Neutral Citation No: [2019] NIQB 62	*Ref:*	McC10978
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	07/06/19

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IN THE MATTER OF AN APPLICATION BY LARA HIGGINS FOR JUDICIAL REVIEW

v

LEGAL SERVICES AGENCY AND DEPARTMENT OF JUSTICE

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McCLOSKEY J

[1] The Order of the court dated 28 February 2019 is attached. It has not been possible for the court to consider this matter further until now, given its heavy workload and taking into account the recent history and conduct of these proceedings.

[2] I have reviewed all of the material provided in the wake of the aborted hearing on 28 February 2019. The order of the court did not direct the written submission on costs signed by counsel which has been provided. I consider that if this had been undertaken by the solicitor concerned, which would have been preferable, it would not have sought (as the submission does) to inappropriately dilute and weaken the acknowledgements, concessions and apologies properly made in the solicitor's affidavit. However, the approach which counsel have chosen to take will not be permitted to reflect adversely on the solicitor or operate to her detriment.

[3] Generally, the new materials provided disclose a clear lack of awareness of, and respect for, the Judicial Review Practice Direction on the part of both solicitor and counsel. The attempt on the part of counsel to characterise certain of the breaches which occurred as minor is unsustainable. The approach on the part of all concerned was casual and neglectful, incompatible with the overriding objective

[4] There are clear indications that counsel should share the responsibility for the multiple and significant breaches and defaults which occurred. Counsels' responsibilities in matters of this kind are generally no less than those of the instructing solicitor particularly where (as in this instance) both senior and junior counsel are engaged. The court takes judicial notice of the solicitor/counsel relationship and arrangements in this

jurisdiction based on its experience and the deliberations of the Judicial Review Judges and Practitioners Liaison Group. I further note that the specific and personal defaults directly attributable to counsel still remain unremedied. However, the court is not endowed with the power to make a wasted costs order against counsel. This seems incongruous, particularly since this restriction does not apply in England and Wales. But for this restriction, the court would have been minded, subject to [9] below, to order that counsels' responsibility be measured at 50%.

[5] There is *prima facie* merit in the submissions made relating to the computation of the wasted costs claimed by the two Respondents. The combined wasted costs claimed by them total some £ 9,000. In matters of computation in a case of this kind, the court's resources are unavoidably limited and its approach will incline towards the summary, a factor which will normally enure to the benefit of the defaulting solicitor. The court will also consider exercising its power to refer the matter to the Taxing Master under Order 62, Rule 11(1)(b) (*infra*).

[6] The legal provisions engaged are section 59(1) of the Judicature (NI) Act 1978 and Order 62, Rules 10 & 11 of the Rules of the Court of Judicature. I refer also to the summary of the governing principles in *Cancino* [2015] UKFTT 00059 (IAC), at [13] – [22] and [27]. I remind myself that wasted costs orders are compensatory, not punitive, in nature: *Ulster Bank v Taggart* [2012] NIQB 24, at [13].

[7] Fundamentally, the court's aspiration and ability to deliver the highest possible service to litigants, the public and the profession were frustrated and compromised in consequence of the breaches and defaults in question, in dereliction of the duties and in contravention of the standards imposed by the overriding objective. I consider provisionally that the threshold for making a wasted costs order is overcome.

[8] In recognition of the fact that wasted costs orders may not be commonly made - or enforced - in this jurisdiction and further recognising the commendable response by the Applicant's solicitor in the affidavit provided in compliance with the court's order of 28 February 2019, I would be minded in principle to adopt a reasonably benign approach.

[9] Taking into account the observations in [5] and [8] above, I consider that the court should be assisted and guided by the expertise and experience of the Taxing Master. Accordingly, I exercise my power to require the Taxing Master to (in the language of the rule, *ante*) to "*enquire into the matter and report to the Court ...* ". Upon receipt of such report, the Court " *... may make such order under* [Rule 11(1) (a)] *as it thinks fit* ". The solicitors concerned shall be afforded the opportunity to make further representations following receipt of the Taxing Master's report to the court.

[10] More generally, this case has lost its place in the queue in the Judicial Review Court in consequence of the breaches and defaults noted. Furthermore, there has been a material development in the wake of the aborted listing on 28 February 2019. The case of Mustafa (No 19/45006/01) has now been listed for substantive hearing on 17 June 2019. It would appear that the issues in that case, as a minimum, overlap in part with those in the instant case, to the extent that the Respondent's [DOJ] affidavit evidence may simply duplicate that in the instant case. The Applicant's solicitors will doubtless wish to communicate

with the instructed solicitors in the Mustafa case in order to inform themselves further. They shall be at liberty to make further representations regarding listing thereafter.

[11] An agreed draft case management order, or in default of agreement competing drafts, would appear premature at this stage.

THE ORDER

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEENS BENCH DIVISION (JUDICIAL REVIEW)

BEFORE THE HONOURABLE MR JUSTICE MCCLOSKEY

on Friday the 1st day of March 2019

IN THE MATTER OF AN APPLICATION BY LARA HIGGINS FOR JUDICIAL REVIEW

UPON THE MATTER having being in the list this day for Hearing,

AND UPON READING the documents recorded on the Court file as having been read,

AND UPON HEARING Counsel for the Applicant and Counsel for the Respondents,

THE COURT HEREBY MAKES AN ORDER in the terms of the Judge's electronic communication to the parties' representatives dated 28 February 2019, reproduced in **THE SCHEDULE;**

IT IS ORDERED that;

1. The Hearing listed this day is hereby adjourned until a date to be fixed and;
2. The parties shall adhere to directions of the Court set out in the schedule below.

Stephen O'Hara
Proper Officer

Time Occupied: **1 March 2019 10 mins**
8 February 2019 5 mins

SCHEDULE

1) The new materials delivered by Applicant's solicitors today have arrived far too late to be properly considered by the Court.

2) The Senior Judicial Review Judge is not prepared to update his personal bundles, in this case or any other.

3) Equally, this is not the task or responsibility of the Judicial Review Office.

4) The indexing & pagination of Trial Bundle 3 [circa 400 pages] are shambolic.

5) Over 90% of Trial Bundle 3 is totally illegible.

6) The court has received no guide to what to read in Trial Bundle 3 in any event.

7) The [ever evolving] authorities bundle omits the elementary aid of highlighting to guide the Judge.

8) The Applicant's skeleton argument is non – compliant with successive Judicial Review Practice Directions [App VI, paras 6 & 7].

9) Given all of the foregoing –

- The Court will devote 5 minutes maximum to the listing on 1 March 2019.

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- Explanations/apologies etc proffered from the bar of the Court will not be accepted.

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- The Applicant's solicitors will provide an affidavit addressing all of the above [& everything ancillary etc] by 8 March 2019.

- The costs of such affidavit will be borne by Applicant's solicitors come what may.

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- The Applicant's solicitors will show cause in writing, by 15 March 2019, why they should not pay all costs thrown away.

- The Respondent & Department of Justice will furnish a schedule of their FULL costs thrown away, by 11 March 2019.

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- The Court's costs ruling will be provided by 29 March 2019

- There shall be no further listing of this case, pending further Order. If and insofar as the Court decides (later) that its process has not been misused, it will give consideration to determining this case without further listing.

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- The Applicant's solicitors shall transmit this direction & the ensuing formal Order to the LSA and shall confirm in writing by 8 March 2019 that they have done so. All LSA responses shall be copied to the Court.

Filed Date 14 March 2019