

JJ & EE v Buckinghamshire Council [2022] UKUT 345 (AAC)

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This was an appeal to the Upper Tribunal arising out of parents' unsuccessful application to the First-tier Tribunal for a costs order against the local authority in a special educational needs case. Parents had appealed against the contents of their daughter's EHC plan; the local authority had conceded the appeal but then withdrew that concession a month later. After the parents won the appeal they applied for a costs order against the authority, relying on its conduct in withdrawing the concession and on a wide range of other conduct. The First-tier Tribunal refused the application for costs, and permission to appeal to the Upper Tribunal was granted.

One ground on which permission to appeal was granted by the Upper Tribunal was that the First-tier Tribunal arguably misdirected itself in law in finding that anything that happened before the parents lodged their notice of appeal to the First-tier Tribunal was irrelevant. The parents' arguments included a submission that the local authority had failed to comply with the Mediation Action Plan. The Upper Tribunal considered that, since statutory mediation is intended to promote resolution of disputes without recourse to the First-tier Tribunal, arguably a party's compliance with mediation agreements may be relevant in determining whether a party's conduct of proceedings was unreasonable, and this was an issue that may be of relevance more widely. However, in the event, parents withdrew their appeal on that ground, so that issue was not considered further by the Upper Tribunal.

The ground on which parents pursued their appeal was that the First-tier Tribunal erred in law by failing to address, or alternatively by failing to explain why it rejected certain aspects of the parents' case on costs. The Upper Tribunal concluded that the First-tier Tribunal had given inadequate reasons for its decision and remitted the costs

application to the First-tier Tribunal to redetermine. However, the Upper Tribunal's reasons for granting permission on this ground, which were quoted in its final decision, stated that, generally, costs order applications that rely on such an extensive range of arguments are to be discouraged: costs applications should not be used simply to ventilate grievances about a local authority's conduct of proceedings or to reargue issues that arose on the substantive proceedings – they should be properly focussed on those aspects of an authority's conduct that might realistically attain the high standard of deficient conduct necessary for a costs order to be made.

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