

Neutral Citation No: [2023] NIKB 126

Ref: QUI12368

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 15/12/2023

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY CRIS DONEGAN
FOR JUDICIAL REVIEW**

COSTS RULING

**Fiona Doherty KC with Séamus McIlroy BL (instructed by Finucane Toner Solicitors)
for the Applicant**

**Tony McGleenan KC with Laura Curran BL (instructed by the Crown Solicitor's Office)
for the Respondent**

**Andrew Magennis BL (instructed by the Police Ombudsman for Northern Ireland)
for the Notice Party**

QUINLIVAN J

Introduction

[1] I previously gave judgment in the above-entitled application for judicial review and ruled on the substance of the applicant's challenge. I ruled that section 55(2) of the Police (Northern Ireland) Act 1998 ("the 1998 Act") created an obligation on the Chief Constable of the PSNI to refer a case to the Office of the Police Ombudsman for Northern Ireland ("the Ombudsman"), where a police officer's actions could be said to have 'resulted in' a death. However, I accepted that there may be cases where an officer's conduct, caused or contributed to a death, but that in such cases section 55(2) did not impose a statutory obligation on the Chief Constable to refer the matter to the Ombudsman. I ruled however that the Chief Constable ought to have referred the applicant's case to the Chief Constable, in exercise of his powers under section 55(4) of the 1998 Act and that DCC Martin erred in failing to do so.

[2] Given my conclusion that DCC Martin's approach to the interpretation of s55(4)(a)(ii) imposed too high a threshold the applicant seeks his costs, on the ground that he has been successful in his application. The respondent resists the applicant and submits that there should be no order for costs as between the parties, on the basis that the applicant was successful on a ground not expressly pleaded in the Order 53 statement, and further on the basis that the case was academic between the parties.

Relevant legal principles

[3] I don't understand there to be any dispute about the relevant legal principles applicable to the award of costs in applications for judicial review in this jurisdiction. While a variety of guiding principles appear from decided cases, costs are always in the discretion of the court and must be addressed on a case-by-case basis.

[4] The starting point is RCJ Order 62, rule 3(3) which provides as follows:

"If the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs."

[5] As is clear from the provision, the court has a discretion as to whether or not it makes any order as to the costs of the proceedings. In the event that the court does decide to make an order then the usual order will be that costs follow the event. However, the court may make a different order where it appears to it that, in the circumstances of the case, a departure from the usual order is warranted. In the event that the court does decide to depart from the usual order, its order may relate either to the whole or to a part of the costs, thus providing the court with a wide power to meet the justice of the situation as the judge assesses it.

The parties' submissions on costs

[6] In support of its contention that the applicant should not recover any costs the respondent submits as follows:

- (a) The applicant did not succeed on the grounds expressly pleaded, namely: that there had been a breach of statutory duty; or, that the decision was irrational. Rather it is said that the "Court of its own volition went on to consider the statutory interpretation of section 55(4), and on that basis conclude that TDCC Martin had imposed 'too high a threshold' in his approach to the interpretation of s55(4)(a)(ii)"

- (b) The decision was academic, and the applicant had in fact suffered no prejudice, the case having been referred by the PSNI to PONI in any event.

[13] In support of his contention that he should be awarded the full costs of the proceedings, the applicant makes the following points:

- (a) The applicant was successful in his judicial review application.
- (b) The court's rationale for its decision was one of the core arguments made by the applicant.

Discussion

[8] The respondent is correct, inasmuch as the applicant's pleaded grounds of challenge, were breach of statutory duty and irrationality. Further leave was only granted on the breach of statutory duty ground.

[9] However, at the leave hearing Humphreys J was of the view that the proceedings were academic as between the parties, he nonetheless granted leave because "I have nonetheless determined that there is in play here a discrete point of construction of section 55 of the 1998 Act, and there is legitimate public interest in the court proceeding to hear the matter."

[10] I propose to address, in the first instance, the argument that the applicant should not be awarded costs because the case was academic between the parties. I am of the view that the case raised important issues as to the proper construction of both section 55(2) and section 55(4) of the 1998 Act. In circumstances where it is decided by a Court that a case, whilst academic, should nonetheless be heard, it does not appear to me appropriate that this should be a basis for refusing a successful applicant their costs. The issues were fully argued between the parties because it had been concluded that there was a legitimate public interest in so doing. The appropriate course remains that costs should follow the event and the academic nature of the case does not, in my view assist the respondent.

[11] When one focuses on the issues before the court, that is the interpretation of sections 55(2) and 55(4) it cannot be said that the applicant was completely successful. I concluded that the PSNI were correct in their approach to section 55(2) inasmuch as I concluded that the police were not, by virtue of that provision, required to refer the applicant's case to PONI. On the other hand, I am of the view that the applicant was successful in relation to the proper approach to the interpretation of section 55(4). On that issue, I concluded that TDCC Martin had fallen into error in his approach to that provision and that he ought, in reliance on that provision have referred the matter to PONI.

[12] Ultimately, looking at matters in the round, it appears to me that the applicant's core complaint was that the case should have been referred to the

Ombudsman by the PSNI under section 55 of the 1998 Act. My conclusion on that issue was that the PSNI had fallen into error. I further consider that this was an important issue and that there was a public interest in the matter being litigated and determined. I have concluded therefore that the respondent should pay the applicant's costs. Costs to be taxed in default of agreement.