Neutral citation [2009] CAT 19

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1107/4/10/08

Victoria House
Bloomsbury Place
London WC1A 2EB

22 June 2009

Before:

THE HONOURABLE MR JUSTICE BARLING
(President)
MICHAEL BLAIR QC
PROFESSOR PETER GRINYER

Sitting as a Tribunal in Scotland

BETWEEN:

MERGER ACTION GROUP

Applicants

-v-

SECRETARY OF STATE FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM

Respondent

- supported by -

HBOS PLC
LLOYDS TSB GROUP PLC

Interveners

Mr. Ian Forrester Q.C. (of White & Case LLP) and Mr. Andrew Bowen (instructed by Mr. Walter Semple) appeared for the Applicants.

Mr. K.P.E. Lasok Q.C., Mr. Paul Harris, Miss Elisa Holmes and Mr. Gerry Facenna (instructed by the Treasury Solicitor) appeared for the Respondent.

Mr. Nicholas Green Q.C. and Mr. Aidan Robertson (instructed by Allen & Overy LLP) appeared for the Intervener HBOS plc.

Miss Helen Davies Q.C. and Mr. Andrew Henshaw (instructed by Linklaters LLP) appeared for the Intervener, Lloyds TSB Group plc.

JUDGMENT (Expenses)

I. INTRODUCTION

1. By its judgment in this matter given on 10 December 2008 ("the Main Judgment") the Tribunal dismissed an application for review under section 120 of the Enterprise Act 2002 lodged on 28 November by the Merger Action Group, an unincorporated association, challenging a decision of the Secretary of State for Business, Enterprise and Regulatory Reform under section 45 of the Act not to refer to the Competition Commission an anticipated acquisition by Lloyds TSB Group plc of HBOS plc (see [2008] CAT 36, 2009 S.L.T. 10). The background to this matter is summarised in paragraphs [10] to [31] of the Main Judgment. The abbreviations and terminology used there by the Tribunal are adopted hereafter in the present judgment, which is unanimous.

2. By letter of 12 December 2008 the Registrar of the Tribunal wrote to the parties setting a timetable for any written submissions they wished to make on the question of expenses. ("Expenses" rather than "costs" is the relevant term when, as in this case, the proceedings are to be treated as proceedings in Scotland.)

3. By letters of 17 and 18 December 2008 Lloyds TSB and HBOS (who intervened in the proceedings in support of the Secretary of State) respectively confirmed that they would not be making any applications for expenses.

4. On 18 December 2008 the Secretary of State lodged an application for the Applicants to pay his expenses in the sum of £62,295.30. Written submissions from the Applicants resisting the Secretary of State's application were received on 13 January 2009.

5. We are asked by both parties to determine this application for expenses on the information and submissions before us and without an oral hearing. In the circumstances of this case the Tribunal does not consider that an oral hearing is necessary or desirable.

II. THE PARTIES' SUBMISSIONS

6. The Secretary of State submits that, as the winning party, he should be awarded his expenses in accordance with the Tribunal's indication in *Unichem v OFT (costs)* [2005] CAT 31, [2006] CompAR 172, at [17].

7. The Secretary of States submits that there are four principal considerations which the Tribunal should have in mind when deciding whether to exercise its discretion to make an expenses award:

   (a) The Secretary of State's conduct was reasonable throughout, and substantial public resources were devoted to submitting evidence and submissions within an unusually tight timescale.

   (b) The Applicants lodged its challenge on the very last day permitted, and made no effort to inform the Secretary of State of the proposed application in advance of lodging their notice of application with the Tribunal on 28 November 2008, as envisaged by paragraph 6.57 of the Tribunal's *Guide to Proceedings*[1]. Pre-action notice might have enabled the parties to avoid certain expenses, or even the litigation altogether.

   (c) Once the Secretary of State's evidence had been served on 4 December, the Treasury Solicitor wrote on his behalf on 5 December 2008 asking the Applicants to withdraw the application in return for the Secretary of State not applying for his expenses against them. The Applicants' failure to reconsider their position once in receipt of the evidence is an important factor that supports an award of expenses.

   (d) So far as the Secretary of State is aware the Applicants are well-resourced litigants who were fully aware of the risks of litigation, and who were in a position to instruct a well-known law firm to represent them. There is

[1] The Guide to Proceedings is available from the Tribunal's website: www.catribunal.org.uk. The requirements of the Guide to Proceedings constitute a Practice Direction issued by the President pursuant to Rule 68(2) of the Tribunal Rules.

therefore no principled basis upon which the Secretary of State could be refused his expenses.

8. The Secretary of State also submits that his expenses are relatively modest compared to the sums that are normally incurred in similar proceedings before the Tribunal.

9. The Applicants resist the Secretary of State's application and contend that he should bear his own expenses. The Applicants submit first that they have conducted themselves responsibly, both in the steps taken to lodge the Notice of Application and in making their case before the Tribunal. The Applicants are persons of moderate means who desired to bring before the Tribunal a matter of public interest. Their concerns were neither fanciful nor frivolous. Their concerns were shared by members of the Scottish Government, as well as former senior officers of the banking community in Scotland.

10. The Applicants explain in their written submissions on expenses why their application was lodged at the end of the last day of the four week period allowed for a challenge. The delay is said to have been caused by difficulty in finding legal representatives who were not conflicted. The Applicants did not wait until then in order to inconvenience the banks or to put an obstacle in the way of the planned general meeting of HBOS shareholders.

11. In line with paragraph [36] of *IBA Health Ltd v Office of Fair Trading (costs)* [2004] CAT 6, [2004] CompAR 529 the Applicants submit that the objectives of the Act should not be frustrated by an order for expenses that might discourage would-be applicants from making applications in the future. The Applicants further submit that it was not reasonable to expect them, in response to the Secretary of State's letter of 5 December 2008, to digest the voluminous evidence and documents supplied to them after the deadline on the evening of 4 December and then to withdraw their application by 5pm the next day.

12. Finally, without prejudice to their primary submission, should the Tribunal be minded to make an award as to expenses in favour of the Secretary of State, the

Applicants submit that any such award should be limited to 10 per cent of his expenses, such expenses to be dealt with by the Auditor of the Court of Session.

III. TRIBUNAL'S JURISDICTION TO AWARD EXPENSES AND COSTS

13. The Tribunal's jurisdiction to award expenses, or costs, is governed by rule 55 of The Competition Appeal Tribunal Rules 2003 (S.I. 2003, No. 1372) ("the Tribunal Rules") which provides, so far as is relevant:

> "55. – (1) For the purposes of these rules "costs" means costs and expenses recoverable in proceedings before the Supreme Court of England and Wales, the Court of Session or the Supreme Court of Northern Ireland.
>
> (2) The Tribunal may at its discretion, at any stage of the proceedings, make any order it thinks fit in relation to the payment of costs by one party to another in respect of the whole or part of the proceedings and, in determining how much the party is required to pay, the Tribunal may take account of the conduct of all parties in relation to the proceedings.
>
> (3) Any party against whom an order for costs is made shall, if the Tribunal so directs, pay to any other party a lump sum by way of costs, or all or such proportion of the costs as may be just. The Tribunal may assess the sum to be paid pursuant to any order under paragraph (1), (2) or (3) or may direct that it be assessed by the President, a chairman or the Registrar, or dealt with by the detailed assessment of a costs officer of the Supreme Court or a taxing officer of the Supreme Court of Northern Ireland or by the Auditor of the Court of Session."

14. Rule 3 provides:

> "Unless the context otherwise requires-
>
> (a) Parts I and V of these rules apply to all proceedings before the Tribunal…"

15. Part V of the Tribunal Rules includes rule 55.

16. Rule 55 therefore covers all proceedings which come before the Tribunal. These are of various kinds, but in general terms fall into one of the following categories:

(1) Appeals on the merits against decisions of the OFT or one of the other concurrent regulators brought under sections 46 or 47 of the Competition Act 1998 (as amended) ("the 1998 Act"). Such appeals are typically against findings of infringement or non-infringement of the Chapter I or

Chapter II prohibitions or the EC competition rules and/or against the imposition or amount of a penalty for infringement.

(2) Appeals brought under the same sections in respect of certain other types of decision of the OFT or other regulators, where the Tribunal must determine the appeal on judicial review grounds rather than "on the merits". This is the case, for example, in third party appeals to the Tribunal against decisions by the OFT to accept or release commitments under section 31A of the 1998 Act.

(3) So-called "follow on" claims for damages or other monetary award under sections 47A or 47B of the 1998 Act in respect of losses caused by an established infringement of the Chapter I or Chapter II prohibitions (or EC equivalents).

(4) Applications under sections 120 or 179 of the 2002 Act, which are in the nature of judicial review of decisions of the relevant competition authorities and ministers taken under Part 3 (mergers) or Part 4 (market investigations) of that Act.

(5) Appeals under section 192 of the Communications Act 2003 ("the 2003 Act") against specified decisions of the Office of Communications ("OFCOM") and other decision-makers. The types of decisions covered by section 192 are many and varied. Such appeals are "on the merits".

17. Given the fundamental differences between these jurisdictions, as well as the differences between individual cases even within a single jurisdiction, the discretion afforded to the Tribunal under rule 55(2) and (3) is necessarily wide. Apart from a reference in rule 55(2) to its discretion to "take account of the conduct of all parties in relation to the proceedings", the rule leaves it to the Tribunal to develop the relevant principles to be applied. As the Tribunal has emphasised on numerous occasions, the width of the discretion enables the Tribunal to deal with cases justly and to retain flexibility in its approach, avoiding the risk of guiding principles evolving into rigid rules (see for example *Emerson Electric Co & Ors v Morgan*

Crucible Co plc & Ors (costs) [2008] CAT 28, [2009] CompAR 7, at [35] and [44]). As the Tribunal said in that case at paragraph [44], there is no inconsistency between the wide discretion, and an approach to its exercise which adopts a specific starting point. Without this there may be an increased risk of discordant decisions.

18. Thus, for example, in relation to appeals against decisions by OFCOM resolving disputes under section 185 of the 2003 Act[2], the Tribunal has recently stated that the starting point is that OFCOM should not ordinarily be the subject of an adverse costs order where it has acted reasonably and in good faith (see *The Number (UK) Ltd & Anor v OFCOM (costs)* [2009] CAT 5, at [5]). However, the Tribunal also emphasised in that case that an adverse costs order could be made notwithstanding the absence of unreasonableness or bad faith where the Tribunal considered it to be appropriate in the light of the specific circumstances. This was in fact the position in *T-Mobile (UK) Limited & Ors v OFCOM (costs)* [2009] CAT 8. (For another example see *Emerson (costs)* (above) in relation to unsuccessful applications under section 47A(5)(b) of the 1998 Act and rule 31(3) of the Tribunal Rules for permission to bring a follow-on claim for damages before the end of the period referred to in section 47A(8)(b) and rule 31(2)(a).)

19. It is axiomatic that all such starting points are just that – the point at which the court begins the process of taking account of the specific factors arising in the individual case before it – and there can be no presumption that a starting point will also be the finishing point. All relevant circumstances of each case will need to be considered if the case is to be dealt with justly. The Tribunal's decision in relation to costs/expenses can be affected by any one or more of an almost infinite variety of factors, whose weight may well vary depending upon the particular facts. Beyond recognising that success or failure overall or on particular issues, the parties' conduct in relation to the proceedings, the nature, purpose and subject-matter of the proceedings, and any offers of settlement are always likely to be candidates for consideration, the factors are too many and too varied to render it sensible to attempt to identify them exhaustively.

[2] That section applies to disputes relating to the provision of network access and to other disputes relating to rights and obligations conferred or imposed by or under Part 2 of the 2003 Act.

20. Cases such as the present (our category (4) in paragraph 16 above) are in the nature of applications for judicial review (see subsections 120(4) and 179(4) of the Act). However, the Tribunal has stated that whilst subsection 120(4) requires the substance of any application for review to be determined in accordance with the principles which would be applied by a court in an ordinary judicial review, the subsection does not apply to an issue of costs (see *IBA Health (costs)* at [37]). It follows that in relation to applications for review under sections 120, as in all other categories of proceedings before it, the Tribunal exercises its discretion under rule 55 in accordance with the principles which it has developed. (It is difficult to see how the same would not also apply in relation to subsection 179(4).)

21. The Tribunal has identified as the appropriate starting point in section 120 applications that a successful party would normally obtain a costs award in its favour (see for example *Unichem (costs)*, at [17]; *Stericycle International LLC v Competition Commission (costs)* [2006] CAT 22, [2007] CompAR 322, page 2, lines 8-9; and *Co-operative Group (CWS) Limited v Office of Fair Trading (costs)* [2007] CAT 25, [2007] CompAR 954, at [4]). However in those cases and in others of the same kind the Tribunal has reiterated the need to retain flexibility in order to reach a just result on the specific facts of the case.

22. The Tribunal will also naturally take note where appropriate of the approach adopted in analogous proceedings by courts and tribunals in the various jurisdictions of the United Kingdom.

Scotland

23. In *McArthur v Lord Advocate* 2006 S.L.T. 170 (OH), a judicial review case in which the petitioners sought a protective order for expenses, Lord Glennie said at [9]:

> "… Expenses are within the discretion of the court and the width of this discretion has been emphasised on many occasions: see for example *Howitt v W Alexander & Sons Ltd* and *Ramm v Lothian and Borders Fire Board*. In *Howitt*, Lord President Cooper gravely doubted "whether all the conditions upon which that discretion should be exercised have ever been, or ever will be, successfully imprisoned within the framework of rigid and unalterable rules", and added that he did not think that it would be desirable that they should be …"

24. In the present case the Secretary of State has submitted that in judicial review cases in Scotland, expenses, while in the discretion of the court as indicated in the above quotation, will ordinarily albeit not invariably follow success. The decision of Lord M'laren in *Liddell v Parish Council of Ballingry* 1908 16 SLT 258 referred to by the Applicants does not appear to support a contrary proposition. It seems to have turned on the fact that in the compulsory purchase proceedings in question the sheriff was acting in an administrative and not a judicial capacity, and as such was not entitled to award expenses (except possibly where an objector had acted vexatiously). Indeed the discussion of the court proceeded on the premise that in ordinary adversarial proceedings where the party in question was a "contentious litigant" expenses would be awarded.

England & Wales

25. As far as judicial review in England and Wales is concerned, issues of costs are governed by section 51 of the Supreme Court Act 1981 (as amended by the Access to Justice Act 1999), and Part 44 of the Civil Procedure Rules ("CPR"). Section 51 provides:

> "**s 51 Costs in civil division of Court of Appeal, High Court and county courts.**
>
> (1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in--
>
> (a) the civil division of the Court of Appeal;
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> (b) the High Court; and
>
> (c) any county court,
>
> shall be in the discretion of the court.
>
> (2) Without prejudice to any general power to make rules of court, such rules may make provision for regulating matters relating to the costs of those proceedings including, in particular, prescribing scales of costs to be paid to legal or other representatives or for securing that the amount awarded to a party in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs.
>
> (3) The court shall have full power to determine by whom and to what extent the costs are to be paid.
>
> …"

26. CPR rule 44.3 states:

"**Court's discretion and circumstances to be taken into account when exercising its discretion as to costs**

44.3(1) The court has discretion as to –

(a) whether the costs are payable by one party to another;

(b) the amount of those costs; and

(c) when they are to be paid.

(2) If the court decides to make an order about costs-

(a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but

(b) the court may make a different order.

…

(4) In deciding what order (if any) to make about costs, the court must have regard to all the circumstances including-

(a) the conduct of all the parties;

(b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and

(c) any payment into court or admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply."

27. Thus although there is a wide discretion, in England & Wales costs in judicial review generally follow the event so that the loser will be ordered to pay the costs of the successful party where the matter goes to a full hearing: see for example *Davey v Aylesbury Vale District Council* [2007] EWCA Civ 116, [2008] 1 WLR 878, per Sir Anthony Clarke M.R. at paragraph [29]:

> "I entirely agree with the guidelines set out by Sedley LJ at paragraph 21 above. I would however add one note of caution. It does seem to me that costs should ordinarily follow the event and that it is for the claimant who has lost to show that some different approach should be adopted on the facts of a particular case. That principle is supported by the decision and reasoning of Dyson J in *R v Lord Chancellor ex p Child Poverty Action Group* [1999] 1 WLR 347 at 355H-356E. That passage concludes as follows: "…. In considering whether, and in what circumstances, there should be a departure from the basic rule that costs follow the event in public interest challenge cases, in my view it is important to have in mind the rationale for that basic rule, and that it is for the applicants to show why, exceptionally, there should be a departure from it." The basic rule he refers to is, as he explained at page 356C, that costs follow the event in public law cases, as in others, because, where an unsuccessful claim is brought against a public body, it

> imposes costs on that body which have to be met out of money diverted from the funds available to fulfil its primary public functions."

28. For further elaboration of the rationale for that rule see *R v Lord Chancellor, ex p Child Poverty Action Group* [1999] 1 WLR 347, [1998] 2 All ER 755 per Dyson J (as he then was) at paragraphs 36-37. For a discussion of the circumstances in which the court might, in the exercise its overall discretion, depart from that basic rule, including cases which Dyson J called "public interest" challenges, see *ex p Child Poverty Action Group* (above) at paragraph 27, *R (on the application of Smeaton) v Secretary of State for Health (costs)* [2002] EWHC 886 (Admin) [2002] 2 FLR 146 per Munby J at paragraph 17, and *Davey* (above) at paragraph 21, where Sedley LJ said:

> "On the conclusion of full judicial review proceedings in a defendant's favour, the nature and purpose of the particular claim is relevant to the exercise of the judge's discretion as to costs. In contrast to a judicial review claim brought wholly or mainly for commercial or proprietary reasons, a claim brought partly or wholly in the public interest, albeit unsuccessful, may properly result in a restricted or no order for costs."

Northern Ireland

29. In Northern Ireland costs issues are dealt with under Order 62 of the Rules of Supreme Court. Rule 2(4) states that the costs of proceedings are in the discretion of the Court. Rule 3(3) 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."

30. In deciding how to exercise its discretion on costs, the court is required to take into account any payment of money into court (Rule 9(b)); the court may also take into account misconduct or neglect of the parties (Rule 10(1)). The notes to Order 62 include the following:

> "The general rule that costs follow the event has an important function to encourage parties in a sensible approach to increasingly expensive litigation. This general rule promotes discipline within the litigation system, compelling the parties to assess carefully for themselves the strength of any claim, and ensures that the assets of the successful party are not depleted by reason of having to go to court. This is as desirable in public law cases as it is in private law cases. Where an unsuccessful claim is brought against a public body, it imposes costs on that body

> which have to be met out of the public funds diverted from the funds available to fulfil its primary public functions: *R v Lord Chancellor ex p CPAG* [1999] 1 WLR 347 (Dyson J); *Re Moore [Costs]* [2007] NIQB 23 [2007] 4 BNIL 130 (Gillen J)…
>
> …A wholly successful defendant in an action or respondent in judicial review is entitled to his costs unless there is evidence that he brought about the litigation, has done something connected with the institution or conduct of the proceedings to cause unnecessary litigation or expense, or has done some wrongful act in the transaction of which the plaintiff/applicant complains."

IV. THE TRIBUNAL'S DECISION

31. We start from the position that the Secretary of State has been successful in resisting all aspects of the Applicants' challenge to the Decision, and that this result would normally lead to an award of expenses in the Secretary of State's favour (see *Unichem v OFT (costs)*, at [17] and the cases cited in paragraph [21] above). There is nothing to be criticised in relation to the manner in which the Secretary of State conducted his defence.

32. The Applicants did not cover themselves in glory in the lead up to the lodging of their application. As we pointed out in the Main Judgment (paragraph [5]), the proceedings were commenced at the very end of the last possible day (28 November 2008), notwithstanding that the Applicants can hardly have been in any doubt that the Tribunal would be asked to hear and decide the application as a matter of great urgency in advance of the HBOS shareholders' general meeting fixed for 12 December 2008. The Applicants' explanation, namely that several law firms were approached before one was found which did not have a conflict of interest, does not justify their taking about three weeks to carry out the process of finding a legal representative.

33. In addition the Applicants failed to comply with the Tribunal's practice direction at paragraph 6.57 of the Guide to Proceedings, in that they did not forewarn interested parties (i.e. the Secretary of State, HBOS and Lloyds TSB) that the application was going to be made.

34. However, once proceedings had been started the Applicants and their legal team cooperated fully in agreeing and complying with a drastically truncated procedure designed to make it possible for a final judgment to be given before 12 December,

with considerable effort on the part of all concerned. We were considerably assisted by the responsible way in which all the advocates, including Mr Forrester QC, conducted the oral proceedings.

35. For the avoidance of doubt we should say that we do not consider that it would be fair to hold against the Applicants the fact that they did not accept the Secretary of State's offer contained in the Treasury Solicitor's letter dated 5 December 2008. There was in our view inadequate time for the Applicants and their legal team to assess the evidence (which had been received the previous evening) and take a decision to drop the case by the deadline, namely 5pm on the same day i.e. 5 December. Our decision on costs therefore does not rely in any way upon that offer: we have neither given the Secretary of State credit for making it, nor penalised the Applicants for not accepting it.

36. The Applicants were themselves successful on two contested issues, namely forum/jurisdiction and standing (see [2008] CAT 34 and Main Judgment, at [32] *et seq.*). Forum/jurisdiction was potentially an issue of some importance, particularly if the matter had gone on appeal, as it meant that any such appeal would go to the Court of Session rather than the Court of Appeal. Although this matter was dealt with fairly briefly in the course of the case management conference which would have taken place in any event, some modest incremental expenses are likely to have been involved in researching, preparing and delivering submissions on this issue.

37. When it comes to the issue of standing, the Applicants' success does not bring much credit to them given the way in which information relevant to that issue was imparted to the other parties and the Tribunal (see paragraph [46] of the Main Judgment).

38. The Applicants' best argument against the Secretary of State's application for expenses is probably the fact that they had no personal or private interest in the outcome of the proceedings other than as persons with business and personal interests reliant upon the availability of banking services in, in particular, Scotland. In this regard there was nothing to distinguish the Applicants from a large number of other consumers of banking services. (We discount for these purposes the fact

that one of the Applicants was said to be a shareholder in HBOS.) The Applicants submitted that their association was a group of responsible individuals pursuing a real and legitimate interest in challenging the lawfulness of the Decision. The Applicants stated that they were concerned, in particular, about the reduction in choice in the banking sector as a result of the proposed merger. No one has questioned the genuineness of that concern. Nor is it in doubt that it was shared not just by the OFT, but also by a good many other people in Scotland and the rest of the UK, including some leading politicians and business people who expressed support for the application. There is similarly no doubt that if the Decision had not been challenged by the Applicants, no one else would have made such a challenge. (See paragraphs [33], [34], [44], and [45] of the Main Judgment.) In these circumstances it seems to us that the subject-matter of the Decision, and by extension the challenge to the Decision, was to that extent a matter of legitimate public interest, albeit that the legal grounds proved incapable of bearing the weight placed upon them.

39. In the light of the above we consider that there should be an award of expenses in the Secretary of State's favour but that it should fairly reflect the matters referred to in the previous paragraph and also the fact of the Applicants' success in relation to the forum issue.

40. The Secretary of State has asked the Tribunal to make a summary assessment of expenses in the sum of £62,295.30 which is broken down in a schedule supplied to us. The Applicants have taken issue with this sum on the basis of *inter alia* the size of the Secretary of State's legal team (paragraph 19 of their written submissions).

41. The sum in question represents work carried out over about 12 days by Treasury Solicitors and external counsel instructed by them. Although it is by no means a negligible sum, it does not seem excessive or disproportionate given the extreme urgency and expedition with which a great deal of work had to be done, and the considerable importance of the outcome of the case. We do not accept the Applicants' criticisms of the size of their opponent's legal team, the hours worked by them, or the amount expended. We note the Applicants' submission that if any expenses are to be awarded to the Secretary of State they should be limited to 10%

of his expenses, this amount to be determined by detailed assessment by the Auditor of the Court of Session. We do not accept that to award 10% of the Secretary of State's expenses would produce a just result. We also consider that in this case it is preferable for the Tribunal summarily to assess the amount to be paid rather than require a detailed assessment by a third party. We are of the view that an appropriate amount to be paid by the Applicants in respect of the Secretary of State's expenses would be £35,000. We record that although the Applicants are said to be persons of moderate means no information whatsoever as to their means has been placed before the Tribunal.

V. CONCLUSION

42. For the above reasons:

IT IS ORDERED THAT:

The Applicants pay to the Secretary of State the sum of £35,000 in respect of the latter's expenses, such payment to be made within 28 days of the date of this judgment.

The President Michael Blair Peter Grinyer

Charles Dhanowa
Registrar Date: 22 June 2009