

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

CO/2241/2009

**THE QUEEN ON THE APPLICATION OF
SHARON SHOESMITH**

Claimant

-and-

- (1) OFFICE FOR STANDARDS IN EDUCATION, CHILDRENS SERVICES AND
SKILLS
(2) SECRETARY OF STATE FOR CHILDREN, SCHOOLS AND FAMILIES
(3) HARINGEY LONDON BOROUGH COUNCIL**

Defendants

**NOTE ON CONSEQUENTIAL ORDERS/APPLICATIONS
ON BEHALF OF THE THIRD DEFENDANT**

1. This note deals with the position of the Third Defendant (the London Borough of Haringey referred to as "Haringey") in relation to consequential applications and orders following the handing down of judgment on 23 April 2010 in these judicial review claims. Haringey has received notice that the Claimant is to seek permission to appeal the Judgment of Foskett J. At this point Haringey is not aware of the grounds of appeal and thus may wish to make further submissions on this point following receipt of the Claimant's initial representations.
2. Haringey's position is as follows:
 - (a) It seeks an order for costs of the judicial review against the Claimant; and
 - (b) resists the Claimant's application for permission to appeal.

3. The Claimant has failed in her claim for judicial review against Haringey on the basis that the Employment Tribunal (and not the Administrative Court) is the appropriate venue for determining the issue of the fairness or otherwise of her summary dismissal by Haringey [see Judgment paragraphs 512 to 514]. The claim for judicial review against Haringey was dismissed on this basis.
4. Haringey has throughout the judicial review proceedings maintained that the Employment Tribunal was the proper and appropriate forum to consider her challenge to Haringey's decision to dismiss her from employment. This was the position adopted by the Head of Legal Services (in an email to the Claimant's Solicitor as early as 20 March 2009) and again subsequently in the Summary Grounds of Resistance and Haringey has since then continued to resist the application, *inter alia*, on this basis. The Claimant has also recognised that the Employment Tribunal affords an avenue of redress for her complaints and issued a claim in the Employment Tribunal at or about the same time as she lodged her judicial review claim.
5. Although the court has a discretion in regard to costs (see SCA 1981 s51) costs in judicial review generally follow the event: the unsuccessful party will generally be ordered to pay the costs of the successful party – see CPR para 54.16.7. Undoubtedly, this would have been the order sought by the Claimant had she been successful in her judicial review application against Haringey.
6. There is no reason to depart from the normal practice and Haringey should be awarded the costs of defending the judicial review claim.
7. It is understood that the Claimant will seek permission to appeal. Permission ought only to be granted where (a) the court considers that the appeal would have a real prospect of success; or (b) there is some other compelling reason why the appeal should be heard (see CPR 52.3(6)).

8. In this case, there is no real prospect of success on appeal for the reasons given in the Judgment and/or for the additional reasons advanced by Haringey in the course of the judicial review hearing.
9. In short summary, Haringey could not have allowed the Claimant to continue in her post as Director of Children and Young People's Services ("Director of CYPS") without contravening the Directions made by the Secretary of State. Without responsibility for the statutory functions encompassed by the role of Director of CYPS, the Claimant's post no longer had any meaningful functions or responsibilities. Further, in light of the 2008 JAR Haringey decided that it could not continue to employ her in another suitable alternative role (if such a role existed, which it did not). Haringey's decisions were private law decisions not amenable to judicial review, despite the fact that the Claimant held a statutory post; and were decisions it was entitled (and/or bound) to make in the circumstances.
10. The Claimant has failed in her claims against all three Defendants following a full hearing that lasted four whole days in October 2009 and the presentation of lengthy written submissions and further argument thereafter. The issues were fully ventilated in argument and subjected to close and comprehensive analysis in a Judgment running to 548 paragraphs.
11. There is accordingly no other compelling reason to commit the Court of Appeal to re-considering this claim on appeal. Permission ought not to be granted on this basis either.

Ingrid Simler QC
(Counsel for Haringey)

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25 June 2010