

PRE/ACCC/C/2015/131

Email correspondence between Tracy Breakell and the solicitor acting for the local authority (London of Borough of Merton) between 20 July 2015 and 7 September 2015

From: George Chesman [email address redacted]
Sent: 07 September 2015 16:42
To: 'Tracy Breakell' [email address redacted]
Subject: RE: Former Nelson Hospital

Dear Ms Breakell

Thank you for this; I will delay taking enforcement to enforce payment of the Council's costs until I have come back to you on the issues you have raised.

Can you let me know if you have made your application to the Aarhus Convention Compliance Committee? I understand that it next meets in October and required submissions for this to have been made by 2nd September.

Yours sincerely

George Chesman
[Contact details redacted]

Ref CS LEG GRC 511/470

From: Tracy Breakell [email address redacted]
Sent: 28 August 2015 11:08
To: George Chesman [email address redacted]
Subject: RE: Former Nelson Hospital

Dear Mr Chesman,

Thank you for confirming the VAT status of the charges from SLLP to the Council. I note that you have not yet confirmed what actual charge was made.

The Unece Citizen's Guide to European Complaint Mechanisms states that most cases submitted to the ACCC take between 9 months and a year to adopted findings, but this varies depending upon whether the ACCC needs to request further information and the length of time taken by the relevant government to respond. In the latest case from the UK to be completed (2012/77), the Committee determined admissibility within 1 month and took 18 months to reach draft findings.

I am aware that the costs cap of £5,000 for individuals was introduced via the CPR in April 2013 following the ACCC's findings in Case 2008/33 (Port of Tyne case). However, please note that the ACCC did not specifically request a cap of £5,000 be introduced – their finding was that the UK was in breach of article 9(4) of the Aarhus Convention as the access to justice procedure was not fair, equitable and not prohibitively expensive, and recommended that it review its systems and legislation to overcome these problems.

Since then, the ACCC has found that the UK is still not complying with this requirement, see ACCC/C/2012/77 (ECE/MP.PP/C.1/2015/3). At paragraph 79 the ACCC also reminded the UK that as a Party to the Convention, it "*is bound by the Convention under international law and that the nature of its national legal system or lack of incorporation of the Convention in national law are not arguments that it can successfully avail itself of as justification for improper implementation of the Convention*".

In its findings on communication ACCC/C/2008/23 (United Kingdom) (ECE/MP.PP/C.1/2010/6/Add.1) at paragraph 54, the Committee commented as follows:

Although it was not raised by the communicants, the Committee considers that the United Kingdom's compliance with article 3, paragraph 2, of the Convention warrants scrutiny in this case. Article 3, paragraph 2, states that "*each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in, inter alia, seeking access to justice in environmental matters*". While not going so far as to make a finding of non-compliance on this ground, the Committee has some doubts that the conduct of the Party concerned in this matter meets its obligation to endeavour to ensure that officials and authorities assist the public in seeking access to justice in environmental matters. The communication was forwarded to the Party concerned in April 2008. It was thus already aware of this case by the time the authorities sought immediate payment of the costs awarded to them rather than accepting the communicants' offer to place them in an interest-bearing account pending the outcome of the substantive proceeding. The authorities' demand for immediate payment did not assist the communicants in seeking access to justice...

The conduct of the Council, in seeking immediate payment of the costs with interest whilst there are still outstanding issues concerning the amount due, does not assist my attempts to seek access to justice in environmental matters as required by article 3(2) of the Convention.

In addition, a punitive interest rate charge and your proposal to involve a High Court bailiff are unreasonable considering that I have already explained that I will be forwarding a communication to the ACCC, and may amount to penalization or harassment within the meaning of article 3(8) (see case ACCC/C/2008/27).

In light of the above, I hope the Council will reconsider its rejection of my offer to place the costs awarded into a separate account. Finally, in order to assist the ACCC in its consideration of the award of costs, please could you also confirm the actual charge that SLLP made to the Council to cover SLLP's services as listed in the Council's Statement of Costs.

Sincerely,

Tracy Breakell

From: George Chesman [email address redacted]

Sent: 25 August 2015 13:17

To: tracy breakell [email address redacted]

Subject: RE: Former Nelson Hospital

Dear Ms Breakell

Thank you for your email.

Regarding the CPR I confirm that the Council is normally entitled to recover VAT on its expenses but I will check if this applies where it is entitled to reimbursement from a third party who is not VAT registered. If this is not the position or it is unclear the payment to the Council can be reduced by £300 and I will let you have a revised interest calculation. I will write to you again in respect of this shortly.

I confirm that there is no VAT element in the internal charging arrangements within the Council.

The Council is not willing to delay payment until the outcome of your application to the Aarhus Convention Compliance Committee. Whereas the Council would have regard to any recommendations from that Committee they are not binding on the Council and typically take several years before final determination. I would also point out that the current costs cap for individuals of £5,000 in cases of this nature was applied following a recommendation of the Aarhus Convention Compliance Committee in a case concerning a British application in respect of the Port of Tyne.

Yours sincerely

George Chesman
[Contact details redacted]

Ref CS LEG GRC 511/470

From: Tracy Breakell [email address redacted]
Sent: 24 August 2015 15:09
To: George Chesman [email address redacted]
Subject: RE: Former Nelson Hospital

Dear Mr Chesman,

Thank you for forwarding a copy of the counsel's fee note to me. I note that the charge is for £2,200 plus VAT.

My understanding of the CPR rules on costs is that, where the receiving party is able to reclaim VAT from HMRC, the VAT element should not be charged to the paying party. I would be grateful if you would confirm whether my understanding is correct.

Also, in the interest of transparency, please could you confirm whether the charge for legal services from SLLP to the Council is inclusive or exclusive of VAT, as well as the actual "hard charge" that was made.

I would like to propose that I set aside £4,500 into an interest-bearing account whilst these discrepancies on the costs are resolved, and a determination has been made by the Aarhus Convention Compliance Committee.

Sincerely,

Tracy Breakell

From: George Chesman [email address redacted]
Sent: 20 August 2015 13:59
To: 'Tracy Breakell'[email address redacted]
Subject: RE: Former Nelson Hospital

Dear Ms Breakell

Thank you for your email. I enclose for your information a copy of the Council's Statement of Costs and counsel's fee-note from which you will see that the amount paid to counsel was marginally under-recorded.

Regarding the point you make the internal charging mechanism within an organisation is irrelevant to the assessment of costs, which in the case of local authorities, Government Departments etc. are charged according to the standard rates allowable for solicitors within the area in which they practise. This principle was established following a decision of the Court of Appeal in *Re Eastwood Deceased* in 1974. The Council's costs in this litigation have accordingly been correctly computed.

I would be glad if you would now pay the sum due within the next 21 days together with interest, calculated at the statutory rate of 8% from 20.03.15 to today's date, of £167.67. If this is not received I propose referring the debt to the High Court Sherriff's office in which case the enforcement costs will also be added to the sum recoverable.

Yours sincerely

George Chesman
[Contact details redacted]

Ref CS LEG GRC 511/470

From: Tracy Breakell [email address redacted]
Sent: 14 August 2015 11:01
To: George Chesman [email address redacted]
Subject: RE: Former Nelson Hospital

Dear Mr Chesman,

As you know, the Court Order was made without a hearing so I was not given an opportunity to raise any issues regarding the costs.

The Financial Report 2014/15 for Quarter 1, presented to Cabinet on 15 September 2014 states that SLLP provides legal services to the Council at a charge of £55 per hour. Yet the claim for costs submitted to the Court was for £250 per hour.

I would be grateful if you could let me know why there is such a large difference in these amounts.

I am currently preparing documents to submit to the UNECE Aarhus Compliance Committee to question the costs which I consider to be unfair, inequitable and prohibitively expensive, and therefore an infringement of article 9(4) of the Aarhus Convention. To this end, please would you provide me with a copies of the relevant invoices from SLLP and Landmark Chambers.

Many thanks,

Tracy Breakell

From: George Chesman [email address redacted]
Sent: 05 August 2015 14:20
To: Tracy Breakell [email address redacted]
Subject: RE: Former Nelson Hospital

Dear Ms Breakell

Thank you for your email.

The costs due to Merton LBC have been quantified in the sum of £5,000 and have been made an Order of the court. Any issues regarding amount and evidence of payment etc. should have been raised at an earlier stage and I am not willing to enter into yet more correspondence regarding it now. I can, however, confirm that the actual cost to the Council in dealing with the your claim exceeded the amount awarded by the Court.

I would be grateful if you would now make the payment, less the sum of £500, in accordance with my previous email without further delay.

Yours sincerely

George Chesman
[Contact details redacted]

Ref CS LEG GRC 511/470

From: Tracy Breakell [email address redacted]
Sent: 03 August 2015 11:03
To: George Chesman [email address redacted]
Cc: Lisa Matthews
Subject: RE: Former Nelson Hospital

Dear Mr Chesman,

Following your request for payment of the legal costs incurred by the Council, I would be grateful if you would forward me copies of the relevant invoices/fee notes from South London Legal Partnership and Landmark Chambers, along with proof of payment.

Many thanks,

Tracy Breakell

From: George Chesman [email address redacted]
Sent: 20 July 2015 16:32
To: Tracy Breakell
Cc: Lisa Matthews
Subject: Former Nelson Hospital

Dear Ms Breakell

Further to previous correspondence and the dismissal by the Court of Appeal of your application to appeal against the first instance refusal the costs payable to the Council are now due.

You will know that one of the recommendations of the Local Government Ombudsman in his final report dated 20.04.15 into your complaint is that the Council pays £500 compensation to you. I understand that this sum remains outstanding and I accordingly propose that it is netted off from the legal costs due to the Council. I would therefore be grateful if you would send a remittance of £4,500 either by cheque payable to Merton LBC or preferably by BACS to Merton LBC General Account at Lloyds TSB, sort code 30.00.02, account number 00083114, quoting reference 511/470/GC/SLLP. The bank's address is PO Box 72, Bailey Drive Gillingham Business Park ME8 0LS.

Yours sincerely

George Chesman
[Contact details redacted]