

Neutral Citation No: [2022] NIKB 39

Ref: COL11976

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 2021/060712/01

Delivered: 28/10/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

GARETH WATSON

Applicant

and

POLICE MISCONDUCT PANEL

Respondent

and

PROFESSIONAL STANDARDS DEPARTMENT

Intervener

**Mr Ian Skelt QC with Mr Michael Egan BL (instructed by Edwards & Co, Solicitors) for
the Applicant**

**Mr Mark Robinson QC with Mr Mark McEvoy BL (instructed by the Crown Solicitor's
Office) for the Respondent**

Mr John Beggs QC (instructed by PSNI Legal Services Branch) for the Intervener

RULING ON COSTS

COLTON J

Introduction

[1] The court gave judgment in this application on 26 August 2022. The applicant is a constable in the Police Service of Northern Ireland. In the proceedings he challenged a decision of the respondent by which it determined that it had jurisdiction to determine a misconduct complaint brought by the intervener. The respondent had determined that the regulations concerning misconduct included an

ongoing duty in relation to an alleged material non-disclosure in relation to his application process to join the PSNI.

[2] The court concluded that the panel was correct in so determining.

[3] At the invitation of the intervener the court also ruled that the relevant regulations permitted prosecution of alleged pre-attestation misconduct of a serving police officer.

[4] The application for judicial review was dismissed.

[5] There was no agreement in relation to the appropriate order as to costs and the court directed written submissions from the parties on this issue which have now been received.

Legal Principles

[6] Costs are in the discretion of the court. Order 62, rule 3(3) provides:

“If the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the court shall order the costs to follow the event, except where it appears to the court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

[7] Herein lies the basis for the usual order that costs follow the event.

[8] In this case the applicant submits that the normal order should not be made and the exception in rule 3(3) should apply. What are the circumstances of the case upon which he urges the court not to make the usual order?

[9] Mr Skelt points to the fact that the application raised novel points of law.

[10] The panel itself anticipated that its decision would be the subject matter of judicial scrutiny and, indeed, the misconduct proceedings have been paused pending the outcome of this application.

[11] In addition to this, he points to the fact that the court considered additional issues not challenged by the applicant because the panel had accepted his submissions on those issues.

[12] In relation to the position of interveners generally the practice is that they bear their own costs. Orders for costs are not normally made either in favour of or against interveners, but the court retains a discretion to do so.

[13] Mr Robinson on behalf of the respondent submits that there is no reason in this case to depart from the general rule that costs follow the event. There is nothing in the litigation which would justify a departure from the usual order.

[14] Mr Beggs on behalf of the intervener contends that his client should have been a respondent or at the very least a Notice Party to the proceedings from the outset. He further argues that in effect his client was the “true respondent” in the proceedings. The Professional Standards Department was the presenting side and made the arguments on jurisdiction on behalf of the Appropriate Authority (“AA”) to the original panel. In the course of the hearing the intervener was the party which primarily engaged with the court. It raised separate arguments in the wider public interest in respect of which it was successful.

Conclusion

[15] The court considers that the respondent is entitled to an order for costs against the applicant. Whilst the point raised by the applicant was an important one in respect of which there was no authority, the fact remains that he was unsuccessful in his application. Many judicial review applications will raise matters of public importance but that alone is an insufficient reason for not awarding costs to a successful party. The applicant had a direct interest in the application. He was unsuccessful in his argument before the panel and his application for judicial review of that decision was unsuccessful. I can see no good reason for departing from the normal rule in those circumstances.

[16] In relation to the intervener, the position is different. The intervener expressly raised two points which were not the subject matter of the application but were relevant to the original decision of the panel. The court agreed to consider those points and accepted the intervener’s invitation to provide guidance on the basis that the points raised an important point of wider public interest. On the main issue there was no disagreement between the respondent and the intervener, and it would have been open for them to come to a joint position if they had a particular concern about costs. I therefore propose to make no order in relation to the costs of the intervener.

[17] Therefore, in relation to costs the court orders that the applicant shall pay the respondent’s costs with those costs to be taxed in default of agreement.

[18] The court makes no order in relation to the costs of the intervener.