

**Litigation and Employment
Group**

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**Administrative Court
FAO Judge Foskett**

Via Mr John Baker

By email and hard copy

Please Quote: LT9/0800E/B5/NSC

Your Reference: CO/2241/09

Monday, 28 June 2010

Dear Sir

**Shoemith v Ofsted, Secretary of State for Children Schools and Families, and LB
Haringey
Case No. CO/2241/2009**

I am writing on behalf of the Secretary of State for Education (the successor to the Secretary of State for Children, Schools and Families) in response to your email message of 14th June 2010, in which you indicated that 'Subject to any representations he receives', Mr. Justice Foskett 'would like an indication from each party as to whether any applications consequent on the judgment are to be made.'

The Secretary of State does wish to make one application – to seek his costs against the Claimant, Sharon Shoemith. Further, the Secretary of State wishes to state his opposition to an application that he understands is to be made by Ms. Shoemith: she will be seeking permission to appeal to the Court of Appeal.

The Secretary of State will invite the Court to make an order for costs against Ms. Shoemith. The application will be that Ms. Shoemith should pay all of the Secretary of State's costs incurred in defending the claim that she brought against him (including the costs incurred in dealing with the various matters that arose after the oral hearing), with the amount of costs to be subject to detailed assessment, if not agreed.

The basis of this application is the simple one that Ms. Shoemith failed in *each* of her grounds of challenge against the Secretary of State, and there are no particular reasons known to the Secretary of State to justify a departure from 'the general rule . . . that the unsuccessful party will be ordered to pay the costs of the successful party': CPR Part 44.3(2)(a). In this regard, the Honourable Judge is reminded that Ms. Shoemith has been aware throughout of the arguments that the Secretary of State would be making to defend the case against him. These arguments, which found favour with the Honourable Judge, were outlined in the Summary Grounds lodged by the Secretary of State on the 31st March 2009 (there was, of course, no letter before claim from Ms. Shoemith). In the circumstances, Ms. Shoemith must be treated as proceeding with her claim with 'open eyes'. It is also clear that she had the benefit of expert legal advice throughout.

Simon Harker - Head of Division
Natalie Cohen - Team Leader

The Secretary of State would like to reserve the right to respond to any arguments made by Ms. Shoemith if she seeks to resist this application. The Secretary of State does not consider that it is appropriate, at this stage, to anticipate any such arguments.

As for the intended application by Ms. Shoemith for permission to appeal this is resisted in principle, although the precise way in which her appeal is being put is not known at this stage.

There is, it is submitted, no basis for the Honourable Judge to grant permission to appeal from his decision to dismiss the application for judicial review against the Secretary of State. An appeal could not have 'a real prospect of success', nor is there 'some other compelling reason why the appeal should be heard': CPR Part 52(6).

There were two aspects to the case against the Secretary of State: unfairness in the decision-making process; and improper purpose/irrelevant consideration. The latter was essentially a question of fact for the Court, and there is no reason to disturb the Honourable Judge's findings. The former involved an application of well-established law to the facts as found by the Court. The judgment reached by the Honourable Judge that the duty of fairness was not contravened was, it is submitted, plainly the correct one to have been reached.

Furthermore, even if there was 'a real prospect of success' that the Honourable Judge was in error as to whether the duty of fairness was contravened, there was a clear factual finding that further representations by Ms. Shoemith (the core of her complaint) would have made 'no difference'. The Honourable Judge made that finding after a very careful consideration of the facts. There is no basis to suggest that this finding will be interfered with on appeal.

There is also no 'other compelling reason why the appeal should be heard'. The Honourable Judge's decision accorded with well established legal principles, as applied to the quite unique facts of the case. Although there was undoubtedly considerable media interest in those facts, and in the Honourable Judge's consideration of them, this is no reason for the matter to be reviewed again by the Court of Appeal.

As with the question of costs, the Secretary of State would like to reserve the right to respond to any arguments made by Ms. Shoemith in support of her application for permission to appeal.

Yours Faithfully



Natalie Cohen
For the Treasury Solicitor

Cc all parties representatives