



JUDICIARY OF
ENGLAND AND WALES

MR JUSTICE FOSKETT

Reilly - CO/260/2012 and Wilson - CO/1087/2012

Rulings on Costs and Applications for Permission to Appeal

1. Further to the handing down of the judgment in this matter yesterday, 6 August, I have now received the written submissions of each party concerning costs and permission to appeal with comments from each side on the other's submissions.
2. This ruling is designed to deal with all outstanding issues.

Costs

3. It is recognised on behalf of Miss Reilly that a costs order must be made against her and I so direct, those costs to be assessed on the standard basis if not agreed.
4. In relation to Mr Wilson the submission made on his behalf is that because he succeeded to some extent, the order should be that he should pay 50% of the costs of the Secretary of State. The submission of the Secretary of State is that, whilst a full order for costs against him would not be appropriate given his success on one issue (the suggestion being that 75% would be appropriate proportion), there should be an adjustment upwards in the Secretary of State's favour (to 85%) to reflect the fact that the issue of the negative resolution procedure was raised and was resolved (by concession or agreement) in the Secretary of State's favour: see paragraph 10 of the judgment.
5. I do not accept this argument. Whilst it is correct that the issue was raised, it was one in respect of which the Secretary of State's advisers needed time for clarification, the answer not being immediately apparent. Whilst it was mentioned briefly in oral argument it was not seriously "in play" during the proceedings. Furthermore, it was raised as much in Miss Reilly's case as in Mr Wilson's case. Overall, in my view, it is a "costs neutral" issue and I see no basis for an adjustment either way.
6. I have little doubt that Mr Wilson's advisers will have incurred costs and expended time dealing with the changing stance of the Secretary of State in relation to whether sanctions were to be imposed and then considering the eventual resolution of that issue via the route described in paragraph 123 of the judgment.

7. Overall, and given that additional feature of the background, I think a fair order is that Mr Wilson should pay two-thirds of the Secretary of State's costs to be assessed on the standard basis if not agreed.

Permission to Appeal

8. As I indicated when handing down the judgment, I had been told in advance that each party would be seeking permission to appeal in respect of the adverse findings in the judgment so far as they affected the relevant party. Each has submitted in writing that each should be granted permission to appeal and has submitted that the other party or parties should not be granted permission to appeal.
9. So far as I am concerned, whether or not permission to appeal is granted is a matter between the losing party and the court and submissions from the victorious party are not normally considered unless there is a specific invitation to put forward arguments concerning this issue. I have, for this purpose, disregarded the submissions made by both sides concerning the issue of whether permission to appeal should be given to the other side.
10. I express no views about the strength of the proposed arguments, although I suspect my views are clear from the judgment, but I do recognise that there is scope for differing views to be taken on the conclusions of law in this case. Equally, it is obvious that there is considerable public interest in the issues thrown up by the case as a whole and there are many people engaged in, or who have been engaged in, schemes or programmes made pursuant to the Regulations whose interests may be affected by the outcome of the case, including, of course, also the Secretary of State. On both grounds, therefore, I grant both parties permission to appeal in respect of the grounds upon which they lost. It seems pointless in the circumstances to restrict the permission to certain grounds and not others: the Court of Appeal should have the opportunity to consider all points that the parties wish to advance. I imagine that the Claimants, whose applications for permission to appeal were received before that of the Secretary of State, will take the lead in advancing the appeal although it will be a matter for the Court of Appeal to decide in which order it wishes to hear the arguments. As will appear below, subject to any contrary directions by the Court of Appeal, I propose to foreshorten the time for lodging an Appellant's Notice for each Claimant and also the time for lodging the Respondent's Notice on behalf of the Defendant (which should include the cross-appeal for which permission has been granted and any grounds upon which the Secretary of State seeks to support my judgment for reasons different from or additional to those contained in the judgment).

Expedition of the Appeal

11. I understand both parties consider that the appeal ought to be heard as quickly as possible. I share that view given the number of individuals who may be affected by the outcome. However, I do not think that it is for me to give any specific directions on that issue: it is a matter for the Court of Appeal to decide. However, in order to ensure that there is a joint momentum to seek an early

hearing of the appeal I intend to impose a condition on the grant of permission to appeal on each side and to order that –

(i) the Claimants should each lodge an Appellant's Notice by **4pm on Friday, 17 August**;

(ii) the Defendant should lodge a Respondent's Notice (including the matters identified in paragraph 10 above) by **4pm on Wednesday, 29 August**;

(iii) all parties should at the same time as the Respondent's Notice is lodged lodge a joint application for an expedited hearing of the appeal with a request that urgent consideration is given to that application by the Court of Appeal, that application (subject to any contrary order of the Court of Appeal) to be fit for consideration during the vacation.

Conclusion

12. I should be grateful if the parties could agree a form of order giving effect to these conclusions and submit it to me for approval.

07 August 2012