



IN THE FIRST-TIER TRIBUNAL

Case No. CCA/2009/0002

[2010] UKFTT 475 (GRC)

**(CONSUMER CREDIT)
GENERAL REGULATORY CHAMBER**

On appeal from:

Office of Fair Trading's

Decision reference: ADJ/1775-493867

Dated: 5 January 2009

Appellant: European Environmental Controls Limited

Respondent: The Office of Fair Trading

Date of decision: 11 October 2010

**DECISION ON COSTS OF PRODUCTION OF
TRIAL BUNDLES**

Before

**HH Judge Peter Wulwik (Chairman)
Nicholas Paul Baxter
Joan Stone**

For the Appellant: Fred Philpot and Simon Popplewell,
instructed by Hodge Halsall LLP

For the Respondent: Anneli Howard and Owain Draper,
instructed by Agnes Shodimu-Collins,
Legal Division of the Office of Fair Trading

Subject matter: Appeal against revocation of consumer credit
standard licence - Tribunal directing that costs
of production of trial bundles to be borne equally
by the parties – costs to be included – summary
assessment of costs

Cases referred to: None

**IN THE FIRST-TIER TRIBUNAL
(CONSUMER CREDIT)
GENERAL REGULATORY CHAMBER**

Case No. CCA/2009/0002

**DECISION OF THE FIRST-TIER TRIBUNAL
ON COSTS OF PRODUCTION OF TRIAL BUNDLES**

1. On 23 August 2010 the Tribunal sent to the parties their decision unanimously refusing the application for costs of the Office of Fair Trading (“the OFT”) following the dismissal of the appeal of European Environmental Controls Limited (“EEC”) against the revocation of its consumer credit standard licence. Paragraph 38 of the Tribunal’s decision of 23 August 2010 provided that the Tribunal’s previous directions were to remain that the costs of the production of the trial bundles (as well as of the attendance of the transcriber at the main hearing of the appeal) were to be borne equally by the parties.
2. On 2 September 2010 EEC’s Solicitors sent to the Tribunal an application for the summary assessment of their costs of preparation of the trial bundles, it having not been possible to reach agreement between the parties in respect of those costs. On 6 September 2010 the Tribunal gave directions for written representations in relation to the costs application, giving both parties the opportunity to have an oral hearing to deal with the assessment of the costs of preparation of the trial bundles if they wished to do so. On 8 September 2010 the OFT sent to the Tribunal an email in answer to EEC’s application. On 1 October 2010 EEC replied to the OFT’s representations. Both parties informed the Tribunal that they were content for the matter to be dealt with in the absence of an oral hearing.
3. EEC’s application for the summary assessment of their costs of preparation of the trial bundles is being determined on the papers and without an oral hearing.

A. Background

4. The Tribunal made a number of directions orders in the course of the appeal proceedings dealing with trial bundles.
5. Paragraphs 23 – 25 of the directions issued by the Tribunal on 27 April 2009 dealt with trial bundles for the main hearing of the appeal. Paragraph 23 provided that the parties were to agree the contents of the trial bundles not later

than 21 days before the main hearing. By paragraph 24 EEC was to prepare and lodge four indexed and paginated sets of bundles with the Tribunal and serve two further sets on the OFT's legal representatives not later than 14 days before the main hearing. By paragraph 25 the costs of production of the trial bundles were in the first instance to be borne equally by the parties and with this being subject to any determination by the Tribunal as to costs at the conclusion of the appeal.

6. The Tribunal subsequently gave directions for the determination of preliminary issues. Paragraph 16 – 18 of the directions issued by the Tribunal on 2 October 2009 dealt with trial bundles for the hearing of the preliminary issues. Paragraph 16 provided that the parties were to agree the contents of the trial bundles for the hearing of the preliminary issues by a specified date. By paragraph 17 EEC was to prepare and lodge four indexed and paginated sets of bundles with the Tribunal and serve two further sets on the OFT's legal representatives. By paragraph 18 the costs of production of the trial bundles for the hearing of the preliminary issues was in the first instance to be shared equally between the parties and was to be subject to any determination by the Tribunal as to costs at the conclusion of the appeal.
7. The Tribunal gave further directions on the determination of the preliminary issues. Paragraphs 9 – 11 of the directions issued by the Tribunal on 23 November 2009 dealt with trial bundles for the main hearing of the appeal. Paragraph 9 provided that EEC in consultation with the OFT was to prepare and lodge four indexed and paginated sets of bundles with the Tribunal (the same including one set of bundles for the use of witnesses at the main hearing) and was to serve two further sets on the OFT's legal representatives by a specified date. By paragraph 10 the sets of bundles to be prepared by EEC were to include a separate bundle to be agreed by the parties containing material relating to the issue of vulnerability of customers and consumer detriment and the standard of fairness alleged to be applicable when considering the same, the parties to provide an agreed reading list with that bundle. By paragraph 11 for the avoidance of doubt the costs of production of the bundles for any hearing in the proceedings before the Tribunal were in the first instance to continue to be shared equally between the parties and were to be subject to any determination by the Tribunal as to costs at the conclusion of the appeal in accordance with paragraph 25 of the directions order dated 27 April 2009.
8. The Tribunal gave further directions on 18 February 2010. Paragraph 14 provided that an indexed and paginated bundle of statutory material and authorities was to be agreed by the parties' legal representatives and lodged with the Tribunal for the main hearing of the appeal.
9. On 28 June 2010 the Tribunal sent to the parties their decision unanimously dismissing EEC's appeal against the revocation of its consumer credit standard licence: See [2010] UKFTT 274 (GRC). Paragraph 182 of the decision provided that any application for costs should be made not later than 14 days after the

date on which the Tribunal sent to the parties the decision, in accordance with Rule 10 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

10. On 12 July 2010 the OFT sent to the Tribunal an application for the costs of the appeal, the OFT attaching to the application a provisional draft schedule of the costs and expenses claimed by the OFT in respect of the appeal, including external Counsel and its internal legal costs, in the total sum of £398,727.79. The Tribunal note that the statement of the OFT's costs referred to the case having been conducted by an Assistant Solicitor of the legal department of the OFT based in the City of London with assistance provided by paralegals, that the charge out rate was given as £225 per hour for the Assistant Solicitor and £136 per hour for the paralegals, and that the OFT's statement of costs included a figure of £29,049.13 for "Shared fees for Hearing Bundle (to be agreed)".
11. On 23 August 2010 the Tribunal refused the OFT's application for costs and made no order as to costs, with each party to bear their own costs of the appeal and with the decision providing that the Tribunal's previous directions were to remain that the costs of the production of the trial bundles (and of the attendance of the transcriber at the main hearing of the appeal) were to be borne equally by the parties.

B. EEC's application for summary assessment of the costs of preparation of the trial bundles

12. In their written application sent to the Tribunal on 2 September 2010 EEC stated that they had prepared trial bundles pursuant to the Tribunal's orders for use at the preliminary hearing on 16 November 2009 and for the main hearing of the appeal, which was heard over a period of 10 days between 19 and 30 April 2010. EEC's Solicitors had served upon the OFT a schedule of costs for the preparation of the trial bundles under cover of a letter dated 6 May 2010. The OFT had served a counter-schedule by letter dated 4 June 2010. EEC's Solicitors had then served an amended schedule of costs by letter dated 30 June 2010.
13. EEC's amended schedule of costs referred to the total costs of preparing the trial bundles as £48,662.50, with disbursements of £813.63. EEC sought one half of these costs. The charge out rate was given as £287 per hour for a partner (EEC's Solicitors being based in Southport) and £105 per hour for a Grade D fee earner. The OFT offered the sum of £4,104.25.
14. EEC's Solicitors in their letters dated 30 June and 1 October 2010 submitted that:
 - (a) The commonsense interpretation of the Tribunal's directions was that one party EEC was to take responsibility for the production of the bundles for use

by the Tribunal and the parties at the relevant hearings at the joint cost of the parties, with that work as a matter of necessity including the time spent in determining the content of the bundles and how the bundles could best be put together to assist the Tribunal and the parties in dealing with the appeal.

- (b) For the main appeal hearing EEC's Solicitors prepared ten sets of trial bundles, with four sets for the Tribunal, three sets for Counsel, one set for the OFT, one set for EEC's Solicitors and one set for EEC. Each set of trial bundles contained 29 files and a total of 8,387 pages. The OFT's Counsel in their closing submission to the Tribunal at the main hearing of the appeal had referred to the matter as the most heavily documented revocation case that the OFT had ever prepared.
- (c) EEC's Solicitors did all the work in producing the bundles. Partner involvement was necessary (approximately 19 hours), with it being a significant exercise to collate the documents, sort them and prepare the bundles. With regard to the Grade D fee earner (221 hours), the rate of £105 per hour was said to be referred to in the firm's terms and conditions.
- (d) EEC's Solicitors are a business and entitled to charge a profit element upon the work that they carried out. It was never suggested that the work should be charged at cost.
- (e) In relation to the charge of £12,000 for photocopying, the actual task of copying the documentation even with multi feed copiers was significant and took days including work carried out after hours and over weekends for which no premium rate had been charged. The charge for photocopying (100,000 pages at 12p per page) was not profit but effectively staff time at the relevant grade and hourly rate.

15. The OFT in their letters dated 4 June and 8 September 2010 submitted that:

- (a) The costs of production of the bundles should be confined to the costs involved in producing the actual bundles. This should include copying, binding and paginating as well as the cost of despatching the bundles to the Tribunal and the parties but nothing further. In particular, it should not include costs relating to deciding what documents should be included in the bundles, examining those documents or correspondence and attendances with the OFT during that process.
- (b) The vast majority of the work did not relate to the production of the bundles in this restricted sense. There was no requirement for partner involvement. The partner would only have been involved in deciding what documents should be included in the bundles and liaising with the OFT and Counsel on such matters. The time claimed for a Grade D fee earner at an hourly rate of £105 should not include a profit element. The 221 hours claimed relating to the

production of the bundles was administrative work which should not be charged at a fee earner rate.

- (c) The photocopying charge of £12,000 was considered to include a profit element of approximately £11,400.

C. The Tribunal's conclusions

16. The Tribunal consider that EEC's Solicitors are correct in their contentions with regard to the costs of preparation of the trial bundles. In particular, the Tribunal are of the opinion that:

- (a) The appeal involved a detailed consideration of EEC's trading practices and their dealings with customers over a number of years. It was apparent both to the Tribunal and the parties from the outset that the task of producing trial bundles would be significant, with the various directions of the Tribunal providing that one party namely EEC should produce the trial bundles and that those costs should be shared equally between the parties subject to any determination by the Tribunal as to costs at the conclusion of the appeal.
- (b) There is no justification for seeking to limit the costs of producing the trial bundles in the way that the OFT have sought to argue. EEC's Solicitors did the work in producing the bundles. The production of the bundles by necessity involved consideration of what should go into the bundles and how the content of the bundles should be arranged. As EEC's Solicitors say, it was a significant exercise to collate the documents, sort them and prepare the bundles. That was as much a part of the production of the bundles as the copying, binding, pagination and despatching of the bundles. The preparation of 10 sets of trial bundles for the main hearing of the appeal, each containing 29 files and a total of 8,387 pages is a good indicator of the complexity of the exercise.
- (c) Partner involvement in the production of the trial bundles was not merely reasonable but was to be expected in view of the heavily documented nature of the appeal and the importance of having comprehensive and logically prepared bundles from which both the Tribunal and the parties could work. The Tribunal found the way in which the bundles had been prepared extremely helpful in dealing with the extensive documentation and issues in the case.
- (d) As EEC's Solicitors say, they are a business and entitled to charge a profit element upon the work that they carried out. It was never suggested to the Tribunal by the OFT at the various directions hearings that the work should be charged at cost.

- (e) The Tribunal are satisfied that the charge for photocopying reflects staff time at the relevant grade and hourly rate. The Tribunal see no justification for reducing the Grade D fee earner hourly rate or otherwise to interfere with these charges.

17. The Tribunal would also add the following:

- (a) The Tribunal have no reason to believe that the schedule of costs for preparing the trial bundles represents other than what in the ordinary way would be payable by EEC to their Solicitors. If the costs of EEC's Solicitors relating to the production of the trial bundles were not to be borne equally between the parties as the OFT seek to argue, it would mean that the cost of producing the bundles would not be shared between the parties but would fall very largely upon EEC. The Tribunal are quite satisfied that this was never the intention of the Tribunal or the parties.
- (b) The Tribunal have previously referred to the very substantial figure of £398,727.79 sought to be recovered by the OFT for their costs of the appeal. The OFT there included a charge out rate of £225 per hour for an Assistant Solicitor and £136 per hour for paralegals. Further, as the Tribunal have noted the OFT's statement of costs included a figure of £29,049.13 for "Shared fees for the Hearing Bundle (to be agreed)".

18. The Tribunal are of the unanimous view that the costs of preparing the trial bundles should be assessed in the sum of £48,662.50, with disbursements of £813.63. These costs are to be borne equally by the parties.

19. The OFT's attention is drawn to Part 4 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which contains provisions relating to correcting, setting aside, reviewing and appealing Tribunal decisions.

HH Judge Peter Wulwik (Chairman)
11 October 2010