Appeal No. EA/2016/0054

BETWEEN

[redacted]

Appellant

and

The Information Commissioner

First Respondent

and

Merseyside Fire and Rescue Service

Second Respondent

Tribunal Directions arising from an application for costs by the Appellant against the Second Respondent

1. On 14th. November, 2016 the Appellant, whom the Tribunal had ordered to pay part of the costs of the Second Respondent ("MFRS") on account of his unreasonable conduct of this appeal, made an application under Rule 10(1) of the 2009 Rules that MFRS pay part of his costs. He further asked that the Tribunal give directions as to the determination of his application. These are the directions that he seeks.

2. This application is out of time. The Appellant cites Rule 10(4) which reads -

   " An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends to the person making the application the decision notice recording the decision which finally disposes of all issues in the proceedings."

3. He relies on the proposition that the date from which the 14 days ran was 31st. October, 2016, when he received the Tribunal's decision on MFRS's application for costs. That is wrong for two reasons –

   (i) Rule 10(4) refers to "the decision notice" which finally disposes of all issues in the proceedings. That is a term reserved for the document embodying the definitive ruling on substantive issues giving rise to the appeal. The rule contemplates that, in many appeals, it is only when he knows the final outcome of the request for information or other subject of dispute, that a party will finally know whether he has a case for applying for his costs. He is then given 14 days to apply.
   (ii) Still more conclusive is the point that, if the disposal of "all the issues in the proceedings" included the determination of applications for costs, Rule 10(4) would contradict itself.

4. The decision notice for this appeal was the Consent order dated 22nd. September, 2016, terminating proceedings, hence disposing of all substantive issues between the parties. The effect was that the ICO's DN stood but the Appellant received the information that he wanted.

5. The Tribunal has power under Rule 5(3)(a) to extend the time granted by Rule 10(4) but has no intention of exercising it in the Appellant's favour since his application is entirely devoid of merit.

6. As he well knows from defending MFRS's application for costs, the Tribunal has power to award costs only where (here) a party defends or conducts its case unreasonably (Rule 10(1)(b)). On the material before me, there is no basis whatever for such an allegation against MFRS and the Appellant does not begin to make one. Rather he repeats trivial complaints which were made and repeated in the course of the previous application and do not remotely meet the requirement of unreasonableness. Any costs incurred by the Appellant over the period covered by his Schedule are the result of his own unreasonable obstinacy, as detailed in the ruling of 31st. October, 2016.

7. I am therefore minded to strike out this application under Rule 8(3)(c) as amounting to "part of the proceedings", being out of time and having no reasonable prospect of success, whether for that reason or because his application, if it should be entertained at all, utterly fails to demonstrate that MFRS conducted these proceedings unreasonably.

8. Rule 8(4) requires the Tribunal to give the Appellant an opportunity to state why this part of the proceedings should not be struck out. I do so now. He has until 4pm. on 28th. November, 2016 to submit, if so advised, a single document, not exceeding two sides of A4 paper, setting out –
   (i) why the Tribunal should find that his application is made within time pursuant to Rule 10(4) or why time should be extended;
   (ii) why the Second Respondent's conduct of this appeal was unreasonable, hence
   (iii) why his application should not be struck out

   I emphasise that he must decide whether to contest the proposal to strike out his application, given what is said in these directions.

9 The Tribunal has already commented on the waste of public funds caused by the Appellant's conduct of this appeal in its later stages. When confronted by this application, I was minded to consider a wasted costs order under Rule 10(1) in respect of the costs incurred by the Tribunal service in dealing with this application. I was deterred from proceeding on such a course only because of the further time and possibly unrecovered costs which the public would incur if the Appellant resumed his submissions, this time on the subject of his liability for such costs. However, he should be in no doubt that, if this application is pursued further and fails, such inhibitions will probably disappear.

10 If, contrary to my interpretation of Rule 8, applications for costs are not

"part of the proceedings" so that I have no power to strike out this application, I am minded to reject it for the reasons already canvassed but give the Appellant the same opportunity, subject to the same conditions (see §8), to explain why that course would be wrong.

David Farrer Q.C.

First – Tier Tribunal Judge

22nd. November, 2016

Striking out a party's case

8.—(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—

. (a) does not have jurisdiction in relation to the proceedings or that part of them; and

. (b) does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(3) The Tribunal may strike out the whole or a part of the proceedings if—

. (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;

. (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or

. (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.