seeking a large number of hours for work that was not necessary to undertake, that is a matter the court ought properly to take into account in determining what is a proper award.

6. The Claimant had initially raised four grounds for bringing a claim for judicial review. On 24 June 2019, all four grounds were rejected by Richard Clayton QC sitting as a Deputy High Court Judge on the papers, but the issue with respect to whether the Defendant has applied the wrong Rulebook contrary to byelaw 11(c) was allowed by Michael Fordham QC, as he then was, at the renewed oral application on 4 September 2019.
7. Subsequent to permission being granted on one ground, the Claimant continued to raise new points in his two skeleton arguments which were then discarded by the third skeleton argument drafted by Counsel acting pro-bono. When represented by Counsel, new points continued to be raised and the issues raised at the hearing, which were listed for an hour, but took a full half-day. The Defendant was required to deal with all the points raised by the Claimant in the various iterations of the written and oral submissions.
8. In my judgment, the Claimant unnecessarily complicated the issues. The matter in dispute was a straightforward issue of construction. The various arguments raised by the Claimant went way beyond that which was necessary and added to the lack of focus brought to the claim. The Court of Appeal, including Lord Burnett LCJ, in *R (Dolan and Monks) v SoS for Health & Social Care and SoS for Education* [2020] EWCA Civ 1605, has recently criticised the prolixity and complexity being brought to judicial review proceedings. While this instant case dealt with a much more straightforward issue, the tendency to overly complicate was clearly present and goes to conduct both with respect to the many issues raised and the manner in which litigation was conducted.
9. The Claimant had not provided a schedule of costs in accordance with the rules prior to the hearing. That schedule has now been provided, together with evidence that the costs of instructing one of the junior Counsel attending the hearing would have been £1,500 plus VAT and that the costs of the submissions for one counsel would have been a further £600 plus VAT.
10. I do not consider that the total of 640 hours that the Claimant says he incurred as a litigant in person were reasonable or proportionate. There was a great deal of duplication in the work undertaken, for example with the two skeleton arguments that were discarded, and many arguments were raised which were unnecessary and without merit. I do appreciate, however, that it would have taken the Claimant some time to prepare his application and to prepare for the hearings, albeit that at the hearings themselves he had the benefit of pro-bono representation.
11. Taking all matters into account, in my judgment a realistic period of time for the Claimant, as a litigant in person, to carry out his research, reading, preparation and drafting was no more than 150 hours, taking into account that there was wasted time on points which were without merit. It is to be noted that in the final skeleton argument the Claimant contends that the reading time, including of the skeleton arguments, should be no more than 45 minutes with the hearing time listed for 1 hour. While those time estimates were unrealistic, it is difficult to understand how the Claimant can contend it took 640 hours to prepare a case where the substantive hearing and the reading required in preparation for that hearing was said to be so short.

12. It is important that the Claimant recognises that he was wasting time by promoting points which were without merit and thereby made the proceedings unnecessarily prolix. The case rested on a single point of construction which had been made clear at the permission stage by Michael Fordham QC.
13. In addition to litigant in person costs of £2,850 (150 hours at £19 per hour), the Claimant is entitled to a pro-bono costs order of £2,100 plus VAT of £420 given the work carried out by Counsel. Two Counsel were being used, even though it is acknowledged that was not necessary, but appropriately costs have been limited to the instruction of one junior counsel. The costs for the hearing and the subsequent written submissions are reasonable and proportionate.
14. The total order for costs is therefore £5,370 of which £2,520 (inclusive of VAT) is to be paid pursuant to the provisions of section 194 of the Legal Services Act 2007 to Advocate (unless I am given alternative details as to whom the payment should be made).
15. The Defendant seeks a stay of the costs order pending the outcome of any renewed decision of the Appeal Committee. The Claimant rejects that contention on the basis that this is a discrete application for judicial review which has ultimately been successful and that the Claimant should be entitled to his costs forthwith. The difficulty for the Claimant in seeking to resist the court exercising its discretion in favour of the Defendant on this matter is that the Claimant has shown himself unable to pay the costs order in the sum of £24,260.50 that has been made against him already in the course of the disciplinary proceedings. It is apparent that the Claimant would not be in a position to return any monies paid to him in costs at this time should he either be ordered to pay costs, if the Defendant were to be successful in an application to the Court of Appeal or, if the matter is remitted for reconsideration by the Appeal Committee, he is obliged to pay costs to the Defendant. There is an appreciable risk that if the costs order in favour of the Claimant is paid by the Defendant at this time then the Defendant will be unable to recover those costs, which would ultimately be used as a set off against any costs the Claimant may owe to the Defendant.
16. In the exercise of my discretion, I will allow a stay of that proportion of the costs that would otherwise be paid to the Claimant as a litigant in person, namely £2,850. The stay does not apply to the £2,520 awarded as pro-bono costs.

Application for permission to appeal

17. The Defendant seeks permission to appeal the determination on the basis both that there is a real prospect of success (CPR r.52.6(1)(a)) and that there is some other compelling reason for the appeal to be heard (CPR r.52.6(1)(b)). Permission to appeal on both limbs is refused.
18. The Defendant has failed to establish that there is a real prospect of succeeding in establishing that the determination was wrong. Permission to bring this substantive judicial review was granted by Michael Fordham QC, as he then was, that it was arguable that the Defendant had erred in determining that the regulations that applied were not those that were in force at the time the application to appeal had first been made. This was a narrow point of construction of the Defendant's regulations and

byelaws as to whether the Claimant's appeal of the decision of the Defendant's Disciplinary Committee was governed by the Appeal Regulations in force at the time the appeal was initiated (the 2018 Rulebook) or at the time the application for reconsideration of the application for permission to appeal was submitted (the 2019 Rulebook).

19. The facts of the matter were that on 19 November 2018 the Claimant appealed the decision of the Disciplinary Committee to exclude him from membership together with an order to pay costs. A Chairman of the Appeal Committee refused the application to appeal on the papers, promulgating that decision on 30 November 2018 and informing the Defendant that he may request his application to be considered by the Appeal Committee within 28 days of the decision refusing permission, that is by 2 January 2019.
20. The Claimant requested his application to be reconsidered by the Appeal Committee by notice dated 1 January 2019, submitted on 2 January 2019, in accordance with the decision letter of 30 November 2018. In accordance with the provisions of the 2018 Rulebook the Appeal Regulations provided that the initial application would be initially considered by a Chairman (or the Appeal Committee) and if the Chairman refused permission to appeal, the applicant may request his application notice to be reconsidered by the Appeal Committee, with an oral hearing if requested, within 28 days of the Chairman's written reasons for refusal [Rulebook 2018: Appeal regulations 6(3)(a), (b), (g)(ii) and 6(4)(a)]. The 2019 Rulebook, which came into force on 1 January 2019, provided that the reconsideration of an application for permission to appeal is undertaken by a Chairman on the papers in private and without a hearing rather than before the full Appeal Committee with an oral hearing if requested.
21. The Defendant has failed to show why it was arguably wrong for the court to determine that in applying on the 2 January 2019, in a notice dated 1 January 2019, for a reconsideration of the application made on 19 November 2018, the Claimant was entitled to a reconsideration in accordance with the rules in place at the time the application for permission to appeal was made. The application on 2 January 2019 was not a new application. It was for a reconsideration of an extant application for permission made when the 2018 Rulebook was in force.
22. Further, there is no justification for suggesting that there is some other compelling reason for the appeal to be heard. The application for permission to appeal seeks to widen the significance of this decision to other disciplinary proceedings relating to both the Defendant and to other regulatory bodies, namely the Insolvency Practitioners Association, the Memorandum of Association of the Institute of Bankers of Ireland, and the Association of International Accountants. These were not matters before the court and are not relevant. The determination of the court was that in this instance the Defendant had failed to apply the rules applicable at the time as the application for permission to appeal was made, overlooking that the application dated 1 January 2019 and submitted on 2 January 2019 was for a reconsideration of the application made on 19 November 2018. There is no other compelling reason for the appeal to be heard.
23. In the circumstances of additional time being granted for the provision of submissions with respect to both costs and this application for permission to appeal, the time for

the Defendant to seek permission from the appeal court in accordance with the provisions of CPR r.52.12 is extended to 14 days from the formal handing down of this determination on Wednesday 9 December 2020, namely by 12 noon on 23 December 2020. This takes into account the additional time that has been required by both sides to enable this matter to be determined on the basis of full submissions.

Order

24. The order will therefore be, that

HHJ Karen Walden-Smith, sitting as a Judge of the High Court

UPON considering the written submissions of the Claimant and the Defendant

ORDERED THAT:

- (1) The Defendant is to pay the costs of the Claimant acting as a litigant in person, summarily assessed in the sum of £2,850, enforcement of such costs order is to be stayed pending the outcome of any appeal against this decision and/or the final determination of the Appeal Committee with respect to the Claimant's application to appeal the decision of the Defendant's Disciplinary Committee;
- (2) The Defendant is pay to the sum of £2,520 (inclusive of VAT) to the Access to Justice Foundation pursuant to the provisions of section 194 of the Legal Services Act 2007 and CPR r.46.7 by no later than 4pm on 23 December 2020;
- (3) Permission to appeal is refused;
- (4) The time for the Defendant to seek permission from the Court of Appeal is extended until 4pm on 23 December 2020 in accordance with the provisions of CPR r.52.12(2)(a).