



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

CO Ref: CO/10241/2008

In the matter of an application for Judicial Review

The Queen on the application of CONDRON

versus MERTHYR TYDFIL COUNTY BOROUGH COUNCIL AND

On the application for an order as to costs

Following consideration of the documents lodged by the parties

Order by the Honourable Mr Justice BEATSON



1. It is ordered that the claimant pay: (a) the costs of the first and second defendant preparing the Acknowledgement of Service, (b) the further costs incurred as a result of her failure to file her supporting documents until after the Acknowledgement of Service was filed, and (c) the costs incurred in considering the claimant's reply to the Acknowledgement of Service and a response to the subsequent argument that time had not expired for the challenge.

The order in paragraph 1 shall not be enforced without the permission of the court.

The costs of the claimant be subject to a detailed Community Legal Service Funding Assessment.

Observations:

1. Although it is recognised, in particular as a result of the EIA Directive that the principles in *Mount Cook* must not be applied in a way which seriously impedes the right of citizens to access to justice in environmental cases, in this case the claimant or her solicitors chose to pursue her claim with absolutely no regard to the rules. There was no compliance with the Pre-Action Protocol and the supporting evidence for the claim was not filed with the claim and indeed not filed until after receipt of the Acknowledgement of Service. Further expense was caused by the other matters referred to in paragraph 1 of the order. For these reasons it is appropriate to award the defendants their costs in full except for the costs directly referable to the hearing itself.
2. The renewed application for permission involved an extensive hearing in which the claim was fully ventilated. It had many of the attributes of a "rolled-up" hearing. For this reason also a departure from the basic *Mount Cook* rule is justified.
3. While there is force in the defendant's submission that the casual disregard for the CPR justifies a departure from the normal rule that the costs awarded against a publicly funded party should not be enforced without the leave of the court, I have on balance decided not to depart from that rule. I do so, however, because it is open to the defendants to apply to the court for those costs to be enforced. On any such application the court will be able to determine whether the costs should be enforced in the light of all the circumstances, including the way the claimant's case was conducted. The alternative in a case in which a party claims that costs have been increased because of the way solicitors have acted is for there to be an application for a wasted costs order against the solicitors.

Signed

J Beatson

Sent to the claimant, defendant and any interested party / the claimants, defendants, and any interested party's solicitors on (date):