

<p>Neutral Citation No: [2025] NIKB 2</p> <p><i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i></p>	<p>Ref: SIM12691</p> <p>ICOS No: 20/073748</p> <p>Delivered: 10/01/2025</p>
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING S BENCH DIVISION

DAVID HAWTHORNE

Plaintiff

-and-

[1] CIARAN DONNELLY
[2] DERRY CITY AND STRABANE DISTRICT COUNCIL

Defendants

The Plaintiff appeared in person
Louise Maguire (instructed by Worthingtons Solicitors) for the Defendants

SIMPSON J

Introduction

[1] This is an appeal from an order of Master Harvey dated 19 September 2023, whereby he dismissed the plaintiff s application under Order 24 Rule 19 of the Rules of the Court of Judicature in Northern Ireland. Order 24 Rule 19 provides for sanctions against a party who fails to comply with any requirement to provide discovery. The plaintiff s original application referred to Order 24 Rule 15(1), but the Master amended it to refer to Order 24 Rule 19, to reflect the true situation.

[2] The plaintiff s Notice of Appeal is dated 25 September 2023.

[3] I heard this appeal over two days, 18 October 2024 and 8 November 2024. For the hearing of what should have been a straightforward appeal from the Master I was provided with 3 lever arch files of documents. I intended to give this judgment in mid-December 2024, when I was likely to be sitting again, but the plaintiff asked for the judgment not to be given during the time when he would be out of the country – from 15 December 2024 to 6 January 2025 – as he, understandably, wanted to be present when the judgment was delivered. Hence, the date of delivery of this judgment.

[4] The plaintiff is involved in a longstanding and acrimonious dispute with the defendants which arises from his employment with the second defendant ("the Council"). Between 28 November 2018 and 17 June 2022, the plaintiff issued seven claims against a combination of the Council or the first defendant, or both, in the Industrial Tribunals and Fair Employment Tribunal. In 2020 the plaintiff also issued proceedings against the first defendant in the County Court. Those proceedings were removed into the High Court on foot of an order of 17 December 2021 and, on the same date, the court ordered that the Council be added as a second defendant to those proceedings.

[5] Without wishing to particularise all the plaintiff's allegations in the various proceedings, the plaintiff alleges, inter alia, discrimination on the grounds of his religion and political beliefs, disability discrimination, harassment and intimidation. He also makes allegations of negligence, deceit, dishonesty, corruption, bribery and attempted bribery, malice, misfeasance and malfeasance, and misconduct in public office.

[6] The application to the Master followed on from an order made by McAlinden J on 2 March 2023 whereby he directed that:

1. The Council shall produce to the plaintiff unredacted or unedited CCTV images of the main yard at Pennyburn of 4 June 2020 and 7 October 2020, within 28 days;
2. The Council shall disclose all emails about Webex meetings held by directors of the Council between 2-3pm on 26 January 2021, within 28 days;
3. The Council shall disclose statements made by directors and Conor Canning, Head of Service, for purposes of inclusion in disciplinary report (sic) originally sent to the plaintiff in March 2022, within 28 days;
4. All Employment Tribunal ET1s and ET3s relating to the plaintiff and all correspondence circulating through the Council's organisation, to be provided to the plaintiff by the Council within 28 days."

[7] Prior to the hearing of the appeal from the Master, the plaintiff filed a further document, dated 13 September 2024, in which he identified a list of asserted failures of disclosure by both defendants. This listed six failures to comply with requirements of discovery on the part of the first defendant and 18 failures on the part of the Council.

[8] The first point to make is that the list of alleged failures on the part of the first defendant is not relevant to this appeal, as the order of McAlinden J of 2 March 2023 which led to the Master's decision refers only to production of documents by the Council. Secondly, the failures list levelled at the Council includes 14 categories of documents which are not the subject of this appeal – in the plaintiff's list, only the first four categories relate to McAlinden J's order of 2 March 2023 and the subsequent decision of the Master, which is the decision under appeal. On behalf of the defendants Ms Maguire, rightly in my view, objected to the court hearing submissions in relation to these 14 categories: [1] because they were not the subject of any consideration by the Master, and are not the subject of appeal, and [2] that if I was to hear submissions about those documents, and decide on issues of discovery, it would deprive the defendants of a potential tier of appeal. It is, she said, appropriate that those should be the subject of a separate application for specific discovery, which should go before the Master.

[9] I consider that her submissions are correct, and tried to make this clear to the plaintiff, not wholly successfully. The plaintiff was determined to make submissions on the other documents, and I heard those and explained to him as best I could that the submissions were not relevant to the appeal which was before me.

The four categories of documents

[10] In response to the plaintiff's assertions in the 'failures list' the Council relies on the contents of two affidavits sworn by Louise McAloon, a partner in the firm of Worthingtons, Solicitors who are instructed by the Council, an affidavit sworn on 31 January 2023 by Gary McWha, Waste Services Officer of the Council, and a lengthy letter sent to the plaintiff dealing with discovery. Ms McAloon's first affidavit is dated 23 May 2023, the second dated 18 December 2023; the letter is dated 30 March 2023. The Council has also summarised its submissions in a separate document under each heading of the plaintiff's 'failures list'.

[11] Before turning to consider the specific documents set out by McAlinden J and the plaintiff's appeal from the decision of the Master, I need to record the plaintiff's attitude to submissions made by and on behalf of the Council. Without seeking to set out his precise submissions in relation to each paragraph of McAlinden J's order the broad theme is that the plaintiff does not accept that the Council has fulfilled its duties as to discovery. He made it clear beyond peradventure, that he simply does not accept the truth of the Council's asserted position. He consistently accuses the Council of conspiracy, of covering-up and concealing matters, of acting dishonestly and of attempting to subvert justice. His criticisms ranged well beyond what was relevant to deal with the issues on appeal, including a veiled suggestion that when he had made complaints to the PSNI which had not been investigated, this was perhaps because a named employee of the Council 'may have links to the PSNI'.

[12] This view of almost everything said by or on behalf of the Council pervaded the plaintiff's whole approach to the appeal and impeded his ability to focus on the

specific issues relevant to this appeal. He frequently said that he challenged, or did not accept, averments or assertions made by or on behalf of the second defendant. Try as I might to impress on him that the appropriate time to challenge such matters would be in cross-examination of the relevant witnesses at the trial not on the hearing of this appeal, I regret that I failed to do so.

[13] As to the category 1 documents in paragraph 1 of McAlinden J's order, the plaintiff asserts in the 'Amended Amended Schedule 2' in his 'failures list' that the Council have failed to produce any unredacted and unedited CCTV to the plaintiff of the main yard at Pennyburn from the 4 June 2020 and the 7 October 2020 as requested by the High Court and confirmed ... as being in their possession..."

[14] In short form, the Council says that it has in its possession the totality of the available CCTV footage for the relevant dates. This is in unredacted and unedited form. The plaintiff has been offered inspection facilities in relation to this footage by viewing it on a Council laptop. This offer has been open to the plaintiff since March 2023. To date, so I am told by Ms Maguire, the plaintiff has declined to view the footage.

[15] The plaintiff, in his submissions, is adamant that the footage has been doctored in some way and that, because of this (and other alleged skulduggery on the part of the Council) the Council's Defence should be struck out. His attitude to Mr McWha, part of whose affidavit dealt with the CCTV footage, is that Mr McWha is someone "I wouldn't trust to put the milk out" and he accuses Mr McWha of having "signed a false affidavit".

[16] In light of the affidavit evidence and the submissions of Ms Maguire, I am satisfied that in relation to paragraph 1 of McAlinden J's order the Council is not in breach of its obligation on foot of the order made.

[17] As to category 2, the order made by McAlinden J stated:

the Council shall disclose all emails about Webex meetings held by directors of the Council between 2 – 3pm on 26 January 2021, within 28 days."

[18] The letter of 30 March 2023 to the plaintiff specifically refers to the disclosure of eight emails relevant to this meeting, and the Council has also provided a list of the invitees to the meeting. Ms Maguire submits that the Council has provided all the relevant emails.

[19] I note that in his 'failures list' the plaintiff asserts that the Council has "failed to produce any statements or affidavits of truth of Conor Canning or the Directors..." about the Webex meeting. First, I am informed that no such documents exist. Secondly, within the rules relating to discovery, there is no such requirement.

[20] From what I have heard and read, I am satisfied that the Council is not in breach of paragraph 2 of McAlinden J's order of 2 March 2023.

[21] Category 3 documents were statements made by directors and Conor Canning, Head of Service, for purposes of inclusion in disciplinary report originally sent to the plaintiff in March 2022".

[22] The affidavits, letter and submissions of the Council show that the report in question is a "Think People Disciplinary Investigation Report" dated 2 March 2022. The plaintiff has now been provided with a copy of the report and all 20 appendices to the report. In the letter of 30 March 2023, Ms McAloon states:

Whilst there are no written statements from Directors or Conor Canning, we confirm that relevant handwritten notes from meetings have been identified in relation to interviews held with 7 members of staff, referenced at section 2.1 on page 6 of the Public Interest Disclosure Investigation Report." [to be found in Appendix 3 of the Disciplinary Investigation Report]
[The underlining is mine]

[23] The notes in relation to 7 people have been provided to the plaintiff.

[24] The plaintiff expresses scepticism that no statements exist. He also says that the meeting notes are not signed and that the Council knows they are not signed. They do not, he says, amount to corroboration. This does not assist in deciding issues of compliance with McAlinden J's order.

[25] Since it is stated that no written statement exists, there is nothing to disclose. I am satisfied that the Council is not in breach of paragraph 3 of McAlinden J's order.

[26] The fourth category of documents to be provided by the Council is "all Employment Tribunal ET1s and ET3s relating to the plaintiff and all correspondence circulating through the Council's organisation". An ET1 is the form completed by an applicant making a claim in the Industrial Tribunals and Fair Employment Tribunal and an ET3 is the form completed by the respondent(s) to the application. All of the forms have been provided to the plaintiff.

[27] In addition, at my request, there was provided to the plaintiff all relevant emails internal to the Council where any employee passed to another an ET1 form. Where such an email contained matters subject to litigation or legal advice privilege, this was redacted.

[28] In the circumstances I am satisfied that the Council has complied with paragraph 4 of the order of McAlinden J.

Disposition

[29] Accordingly I allow the appeal in relation to that part of paragraph 4 of the order of McAlinden J which referred to “all correspondence circulating through the Council’s organisation” (relating to ET1s). I dismiss the appeal in relation to all other matters.

[30] Having heard counsel for the defendants and Mr Hawthorne, I make no order as to costs of this appeal.