In the High Court of Justice
King's Bench Division
Administrative Court

AC-2024-LON-002386



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In the matter of an application for judicial review

THE KING

on the application of

KEVIN MATMUJA

Claimant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

Notification of Judge's Decision on Costs

Following consideration of the costs submissions filed by the parties

ORDER BY JOHN HALFORD SITTING AS A DEPUTY HIGH COURT JUDGE

1. The Defendant must pay 70% of the Claimant's costs of the claim subject to detailed assessment if not agreed.

2. There shall be an assessment of the Claimant's costs for the purposes of any claim on the Legal Aid fund.

REASONS

(1) The Defendant made two reasonable grounds decisions adverse to the Claimant on 15 May and 5 June 2025. The first was withdrawn after a Judicial Review Pre Action Protocol ('PAP') letter was sent on 19 May 2025. As the effect of the second decision was the same as the first, the Claimant did not send a second PAP letter, instead instructing his representatives to promptly issued this claim. The Defendant then withdrew the second decision and a dispute about costs arose. In short, the Claimant says he has 'succeeded' as withdrawal of the second challenged decision is equivalent to the relief sought in the claim. The Defendant for her part says there ought io have been a second PAP letter and the Claimant's conduct in not sending one amounts to

a serious breach of the PAP that should disqualify the Claimant from recovering his costs.

(2) Plainly the Claimant is the successful party; the outcome aligns fully with the relief sought.

(3) The PAP states materially:

> "2. This Protocol sets out a code of good practice and contains the steps which parties should generally follow before making a claim for judicial review…
>
> 6. This protocol will not be appropriate in very urgent cases. In this sort of case, a claim should be made immediately…
>
> 7. All claimants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of the case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it in good time before proceedings are issued and will take into account compliance or non-compliance when giving directions for case management of proceedings or when making orders for costs. [3]…
>
> 14. In good time before making a claim, the claimant should send a letter to the defendant. The purpose of this letter is to identify the issues in dispute and establish whether they can be narrowed or litigation can be avoided."

(4) I note the Claimant does not argue this was a case that was so urgent that the need for a PAP letter was overridden. His contention is that nothing, or at least nothing significant, had changed between the first and second decisions so a new PAP letter was unnecessary.

(5) I have compared the two decisions and consider there is some force in this point. Doubt about credibility was at the heart of both and some of the Claimant's criticisms about the way credibility was considered and tested, and what was not taken into account, or at least not in a legally adequate way, which featured in the PAP letter also featured in the Grounds. However, the two decisions were certainly not identical, the reasoning differed to some extent, and some new information was considered. This is not a case where the second, reconsidered decision was no more than a reiteration of the first.

(6) A PAP letter is never mandatory, but it is normally appropriate and the failure to send one will be relevant to the Court's discretionary decision on costs: CPR 44.2(5)(a). Here, I consider there ought to have been a second PAP letter. Even if a relatively short response deadline was given, the speed of the Defendant's response to the first PAP

letter indicated at least an ability to reconsider rapidly.

(7) However, the Claimant has been vindicated because the Defendant has decided she cannot maintain the second decision. In such circumstances, the failure to comply with the PAP should not be fatal to the Claimant's costs claim to the extent that the CPR 44.2(2)(a) default rule should be wholly disapplied, especially when compliance would have involved repeating several of the points already made about the Defendant's approach as well as making new ones.

(8) I also see some force in what the Claimant says about there being no evidence that the Defendant would have taken a different approach had there been a PAP letter sent.

(9) In these circumstances, I consider that the Claimant's failure to comply with the PAP should be marked by a 30% reduction in the claim for costs, but that the remainder should be paid, subject to assessment.

Signed:



John Halford sitting as a Deputy High Court Judge

Date: 4 1 2025

The date of service of this order is calculated from the date in the section below

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For completion by the Administrative Court Office

Sent to:

The Claimant / The Claimant's solicitors [ ]

The Defendant / The Defendant's solicitors [ ]

The Interested party / The Interested Party's solicitors [ ]

Date: **5th January 2025**

Ref No.