

[2018] EACC 2

IN THE ARCHES COURT OF CANTERBURY

IN THE MATTER OF THE CHURCH OF ST PETER AND ST PAUL (BATH ABBEY)

ON AN APPLICATION BY THE VICTORIAN SOCIETY FOR PERMISSION TO APPEAL

FROM THE CONSISTORY COURT OF THE DIOCESE OF BATH AND WELLS

(CHANCELLOR TIMOTHY BRIDEN)

DECISION ON COSTS

1. In my decision of 1 March 2018 refusing permission to appeal ([2018] EACC 1) I dealt with costs in the final paragraph:

“14. Under rule 23.5(1)(b) of the Faculty Jurisdiction Rules 2015, I have a discretion in relation to costs. The Victorian Society shall bear the petitioners’ reasonable costs of submitting the Response (to be taxed by the Provincial Registrar if not agreed), and the court costs of considering and determining the application. Such costs shall be paid within 14 days of receiving notification from the provincial Registrar of the amounts concerned. Although rule 23.5(1)(b), unlike rules 19(2) and (3) which (by virtue of rule 2.1(2)) apply to substantive appeals, make no provision for representations on costs to be made, I shall allow the Victorian Society 7 days to submit (if so minded) any representations as to why it considers a different order for costs should be made.”

2. The Victorian Society has submitted a Representation on Costs (“the Representation”), dated 5 March 2018. In purported reliance on *Re St Mary, Sherborne* [1996] Fam 63, the Victorian Society contends that the court costs on appeal should be paid by the petitioners irrespective of whether they have been successful or not on the appeal (at 70C). As to the parties’ costs, whilst the Victorian Society accepts that the usual order is that costs follow the event, here it submits that there should be no order for costs as between the parties for three reasons:

(a) the court should be reluctant to penalise a statutory amenity society, even if it is held to have been wrong to seek permission to appeal;

(b) this is especially so where the financial resources of the church in question are large and those of the Victorian Society relatively small (its last audited accounts for y/e 2016 showed total gross income of “only £618,166”);

(c) any costs awarded should not extend to the petitioners’ costs of employing counsel and solicitors (*Sherborne* at 70F-G), and since the petitioners’ non-legal costs are likely to be trivial, none should be awarded.

Court costs of an unsuccessful application for permission to appeal

3. In *In re St John the Baptist, Peshurst (No.2)*, 30 March 2015 unreported, the Court of Arches, following a substantive hearing of the Victorian Society's appeal, gave detailed consideration to the approach in such cases to court costs, and described the approach in *Sherborne* to court costs as one which it saw no reason to change (para 15).

4. Where permission to appeal has been granted, there is generally a public interest in the hearing taking place (see *Sherborne* at 70A). The position, however, is different where an application to appeal has been refused. There is no public interest in encouraging hopeless applications for permission; rather the opposite. It has been the invariable practice of the Dean in recent years to order unsuccessful would-be appellants to pay the court costs: see *Re Churchyard of St Mary's Church, White Waltham*, 6 August 2009 unreported, para 28; *Re St Mary the Virgin, Ashford*, 20 September 2010 unreported, para 34; and *St James, Kidbrooke*, [2017] EACC 2.

5. Of course there may be the occasional case where a different order is justified. But, *Sherborne* apart, the only matter identified in the Representation is the disparity between the wealth of Bath Abbey and the modest means of the Victorian Society. A somewhat similar, albeit stronger, argument was rejected in *Kidbrooke*.

6. Accordingly there will be no change to the terms of the original order in relation to court costs, save that those court costs will include those of consideration and determination of the Representation.

Parties' costs on an unsuccessful application for permission to appeal

7. I readily accept that statutory amenity societies should not be discouraged from participating in the faculty jurisdiction, including appeals. But both on a substantive appeal and where permission to appeal has been refused, there is no sound reason why they should be exempt from a normal parties' costs order. The costs of the petitioners on this occasion are unlikely to be considerable, and I do not regard the limited means of the Victorian Society as a reason for departing from the normal order.

8. On the appeal in *Sherborne* the petitioners (unlike the Victorian Society in that case) were not represented by solicitors or counsel (at 70H). The appeal court did not rule that legal costs would never be allowed, merely that on the facts of that case "it is very unlikely that in any event we would have made a costs order to cover such legal representations" (at 70H-71A). In recent years following substantive appeal hearings, no attempt appears to have been made to disallow costs of legal representation, although it is often now the case that legal representation is given on a *pro bono* basis.

9. Be that as it may, in cases where applications for permission to appeal have been refused, the parties' costs order has always included the costs of legal representation, although in *Kidbrooke* between the decision refusing permission to appeal and the decision on costs, the petitioners generously waived their entitlement to recover any costs (para 2).

10. In the present instance it was clearly appropriate for the petitioners to instruct Counsel to settle a Response to the Victorian Society's Reasons and Grounds (both of which had been settled by Counsel).

11. Accordingly there will be no change to the terms of the original order in relation to parties' costs.

Other matters

12. I regret that the making of this Representation has inevitably increased the amount of the court costs. I deliberately did not seek a response to the Representation from the petitioners, because that would only have added to the amount of the parties' costs which I would have then ordered the Victorian Society to pay.

11 March 2018

CHARLES GEORGE QC

Dean of the Arches