



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

CO Ref: CO/2148/2019

In the matter of an application for Judicial Review

The Queen on the application of
ALEXANDER BORIS DE PFEFFEL JOHNSON (Claimant)
versus WESTMINSTER MAGISTRATES' COURT (Defendant)
and (1) BREXIT JUSTICE LIMITED (2) MARCUS BALL (Interested Parties)

On the Claimant's application for costs against the Interested Parties

Following consideration of the documents lodged by the Claimant and the Interested Parties

Order by the Right Hon. Lady Justice RAFFERTY
and the Hon. Mr Justice SUPPERSTONE

1. The Interested Parties ("IP") shall pay the C's costs of the JR proceedings, on an indemnity basis, summarily assessed in the sum of £46,130.18; and
2. The IP shall pay the C's costs of the proceedings before the Magistrates' Court pursuant to s.19 of the Prosecution of Offences Act 1985, on an indemnity basis, summarily assessed in the sum of £55,000.

Reasons:

1. C applies for his costs of the JR proceedings and the proceedings before the Magistrates' Court, on an indemnity basis, to be summarily assessed. The costs claimed are £46,130.18 in respect of the JR proceedings, and £55,014.96 in respect of the Magistrates' Court proceedings.
2. The IP accepts that the C should be awarded his costs of the JR proceedings, on the standard basis, summarily assessed in the sum of £29,984.61. In respect of the Magistrates' Court proceedings, the IP submit that the court should not make an order pursuant to s.19 of the Prosecution of Offences Act 1985 ("the 1985 Act"), but should only consider making an order under s.16 for costs to be payable out of central funds; alternatively, if an order for costs is made pursuant to s.19 that should be on the standard basis, and subject to detailed assessment (or if assessed summarily, in the sum of £35,773.73).
3. We consider, having regard to the factors set out in paragraphs 4-10 below that the IP should pay the Claimant's costs of the JR proceedings and the proceedings before the Magistrates' Court on an indemnity basis.
4. In our view the conduct of the IP in bringing and pursuing the prosecution of C takes the case out of the norm so as to justify an order for indemnity costs.
5. Before launching this private prosecution the IP did not report their allegation to the police, the CPS, or to any other investigatory or prosecuting authority, or to any disciplinary or regulatory body.
6. The IP rejected the advice of eminent Queen's Counsel which had been to the effect that the offence of misconduct in public office could not be made out.

7. The prosecution was commenced in breach of the IP's duty of candour. None of the matters set out in para 41 of our judgment, or in the document "Motive and Conduct" prepared on behalf of C were disclosed by the IP, nor were other material matters referred to in para 27 of the "Application for Costs".
8. The District Judge ("DJ") accepted that "when [Mr Ball] commenced his consideration of whether to bring a private prosecution against [Mr Johnson], some three years ago, there may have been a political purpose to these proceedings". The DJ provided no reasons to support her conclusion that the prosecution was not vexatious. That finding was, in our view, flawed. At para 44 of our judgment we said: "The passage of time since 2016 was no answer to the Claimant's detailed submission that the political motive for the prosecution was apparent from evidence as far back as July 2016 and up to the institution of the prosecution in February 2019, as even the limited extracts we have set out make clear". The evidence, in our view, shows that the prosecution was politically motivated, and vexatious. It was unnecessary for us to decide whether the decision of the DJ that it was not vexatious was *Wednesbury* unreasonable.
9. There was plainly no proper legal basis for the issue of the summonses in this case.
10. We accept the submission made on behalf of C that the bringing of this prosecution was unreasonable to a high degree and deserving the punitive element of an order for indemnity costs.
11. Having regard to the above factors we also consider that this is an exceptional case that in all the circumstances warrants the application of the civil costs regime and the making of an order pursuant to s.19 of the 1985 Act, and that C should recover his costs of the proceedings before the Magistrates' Court from the IP on an indemnity basis.
12. We consider the costs claimed in respect of the JR claim to be reasonable and proportionate. We have not been provided with a detailed schedule of costs in relation to the Magistrates Court proceedings, but having regard to the work we know had to be done, we consider costs in the sum of £55,000 to be reasonable and proportionate.

Signed

Michael Tupper

Date: 20 September 2019

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

20 SEP 2019