



Neutral Citation Number: [2024] EWHC 2874 (Admin)

Case No: AC-2023-LON-003385

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/11/2024

Before :

MR JUSTICE SWEETING

Between :

AB
-and-
SOCIAL WORK ENGLAND

Applicant
Respondent

AB (representing themselves) for the **APPLICANT**
Michael Standing (instructed by **BATES WELLS & BRAITHWAITE LONDON LLP**) for
the **RESPONDENT**

Hearing dates: 9th July 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 12th November 2024 by circulation to the parties or their representatives by email and by release to the National Archives

THE HONOURABLE MR JUSTICE SWEETING

Introduction

1. This judgment relates to the assessment of costs following the appeal hearing on 9 July 2024 in the matter of *AB v Social Work England* [2024] EWHC 1862 (Admin), an appeal by AB against a decision of Social Work England ("SWE", "the Respondent") to remove her name from the Register of Social Workers.

Background

2. The Appellant represented herself throughout the proceedings. The Respondent was represented by counsel, Mr Michael Standing, instructed by Bates Wells & Braithwaite London LLP ("Bates Wells").
3. The Appellant was the subject of an SWE Fitness to Practise investigation which culminated in a fourteen-day hearing. The Panel found her fitness to practise to be impaired due to misconduct. The sanction imposed by the Panel was to remove the Appellant from the Register of Social Workers. The Panel also revoked an interim suspension order previously imposed and imposed a new 18-month interim suspension order.
4. Five allegations of misconduct were made against the Appellant as follows:
 - a. Allegation 1: Inappropriate communication with a colleague.
 - b. Allegation 2: Improper handling of, and access to, confidential information, including retaining and disclosing a safeguarding alert without consent, accessing her son's social work records without a legitimate reason, and keeping case notes after her employment had ended.
 - c. Allegations 3, 4, and 5: Providing inaccurate information about child protection visits, failing to ensure the safeguarding of service users, and acting dishonestly in relation to these matters.

Resolution of the Substantive Appeal

5. Prior to the appeal hearing, SWE conceded the appeal in relation to Allegations 3, 4 and 5 relating to the child protection visits. The basis for this concession was an acknowledgment by SWE that the Panel's reasoning in respect of these allegations was not adequately detailed, particularly regarding the evaluation of hearsay evidence. Additionally, the Appellant had obtained new evidence that she argued contradicted the hearsay evidence SWE had relied on. SWE proposed that these allegations should be remitted to a differently constituted Panel for redetermination.
6. The appeal proceeded in respect of Allegations 1 and 2. The effect of my judgment was that the appeal was dismissed in relation to these matters and allegations 3, 4 and 5 were remitted

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to a differently constituted panel for redetermination. The question of impairment and sanction, taking into account the findings on Allegations 1 and 2 (which were undisturbed) and any findings that might be made in relation to Allegations 3, 4 and 5 necessarily fell to be redetermined (an outcome that had always been accepted by the Respondent). The 18-month interim suspension order imposed by the Panel remained in force.

Offers and Responses in Relation to Costs

8. The Respondent made two 'without prejudice save as to costs' offers of settlement to the Appellant:
 - a. On 22 May 2024, SWE offered to concede the appeal in relation to Allegations 3, 4 and 5 on the basis that they would be remitted to a new panel for redetermination. The offer proposed that there be no order as to costs to reflect the limited nature of the concession and the costs incurred by SWE in considering Allegations 1 and 2, which were not conceded.
 - b. This offer was rejected by the Appellant who made a counterproposal on 28 May 2024. This counterproposal was rejected by SWE on 6 June 2024.
 - c. On 24 June 2024, SWE made a revised offer to settle which again proposed remittal of allegations 3, 4 and 5. This offer included a proposal to quash the interim suspension order on the basis that the Appellant would give an undertaking to the Court not to practice as a social worker until SWE had made an application for a new interim order. The offer expressly stated that if it was not agreed, SWE would seek its costs of defending the appeal. The Appellant again rejected this offer.

Parties' Costs Arguments and Applicable Law

9. The parties' respective costs arguments are set out in their written submissions. SWE contends that costs should follow the event, per CPR 44.2(2)(a). It submitted that the Appellant had not achieved a better outcome than had previously been offered to her. SWE sought two-fifths of the costs incurred up to 22 May 2024, when its first settlement offer was made, to reflect the costs incurred in relation to Allegations 1 and 2. In respect of the costs incurred following this offer, SWE sought its costs in full.
10. The Appellant disputed that SWE had been successful in resisting the appeal, arguing that Allegations 1 and 2 had been remitted for redetermination. She contended that she had achieved a better outcome by obtaining an order that future hearings should be listed promptly.
11. The Appellant argued that it had been unreasonable for SWE to delay conceding the appeal in relation to Allegations 3, 4 and 5 and that their offers of settlement were not made in good faith. The Appellant sought a costs order in her favour based on the 'loss of chance' principle. Alternatively, the Appellant sought an order that each party bear their own costs.

Discussion

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12. The general rule is that the unsuccessful party will be ordered to pay the costs of the successful party: CPR 44.2(2). However, CPR 44.2(4) provides that the court has discretion as to whether costs are payable by one party to another, the amount of those costs and when they are to be paid, and that in exercising this discretion the court will have regard to all the circumstances.
13. The factors identified in CPR 44.2(4) as being relevant include the conduct of all the parties; whether a party has succeeded on part of its case, even if that party has not been wholly successful; and any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
14. In my judgment, SWE was the successful party in this appeal. Allegations 1 and 2 were upheld, and the interim suspension order remained in place. Whilst Allegations 3, 4 and 5 were remitted, this was on the basis of a concession made by SWE at an appropriate stage, and not on the merits of the Appellant's arguments in the appeal.
15. The inclusion of a direction in the order that SWE use all reasonable endeavours to list future hearings promptly did not amount to the Appellant achieving a better outcome than that which had previously been offered. SWE had made it clear at the hearing that it would list a future hearing promptly; the order simply confirmed this.
16. The Appellant's arguments regarding SWE's conduct are not persuasive. The delay in conceding the appeal was a consequence of the Appellant's initial rejection of the offer which had been made by SWE. The Appellant's criticisms of the content and timing of the settlement offers are also not, in my view, arguable. SWE was entitled to defend Allegations 1 and 2 and was not obliged to serve its skeleton argument or make a further offer of settlement until it did in fact do so. The offers were sufficiently clear and straightforward that it was not necessary for SWE to make a contribution towards the costs of the Appellant obtaining independent legal advice as she argued.
17. The Appellant's claim for 'loss of chance' costs and for 'stress and reputation' is not a claim for costs which this court has jurisdiction to award. These are matters which are more properly dealt with by way of a claim for damages although the basis for such a claim in view of the outcome of the appeal is at best opaque and unexplained.
18. In all the circumstances of this case SWE was on any fair view the overall "winner". It was successful in resisting the appeal in relation to the majority of the allegations and acted reasonably throughout the appeal proceedings in relation to the matters which had been conceded. The Appellant's arguments relating to delay, bad faith, and inequality of arms are not persuasive and, in any event, do not outweigh the general rule that costs should follow the event. I turn then to the question of the amount of costs which the Appellant should be ordered to pay.

Summary Assessment of Costs

19. SWE offered to limit its claim for costs incurred before conceding part of the appeal, to two-fifths of the total amount. This offer, made on 22 May 2024, resulted in SWE claiming

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£6,023.04 instead of the full pre-concession amount of £15,057.60. SWE justified this reduction on the basis that the remaining three-fifths of the pre-concession cost related to allegations 3, 4, and 5, which it was accepted should be remitted.

20. SWE served two costs schedules. The first schedule covered pre-concession costs, incurred before 22 May 2024, the date SWE had sent its letter offering to remit allegations 3, 4 and 5 to adjudicators, in the sum total of £6,023.04 for the reasons set out above. The second schedule detailed post-concession costs, totaling £48,773.82. This schedule itemised costs incurred after 22 May 2024, leading up to and including the appeal hearing on 9 July 2024 and the filing of costs submissions.
21. The principles on which costs are assessed will be familiar to the Respondent but less so to the Appellant as a litigant in person. She has, however, identified the relevant parts of the Civil Procedure Rules and I am satisfied that she was able to present her arguments as to costs without being placed at any substantial disadvantage. The court has the power to make a summary assessment of costs pursuant to CPR 44.6. The fact that the Appellant is a litigant in person does not appear to me to require a detailed assessment in the circumstances of this case. The hearing lasted less than a day and brought the appeal to end. Summary assessment is not intended to involve a lengthy consideration of each item of costs claimed but, rather, represents a proportionate means of justly, fairly and swiftly resolving the question of costs without the need for further costly proceedings regarding the costs themselves. It is appropriate to summarily assess in this case.
22. In carrying out a summary assessment of costs, the court must apply the same principles as would be applied on a detailed assessment. The general principles are that:
 - a. A party may only recover costs that it is liable to pay its own legal representative (the indemnity principle).
 - b. Costs must be reasonably incurred and reasonable in amount.
 - c. When assessing costs on the standard basis, the court will only allow costs that are proportionate to the matters in issue.
 - d. The court should not endorse disproportionate or unreasonable costs.
23. The Appellant submitted that the costs sought by SWE were exaggerated. She challenged the pre-concession costs, arguing that two-fifths was unreasonable considering the limited communication from Bates Wells and the potential inclusion of unrelated costs. The Appellant also argued that the costs might well be exaggerated, given that Allegations 1 and 2 were remitted for a new hearing on impairment and sanction. The Appellant specifically challenged SWE's claim for £15,239.00 for redacting the original bundle, suggesting it was unreasonable and unnecessary. The Appellant pointed to her offer to redact the bundle herself, SWE's late filing of the supplemental bundle, the submission of irrelevant evidence, and the unnecessary duplication of work.
24. The Respondent submitted that the work carried out in relation to the bundle was necessary both for the purpose of the appeal and to protect the sensitive data of third parties.

Proportionality of Costs

25. Costs will be proportionate if they bear a reasonable relationship to (a) the sums in issue in the proceedings (b) the value of any non-monetary relief in issue in the proceedings (c) the complexity of the litigation (d) any additional work generated by the conduct of the paying

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- party (e) any wider factors involved in the proceedings, such as reputation or public importance and (f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness: rule 44.3(5).
26. The Court of Appeal gave guidance on the application of the test of proportionality in *West v Stockport NHS Foundation Trust* [2019] EWCA Civ 1220. Having considered the reasonableness of the costs claimed, the court should consider the proportionality of the total figure considered to be reasonable having regard to the factors in r.44.3(5) and, if relevant, any wider circumstances under r.44.4. In doing so it should ignore unavoidable items such as court fees. If the court considers the total to be disproportionate it should consider each category of costs claimed (such as time spent drafting witness statements) and consider whether those costs were disproportionate. If they are, then the court should reduce the costs.
 27. SWE argued that its costs were reasonable and proportionate, both before and after its concession regarding Allegations 3, 4 and 5. In relation to pre-concession costs, SWE contended that a significant amount of work was undertaken on Allegations 1 and 2, on which it was ultimately successful. These allegations in turn occupied a considerable portion of the Appellant's grounds of appeal and, eventually, consumed a substantial amount of time during oral submissions. SWE argued that claiming two-fifths of the costs incurred up to the initial settlement offer was a fair reflection of the work undertaken on the contested allegations to that stage.
 28. In relation to post-concession costs, SWE relied on its success in resisting the remaining grounds of appeal in relation to the findings on Allegations 1 and 2, upholding the remission of Allegations 3, 4, and 5, and maintaining the interim suspension order. SWE asserted that the substantial costs associated with redacting the bundle were both reasonable and proportionate.
 29. It had made proactive attempts to settle the matter and minimise costs by conceding part of the appeal at an early stage and so had acted reasonably and proportionately. The Appellant had rejected both of the settlement offers which was not a proportionate response and directly led to additional costs then being incurred in defending the appeal.
 30. I have considered the Respondent's costs schedule carefully. In both schedules the hourly rates are within the guidelines. However, I consider the Appellant makes fair points in saying the non-hearing attendance claims in both schedules are high, considering in particular that there had already been proceedings in front of the Panel and a relatively early decision to concede some allegations. The work done on documents in the second schedule includes over 18 hours to prepare a schedule of costs and over 150 hours in preparing the Respondent's bundle. Whilst I note the explanation given for the latter it nevertheless strikes me as excessive and unusual in the context of an appeal of this nature. I should add that there is nothing to complain about in relation to counsel's fees which are moderate and give some indication of the relative complexity of the appeal.
 31. These concerns about the reasonableness and proportionality of costs can be addressed by making a percentage reduction in the amount recoverable. Having considered the costs schedules filed by SWE and the written submissions of the parties, and taking into account all the circumstances of this case, I summarily assess SWE's pre-concession costs at £4,517.28 (a 25% reduction) and the post-concession costs at £36,580.36 (a 25% reduction).

Conclusion

32. For the reasons set out above, the Respondent's costs of this appeal, summarily assessed in the total sum of £41,095.64 should be paid by the Appellant. As a general rule, a paying party should be ordered to pay summarily assessed costs within 14 days. There is no reason that should not apply in this case. The question of whether and to what extent the order is enforced is a matter for the Respondent. The ability of the Appellant to meet a costs order is not relevant to whether it should be made and in what amount. The Respondent should file a draft order for the Court's approval giving effect to this judgment.

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