



Neutral Citation Number: [2018] EWHC 2553 (Admin)

Case No: CO/4908/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/10/2018

Before:

LORD JUSTICE LEGGATT
and
MR JUSTICE GREEN

Between:

R (THE GOOD LAW PROJECT)	<u>Claimant</u>
- and -	
ELECTORAL COMMISSION	<u>Defendant</u>
- and -	
VOTE LEAVE LIMITED	<u>Interested</u>
MR DARREN GRIMES	<u>Parties</u>

Jessica Simor QC, Tom Cleaver and Eleanor Mitchell (instructed by Deighton Pierce Glynn) for the Claimant

Richard Gordon QC and Gerard Rothschild (instructed by the Government Legal Department) for the Defendant

Timothy Straker QC and James Tumbridge (instructed by Venner Shipley) for the First Interested Party

Approved Judgment

Lord Justice Leggatt (giving the judgment of the court):

1. When the judgment in this case at [\[2018\] EWHC 2414 \(Admin\)](#) was handed down on 14 September 2018, the court indicated that the order giving effect to the judgment would be pronounced in court at a later date after considering written submissions from the parties on the appropriate form of order and other consequential matters. We have received and considered such submissions filed on behalf of each of the claimant, defendant and first interested party (Vote Leave Limited). These are the reasons for the orders that we now make.

Form of declaration

2. In the final paragraph of the judgment dated 14 September 2018, we indicated that we would make a declaration which records our conclusion. The defendant, with the concurrence of the claimant, has proposed a form of declaration mirroring the wording of paragraphs 81 and 94 of the judgment. Vote Leave proposed that the court should make a declaration mirroring only paragraph 94.
3. We do not consider either proposal satisfactory. Paragraphs 81 and 94 of the judgment are part of the court’s reasoning but do not state its conclusion on the issue raised by the claim. The court was not deciding, and does not have power to decide, questions of law in the abstract – but only how the relevant law is to be interpreted in its application to the facts of the present case. The issue raised by the claim is whether, on the proper interpretation of the definition of “referendum expenses” in section 111(2) of the Political Parties Elections and Referendums Act 2000, the three payments totalling £620,000 made by Vote Leave Limited to AggregateIQ Data Services Limited between 16 and 21 June 2016 to pay for advertising services purchased by Mr Darren Grimes (“the AIQ Payments”) were referendum expenses incurred by Vote Leave. The declaration made should therefore record the court’s conclusion on that issue. We have accordingly formulated it as follows:

“On the proper interpretation of the definition of “referendum expenses” in section 111(2) of the Political Parties Elections and Referendums Act 2000, the three payments totalling £620,000 made by Vote Leave Limited to AggregateIQ Data Services Limited between 16 and 21 June 2016 to pay for advertising services purchased by Mr Darren Grimes were referendum expenses incurred by Vote Leave Limited.”

4. After this judgment was circulated to the parties’ representatives in draft, leading counsel for the claimant wrote to the court asking that the court’s order should additionally declare that a payment of £100,000 made by Vote Leave Limited to AggregateIQ Data Services Limited to pay for advertising services purchased by Veterans for Britain was also a referendum expense incurred by Vote Leave Limited. She pointed out that this payment was referred to in the claimant’s grounds for seeking judicial review and that the relevant facts have not been disputed by the defendant nor by Veterans for Britain, which was served with the claim and given the opportunity to participate in the proceedings as an interested party but chose not to do so.
5. It may well be that this further payment of £100,000 made in respect of advertising services purchased by Veterans for Britain stands on all fours with the three AIQ

Payments. However, at the hearing of the claim the court was not shown any evidence relating to this further transaction. For that reason the judgment handed down on 14 September 2018 made no factual finding about it. In paragraph 12 of the judgment the subject matter of the claim was identified as the three payments totalling £620,000 made by Vote Leave Limited to AggregateIQ Data Services Limited to pay for advertising services purchased by Mr Darren Grimes and no mention was made anywhere in the judgment of any further payment (or of Veterans for Britain). When the claimant's representatives were sent the judgment in draft and given the opportunity before it was finalised to propose any corrections to it, they did not raise this point and did not suggest that the description in paragraph 12 of the subject matter of the claim was inaccurate or incomplete. In these circumstances we consider it far too late to seek to introduce this point now.

Costs

6. The claimant has been successful on the only ground of its claim for judicial review on which it was given permission to proceed. (Permission to proceed on two further grounds was refused by the court for reasons given in its judgment dated 23 March 2018 at [\[2018\] EWHC 602 \(Admin\)](#).) As the ultimately successful party, the claimant seeks an order that the defendant pay its costs of the claim in the sum of £40,000. That figure represents a cap on the costs which the claimant can recover imposed by an order of Ouseley J dated 17 May 2018. In response to a request from the court, the claimant has belatedly filed a schedule showing total costs of £112,582. Of this total, costs of £55,441 are said to have been incurred in the period up to and including the permission hearing on 15 March 2018 and costs of £57,141 since that date.
7. The defendant accepts that it should pay the claimant's costs of pursuing the ground on which the claimant succeeded, subject to the cap of £40,000. But it proposes that the claimant should pay the defendant's costs of the second and third grounds of the claim, subject to the cap on the defendant's costs of £20,000 imposed by the order of Ouseley J. This approach would be likely to result in the claimant recovering £20,000 from the defendant.
8. We do not think it appropriate to make separate cost orders in relation to different issues, as the defendant has proposed. (Still less would it have been equitable to apply the two cost caps separately without netting off the costs that would otherwise have been recoverable in respect of those issues, as the defendant has further suggested.) In our view, the fact that the claimant was successful on its first ground for claiming judicial review but was refused permission to proceed with two further grounds is fairly reflected in an order which deprives the claimant of half of its costs incurred up to and including the permission hearing. No reduction should be made in respect of the later period, as the only issue then remaining was the issue on which the claimant has succeeded.
9. As pointed out by counsel for the defendant, the claimant's costs schedule was not only served late but is in a rudimentary form and contains insufficient information to provide a suitable basis for summary assessment. We do, however, consider that the schedule provides a sufficient basis on which to conclude that, on any assessment, it is very likely to be found that the costs which would otherwise be payable to the claimant exceed the £40,000 cap. In these circumstances we think it reasonable to order the defendant to pay the sum of £40,000 on account of the costs awarded to the claimant.

Permission to appeal

10. Both the defendant and Vote Leave have applied for permission to appeal to the Court of Appeal. In particular, counsel for the defendant have formulated four proposed grounds of appeal challenging the analysis contained in the judgment. (No draft grounds were provided by counsel for Vote Leave.) We accept that at least some of the submissions advanced in support of the defendant's draft grounds of appeal are reasonably arguable. However, an appeal must be directed at the order made by the court and not simply at aspects of its reasoning. The question is therefore not whether aspects of the court's reasoning are open to challenge but whether there is a real prospect of persuading the Court of Appeal that the AIQ Payments were not "referendum expenses" incurred by Vote Leave within the meaning of section 111(2) of PPERA. We do not consider that there is such a prospect and permission to appeal is therefore refused.