Neutral Citation Number: [2025] EWHC 1493 (Admin)

Case No: AC-2025-MAN-000061

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT IN MANCHESTER

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date: 17/06/2025

Before:

MRS JUSTICE HILL

- -

Between:

The King (on the application of Peacekeepers Foundation)	**Claimant**
- and -	
Liverpool and Knowsley Magistrates Court	**Defendant**
Liverpool City Council	**Interested Party**

- -
- -

The Claimant was represented by Marc Horn in person
The **Defendant** did not appear and was not represented
Simon Whitfield (instructed by **Liverpool City Council**) for the **Interested Party**

Hearing date: 21 May 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

Introduction

1. This is a renewed application for permission to apply for judicial review, permission having been refused on the papers by Mr Mark Ockelton, sitting as a Judge of the High Court, by an order sealed on 3 March 2025. This judgment is structured as follows:

    The factual background: paragraphs [2]-[7];

    The procedural history: paragraphs [8]-[11];

    The legal framework: paragraphs [12]-[15];

    Sufficient interest: paragraphs [16]-[25];

    Alleged delay: paragraphs [26]-[36];

    Alternative remedy: paragraphs [37]-[52];

    The merits (grounds 2 and 3): paragraphs [53]-[97];

    The merits (grounds 4 and 5): paragraphs [98]-[115];

    The merits (grounds 6 and 7): paragraphs [116]-[130];

    The merits (grounds 8 and 9): paragraphs [131]-[154];

    Conclusion on the application for permission: paragraphs [155]-[158]; and

    Costs: paragraphs [159]-[173].

The factual background

2. The Claimant, PeaceKeepers Foundation, is a corporate entity registered at Companies House. It was incorporated on 3 July 2024. Marc Horn is a director and trustee of the organisation.

3. The application arises out of council tax liability proceedings brought by Liverpool City Council ("LCC") against Mr Horn under regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992 ("the 1992 Regulations").

4. On 12 August 2024 District Judge Healey sitting in the Liverpool and Knowsley Magistrates' Court heard LCC's application. Mr Horn advanced a series of arguments before the District Judge and judgment was reserved.

5. On 23 September 2024 the District Judge granted the application, making a council tax liability order against Mr Horn for £1,025.66, comprising the £75.66 payable in council tax and £950 for LCC's legal costs. The District Judge's reasons were set out in a detailed written judgment.

6. On 14 October 2024 Mr Horn applied to the District Judge under section 111(1) of the Magistrates' Court Act 1980 ("the MCA"), asking him to state a case for the opinion of the High Court in respect of 17 questions which it was contended arose from the judgment.

7. On 24 October 2024 the District Judge refused to state a case under section 111(5) of the MCA, on the grounds that the application was frivolous (meaning "futile, misconceived, hopeless or academic": *R v North West Suffolk (Mildenhall) Magistrates Court, ex p Forest Heath District Council* (1997) EWCA Civ 1575. Again, the District Judge gave detailed written reasons for the decision.

The procedural history

8. On 20 December 2024 the Claimant filed this application for permission to apply for judicial review. It was issued by the Administrative Court Office in London on 24 January 2025. The claim was duly transferred to Manchester. Seven grounds were initially advanced, but Ground 1 was withdrawn before the hearing.

9. The renewed application for permission proceeded as a "hybrid" hearing in that a very large number of individual members or supporters of the Claimant organisation attended the hearing both in person and online. I am grateful to the court staff for making those arrangements.

10. It was agreed that Mr Horn could make submissions on behalf of the Claimant. I do not understand him to be a legal professional, but he has plainly conducted extensive legal research. The Defendant, as a court, had made brief submissions in its Acknowledgement of Service, but did not participate in the hearing. I was also assisted by written and oral submissions from Simon Whitfield, counsel for LCC, who had appeared in the Magistrates Court proceedings.

11. The renewal hearing had been listed for 3 hours given the number of issues and grounds involved. The oral submissions took all of that time, such that it was necessary to reserve judgment.

The legal framework

12. It is necessary for me to decide, afresh, whether to grant permission to apply for judicial review.

13. Permission should only be granted if the judge is satisfied that there is an arguable ground for judicial review which has a realistic prospect of success: see the cases cited in the Administrative Court Judicial Review Guide 2024 ("the Guide") at paragraph 9.1.3.

14. Even if a claim is arguable, the judge must refuse permission (i) unless they consider that the applicant has a sufficient interest in the matter to which the application relates; and (ii) if it appears to be highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred: the Guide at paragraph 9.1.4. The latter requirement derives from section 31 of the Senior Courts Act 1981, which provides in material part that:

> "(3C) When considering whether to grant leave to make an application for judicial review, the High Court—
>
> (a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and
>
> (b) must consider that question if the defendant asks it to do so.
>
> (3D) If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.
>
> (3E) The court may disregard the requirement in subsection (3D) if it considers that it is appropriate to do so for reasons of exceptional public interest".

15. The court may also refuse permission (i) if the court considers that there has been undue delay in bringing the claim; and (ii) if there exists an adequate alternative remedy: the Guide at paragraphs 9.15-6.

Sufficient interest

The relevant law

16. Section 31(3)(a) of the Senior Courts Act 1981 provides that the court shall not grant permission to bring judicial review proceedings unless it considers that the claimant has a "sufficient interest in the matter to which the [claim] relates".

17. The applicable principles are set out in *R v Secretary of State for Foreign and Commonwealth Affairs ex p World Development Movement* [1994] EWHC Admin 1, [1995] 1 WLR 386 at 392-396, *R (Good Law Project Ltd) v Prime Minister* [2022] EWHC 298 (Admin) at [53]-[59] and the other cases referred to in the Guide at paragraph 6.3.2.

The parties' positions

18. LCC contended in its Summary Grounds of Defence that the Claimant organisation did not have sufficient interest in the matter to which the claim relates, namely the tax liability of Mr Horn as a private individual; and thus did not have standing to bring the claim. LCC referred to the organisation's website, stating that it indicated that it was involved, generally, in "[e]mpowering individuals to understand and defend their rights under the Rule of Law", rather than having any particular interest or expertise in council tax enforcement. LCC argued that at most the organisation might seek to assist individuals such as Mr Horn to challenge their liability to council tax. In particular, the Claimant could not be regarded as the "victim" of the District Judge's decision to make a liability order for council tax against Mr Horn and thus could not assert that the Judge had acted in a way which is rendered unlawful by section 6(1) of the Human Rights Act 1998 ("the HRA").

19. In his various written submissions, Mr Horn described the Claimant as "a not-for-profit incorporated entity advocating for due process, transparency, and constitutional

compliance in local authority enforcement proceedings" and indicated that it brings this claim "in the public interest" as it addresses "systemic legal failures in council tax liability proceedings". He submitted that the organisation's constitution and activities focus on the rule of law and due process of law, in particular what it considers to be "systemic and procedural unlawfulness affecting council tax payers generally". He stated that it represents over 9,000 interested persons and conducts public education forums on statutory enforcement procedures.

Mr Horn's application to be joined as a Claimant

20. Judge Ockelton refused permission, in part, on the basis that the Claimant did not have standing.

21. On 13 May 2025 Mr Horn submitted a document to the court by which he "consented" to being added as a Claimant to the proceedings should the court consider it in the interests of justice to make such an order. He was advised by court staff before the hearing that he was required to file an application notice in order to apply to be added as a party to the proceedings under CPR 19.2(2)(a) and to pay the necessary court fee. He declined to do so; but said at the hearing that he would complete the application notice and pay the fee if ordered to do so.

22. During the hearing Mr Whitfield accepted that Mr Horn was a proper Claimant (indeed, on LCC's case, the only proper Claimant). He conceded that LCC would suffer no prejudice by Mr Horn being substituted or added as a Claimant and would not object to such a course.

Conclusion on the sufficient interest issue

23. In light of the above chain of events, it was agreed that if permission was granted Mr Horn could be added to the claim as a Claimant. It is accepted that he satisfies the requirements of section 31(3)(a). On that basis, it would not be appropriate to refuse permission on the issue of standing alone.

24. It is not therefore necessary for me to determine the separate question of whether the Claimant organisation also falls within section 31(3)(a) and should remain in the proceedings.

25. Nor do I consider that it would be appropriate for me to do so at this stage, for the following reasons. *First*, in light of the position set out at [23] above, and given the lack of court time, this issue was not fully argued before me. *Second*, the parties appeared to have differing views as to the purpose and functions of the Claimant organisation (see [18]-[19] above) and there was no evidence, as opposed to assertion, before the court on this issue. *Third*, this meant that it was not possible to conduct the sort of detailed analysis that is required in order to determine whether there is standing in relation to each ground of judicial review: see, for example, the exercise carried out in *R (Good Law Project) v SSHSC and Abingdon Health plc* [2022] EWHC 2468 (TCC) at [500]-[550]. After circulation of the draft judgment, the Claimant contended that it was necessary for me to determine the standing issue in order to address the fact that this was one of the reasons for which permission was refused, and to avoid a multiplicity of further cases. The reasons in this paragraph

explain why I do not consider that course appropriate. At [158] below I set out the position I would have adopted had I granted permission.

Alleged delay

26. LCC argued in their Summary Grounds and skeleton argument that permission should be refused on the basis that the claim had been brought out of time.

27. CPR 54.5(1) provides in respect of judicial review claims that the claim form must be filed (a) promptly; and (b) in any event not later than 3 months after the grounds to make the claim first arose.

28. The Claimant set out three decisions of which it sought judicial review at section 3.1 of the claim form.

29. The third of these related to the refusal of the District Judge to state a case, which took place on 24 October 2024. This decision only featured in Ground 1, which as I have indicated was withdrawn.

30. The other two decisions related to the District Judge's decision to make the liability order, on 23 September 2024.

31. In its Summary Grounds, LCC relied on the fact that the claim was not issued until 24 January 2025, arguing that it had not been filed "promptly" after the 23 September 2024 order or within 3 months as required by CPR 5.4(5)(1)(a) or (b). It was suggested that it was reasonable to infer that the Claimant had, for some kind of tactical advantage, chosen to wait until the last possible moment to issue the claim.

32. The Claimant served correspondence showing that this was not the case. Rather, the Claimant had filed the claim with the Administrative Court Office in London on 20 December 2024 and had "chased" the court more than once to issue the claim, but this had not occurred until 24 January 2025. The court had apologised to the Claimant for the delay. I observe that some, although not all, of the time period in question was when court offices were closed for the Christmas vacation.

33. Mr Whitfield initially argued that the claim had been filed out of time on the basis that CPR 7.2(1) and (2) provide that (i) proceedings are "started" when the court "issues" a claim form at the request of the claimant; and (ii) a claim form is "issued" on "the date entered on the form by the court".

34. However, as Mr Horn highlighted, CPR 54.5(1) does not refer to when the claim is "started" or "issued", but when the claim form is "filed". CPR 54 makes specific provision for judicial review proceedings, whereas CPR Part 7 addresses claim forms in private law proceedings.

35. Accordingly, Mr Whitfield was right to concede, at the end of the oral submissions, that the claim had been brought in time: it had been "filed" for the purposes of CPR 54.5(1) not later than 3 months after the grounds to make the claim first arose.

36. It would not, therefore, be appropriate to refuse permission on the ground of delay.

Alternative remedy

37. Judicial review is a remedy of last resort. If there is another route by which the decision can be challenged, which provides an adequate remedy for the claimant, that alternative remedy should generally be used before applying for judicial review. If the court finds that the claimant has (or had) an adequate alternative remedy, it will generally refuse permission to apply for judicial review: see the Guide at paragraph 6.3.3.

38. LCC contended that permission should be refused because there were two alternative remedies available in this case which had not been pursued: (i) an application to the High Court under section 111(6) of the MCA for an order requiring the District Judge to state a case, following the procedure set out in CPR PD 52E; and (ii) an appeal to the Valuation Tribunal.

(i): An application to the High Court under section 111(6) of the MCA

39. Mr Horn sought to persuade me that the procedure set out in CPR PD 52E only applies where the Magistrates Court has stated a case, and not where it has refused to do so. His argument was to the effect that although Section III, paragraphs 3.11-3.14 of PD 52E sets out the process to be followed where an application is made to the appeal court to require the tribunal below to state a case, this does not apply here, because cases involving Magistrates Courts are dealt with exclusively in Section II, which makes no such provision.

40. I do not accept that this is the correct interpretation of the PD. Rather, my understanding is that (i) Section II sets out certain specific provisions in relation to applications to state a case involving the Magistrates Court and the Crown Court (largely by reference to the Criminal Procedure Rules); (ii) Section III, paragraphs 3.1-3.13 make similar provision for applications to state a case involving a Minister, Government department, tribunal or other person; and (iii) Section III, paragraphs 3.11-3.14 then make common provision for the process where a case has not been stated, that is applicable to the Magistrates Court, the Crown Court and the other bodies mentioned in Section III. In other words, I consider that "tribunal" in Section III is interpreted as covering a Magistrates Court and a Crown Court.

41. That this is the correct interpretation of the PD is clear from the terms of section 111(6) itself, which specifically provides that "[w]here justices refuse to state a case, the High Court may, on the application of the person who applied for the case to be stated, make an order of mandamus requiring the justices to state a case".

42. Accordingly, on being dissatisfied with the refusal of the District Judge to state a case, the correct route for the Claimant and/or Mr Horn to follow was to apply to the High Court under section 111(6) of the MCA, using the procedure set out in CPR PD 52E to order the Magistrates to prepare a case stated on behalf of the Claimant. After circulation of the draft judgment, I received submissions from the Claimant in which Mr Horn appeared to accept this was the correct analysis (albeit that he maintained that the section 111(6) was not the "correct" route but merely an "alternative" one to bringing judicial review proceedings).

43. However, I do not consider that permission should be refused on this basis, because there is authority for the proposition that a case involving a refusal to state a case can nevertheless proceed by way of judicial review: see *Sunworld Ltd v Hammersmith*

and Fulham LBC [2000] 1 WLR 2102, to which Mr Horn referred in post-hearing written submissions.

(ii): An appeal to the Valuation Tribunal

44. Under Regulation 57 of the 1992 Regulations:

> "Any matter which could be the subject of an appeal under section 16 of the Act or regulations under section 24 of the Act may not be raised in proceedings under this Part."

45. The Act referred to in Regulation 57 is the Local Government Finance Act 1992 ("the 1992 Act"). Section 16 thereof provides that:

> "A person may appeal to a valuation tribunal if he is aggrieved by (a) any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; or (b) any calculation made by such an authority of an amount which he is liable to pay to the authority in respect of council tax".

46. In *Oyston v Blackpool Council* [2024] EWHC 1224 (Admin) Turner J confirmed that the effect of these provisions is that any person who seeks to challenge his liability to council tax may not raise their arguments in the Magistrates' Court. Rather, they must appeal to the Valuation Tribunal.

47. Mr Whitfield contended that in light of these provisions, the District Judge should not have proceeded to deal with the various arguments Mr Horn raised. It was initially unclear whether LCC in fact drew these provisions to the District Judge's attention, but Mr Horn now concedes that they did (albeit just before the hearing). I note that there had been a failure to do so in *Oyston*: see [5] of the judgment in that case.

48. However, I do not accept that permission should be refused on the basis that an appeal to the Valuation Tribunal is an alternative remedy available to Mr Horn which should have been pursued; and which could indeed be pursued now, for the following reasons.

49. *First*, although LCC maintains the position that the District Judge should not have addressed the various arguments advanced by Mr Horn, the fact is that he did so. Mr Horn now seeks to advance grounds of judicial review challenging the District Judge's conduct of the hearing and the nature of his reasoning. Challenges to a District Judge's decision would not easily fall within the jurisdiction of the Valuation Tribunal.

50. *Second*, the issues in this claim do not concern whether the property in question is a chargeable dwelling or whether Mr Horn is liable to pay council tax on it. The case therefore at least arguably (i) falls outside section 16; and (ii) can be distinguished from *Oyston*, where those were the issues: see [7].

51. *Third*, in *R (Curzon Berkeley Ltd) v Bliss (valuation officer, London Westminster Group Inland Revenue)* [2001] EWHC Admin 1130 at [72], James Goudie QC (as he then was, sitting as a Deputy Judge of the High Court), held that the Administrative

Court rather than the Valuation Tribunal was the appropriate forum for the determination of "the legal and constitutional issue as to whether or not word should be implied into a taxing statute". That sort of challenge resonates with the grounds advanced here and fortifies me in the conclusion that the Administrative Court has jurisdiction in preference to the Valuation Tribunal.

Conclusion on the alternative remedy issue

52. For these reasons I do not consider it appropriate to refuse permission on the grounds that the Claimant or Mr Horn had another alternative remedy available.

The merits

53. The Claimant's statement of facts and grounds supporting the claim form ("SFG") run to some 40 pages. At times the document is a little hard to follow but my understanding of each of the grounds is set out below. As noted at [8] above, Ground 1 was withdrawn before the hearing.

Ground 2

54. Under this ground the Claimant contends that the District Judge unduly limited public access to the hearing both remotely and in person and erred in several respects to this issue.

The legal framework

55. The open justice principle requires Magistrates Courts to take steps to facilitate public access to their hearings, both in person and remotely.

56. The Courts Act 2003, section 85A(2) enables a magistrate to make a direction permitting a member of the public to observe a hearing remotely. Such a direction can only authorise transmission to designated live-streaming premises (which is of no application to this case) or to individuals who are given access only having first identified themselves to the court (or to a person acting on behalf of the court): section 85A(3). It may make provision addressing "the persons who are to be able to watch or listen to the transmission (including provision making that ability subject to conditions, or aimed at preventing persons who are not meant to watch or listen from being able to do so)": section 85A(5)(b).

57. The Remote Observation and Recording (Courts and Tribunals) Regulations 2022, regulation 3 provides that before making a direction under section 85A(2), the court must be satisfied that "(a) it would be in the interests of justice to make the direction; and (b) there is capacity and technological capability to enable transmission, and giving effect to the direction would not create an unreasonable administrative burden".

58. Under regulation 4, before deciding whether, and on what terms, to make a direction under section 85A(2), the court must take into account "(a) the need for the administration of justice to be, as far as possible, open and transparent; (b) the timing of any request or application to the court or tribunal to make a direction, and its impact on the business of the court or tribunal; (c) the extent to which the technical, human and other resources necessary to facilitate effective remote observation are or

can be made available; (d) any limitation imposed by or under any enactment on the persons who are entitled to be present at the proceedings; (e) any issues which might arise if persons who are outside the United Kingdom are among those watching or listening to the transmission; (f) any impact which the making or withholding of such a direction, or the terms of the direction, might have upon (i) the content or quality of the evidence to be put before the court or tribunal; (ii) public understanding of the law and the administration of justice; (iii) the ability of the public, including the media, to observe and scrutinise the proceedings; (iv) the safety and right to privacy of any person involved with the proceedings".

59. Under regulation 5(1) a direction under section 85A(2) must include provisions "(a) prohibiting any person other than a person entitled to be present at those proceedings from watching or listening to the transmission; and (b) requiring any person so entitled to demonstrate, in such manner as specified in the direction, the capacity in which that person is so entitled".

60. Under regulation 5(2) a direction under section 85A(2) must, except where the direction is for transmission to designated live-streaming premises, include provision which has the effect "(a) that no person will be able to watch or listen to the transmission without first, when identifying themselves to the court, providing their full name and their email address, unless the court dispenses with this requirement; and (b) of requiring as a condition of continued access that any person given access will during the transmission conduct themselves appropriately and in particular in accordance with any requirements of the direction or instructions of the judge for persons observing the proceedings".

Relevant guidance

61. The Claimant relies on the 'General guidance to staff on supporting media access to courts and tribunals' published by HM Courts and Tribunals Service. This was published in October 2008 and last updated in May 2025.[1] Page 4 reiterates the "general rule" that "justice is administered in open court where anyone present may listen to and report what is said". It also notes that "[m]ost courts or tribunals will have dedicated press seating and the media should be given priority to those seats during a case or hearing". The Claimant infers from this that if spaces dedicated to the press are not being used by the press, members of the public should be permitted to use them.

62. In June 2022, the then Lord Chief Justice and Senior President of Tribunals issued Practice Guidance to the judiciary on the use of remote observation powers.[2] The guidance makes clear that: (i) the decision whether to make any and if so what direction for remote observation will always be a judicial decision not an administrative one; (ii) decision-makers must give due weight to all the relevant circumstances, including the factors identified in the Regulations; (iii) remote observation should be allowed if and to the extent it is in the interests of justice but it should not be allowed to jeopardise the administration of justice in the case before the court; (iv) the ultimate decision will inevitably depend on the nature of the

[1] https://assets.publishing.service.gov.uk/media/6835888fc239ae3e866c03b0/HMCTS729_HMCTS_media_guidance_May_2025.pdf
[2] https://www.judiciary.uk/wp-content/uploads/2022/06/Practice-Guidance-on-remote-observation-final.pdf

jurisdiction, the particular resources available at the relevant time, and the specific facts and circumstances of the case; and (v) it will not usually be necessary to give more than the briefest reasons for the decision: paragraphs 16, 19, 20, 23 and 24.

63. Paragraph 17 emphasises that decision-makers must give due weight to the importance of open justice. It continues:

> "This is a mandatory consideration. Open justice serves the key functions of exposing the judicial process to public scrutiny, improving public understanding of the process, and enhancing public confidence in its integrity. Remote observation can promote all those purposes. Access for reporters, legal commentators and academics is likely to do so. Judicial office holders may take as a starting point that remote access for other observers is desirable if they would be entitled in principle to have access to a courtroom in which the hearing was taking place, and giving them remote access is both operationally feasible and compatible with the interests of justice".

64. Paragraph 18 reiterates the provision in regulation 4 that the "[t]iming and impact on the business of the court must be considered". It continues:

> "Media applications and others that are timely and uncontroversial may pose no difficulty. On occasion, however, applications may be late, or numerous, or raise complex issues. Judicial office holders might properly guillotine the process, limit the numbers given access, or decline to deal with an application if they would otherwise be disabled or impeded from administering justice in the case itself, or diverted from other pressing judicial duties".

The factual background

65. Prior to the hearing of LCC's application before District Judge Healey on 12 August 2024, there had been an earlier hearing before District Judge Clarke. It is the Claimant's case that, having been notified of the significant public interest in the case, District Judge Clarke made arrangements for the 12 August 2024 hearing take place in Liverpool not the Wirral. It was suggested that this would accommodate 20 observers for the hearing.

66. At 1.59 pm on Thursday 8 August 2024, Mr Horn emailed the "Court Manager / Clerk to the Court" to make sure that this had been communicated. He observed that some members of the public intended to travel for over 4 hours to watch the hearing.

67. At 6.55 pm a member of court staff, J Cooper, replied, in their capacity as "Officer of the Court on behalf of Merseyside/Cheshire Magistrates". They stated that "The number of supporters allowed into the courtroom is limited we would suggest you bring 1 or 2 people with you, any others may need to wait outside".

68. At 9.11 pm Mr Horn replied to the effect that this was not acceptable and "a breach of the court's duty under the open justice obligations". He asked for provision of the lawful authority which allowed the court to restrict public access in this way. He stated that the individuals were not "supporters", but individuals who "have every

right under the open justice principle to see justice being done in their name". He said that District Judge Clarke was fully aware of the situation and that at the last hearing there had been 9 members of public in the gallery. The District Judge had been notified that there would be more people attending the 12 August 2024 hearing and "had no issues including asking that those with assistance dogs make sure they are near the exit".

69. At 11.37 pm Mr Horn sent a further email, citing case law on the open justice principle. He asked that the court "[p]lease ensure public access is not impaired and ensure all your staff are with the knowledge they must identify themselves if asked". He concluded by saying "We are a peaceful group whose purpose is to ensure the rule of law is upheld".

70. At 2.11 pm on Friday 9 August 2024 J Cooper replied, stating that the case was listed in a courtroom that had 8 available seats in the public gallery, but that further supporters could request a video link to watch the hearing remotely. The email indicated that anyone wishing to obtain a remote access link should send the request to a particular email address stating which hearing they wished to observe, providing their full name and email address and setting out whether or not they were a witness in the proceedings.

71. Over the weekend of 10/11 August 2024, approximately 70 people applied for permission to watch the hearing remotely.

72. The SFG asserts at paragraph 10.1.1 that court staff made arrangements for remote access to take place and confirmed to those who had applied that the link would be sent out on the morning of the hearing.

73. The hearing of LCC's application was listed for 2 pm on Monday 12 August 2024. At some point during the day, before the hearing, District Judge Healey refused all the applications.

74. Over 20 people attended the hearing from different parts of England and Wales, hoping to watch in the courtroom. The public gallery was full. The SFG asserts at paragraph 9.5 that there were over 13 empty seats in the courtroom, but the District Judge refused to permit members of the public to use them.

The remote access issue

(i): The District Judge's reasons

75. On 13 August 2024 Sharon Dolan, another Officer of the Court on behalf of Merseyside/Cheshire Magistrates, emailed those who had made remote observation applications, setting out the District Judge's reasons for refusing the applications. These were as follows:

> "Over the weekend and on the morning of 12th August the court received over 70 applications from members of the public to observe remotely the proceedings regarding the application for a liability order in respect of Mr Horn. As a result of the civil disorder prosecutions the court was exceptionally busy yesterday morning and it was simply

> impracticable for the applications to be considered ahead of the afternoon hearing.
>
> Half a days court time was set aside for the application for the liability order to be considered, and if time had been allocated to consider the applications to observe the proceedings remotely there would not have been sufficient time to consider the substantive application. Accordingly I refused the applications to observe proceedings remotely."

76. The District Judge confirmed these reasons at [3] of his judgment refusing to state a case, adding the further details that (i) it was only during the morning of 12 August 2024 that he had been made aware of the applications; and (ii) the morning court concluded at around 1 pm.

77. The District Judge returned to this issue at [26] of his judgment, adding that (i) he had concluded that considering around 70 applications ahead of the hearing would have taken a significant amount of time; (ii) if the applications were granted it would take a significant amount of time to set up the links; and (iii) this would inevitably result in there being insufficient time to consider the application for the liability order. He therefore concluded that considering the applications at that time would have such an adverse impact on the business of the court that he should refuse the applications.

(ii): Submissions and analysis

78. *First*, the Claimant contends that the District Judge misdirected himself because he mistakenly believed he had to authorise each individual application.

79. I do not consider this arguable. The statutory scheme and Practice Guidance make clear that directions permitting a member of the public to observe a hearing remotely are judicial decisions. A judicial office-holder is entitled to scrutinise each application separately. Such an individualised approach is strongly suggested, if not required, by (i) the requirement in regulation 3 that the judicial office-holder be satisfied that the interests of justice are met, and that there is the necessary capacity and technological capability without creating an unreasonable administrative burden, in each case; (ii) the need to consider the factors set out in regulation 4 which is inevitably to some degree specific to each application, even if they are applications for the same hearing; and (iii) the need for them to be aware of the name of the person applying so that sections 85A(3) and 85A(5)(b) and regulations 5(1) and (2) can be considered and complied with.

80. *Second*, the Claimant contends that the regulations are unlawful in requiring people to submit their names before securing a remote access direction.

81. I do not consider this arguable. Courts are required to know who is watching their proceedings remotely. Indeed they are required to do so in order to ensure that section 85A(5), with its reference to "preventing persons who are not meant to watch or listen", is complied with.

82. *Third*, the Claimant submits that the District Judge's decision amounted to an unlawful and unjustified intrusion into the open justice principle. Reference is made

to other court proceedings in which remote access directions have been given without difficulty, including the hearing in this case.

83. While the requirement of public access to court proceedings is important, it is not an absolute requirement. The statutory scheme makes clear that deciding whether or not to permit remote observation of court proceedings involves the exercise of judicial discretion. Other District Judges might have made a different decision in the exercise of that discretion in this case. For example, they might have gone into court at 2 pm, explained the position to the parties and invited submissions. They might have delayed the start of the hearing so that there was time to consider the applications. If that meant that the hearing could not be completed during the afternoon, a further court date could have been found.

84. However, this does not mean that the District Judge's decision to proceed in the way he did discloses a public law error. Regulation 4(b) specifically required him to consider "the timing" of any application to the court and its "impact on the business of the court". Paragraph 18 of the Practice Guidance reiterated that in respect of late applications, which these were, he was entitled to "decline to deal with an application if they would otherwise be disabled or impeded from administering justice in the case itself, or diverted from other pressing judicial duties". In those circumstances it is not arguable that the District Judge's exercise of his discretion was irrational. It was not arguably one that no reasonable District Judge would have reached.

The physical access issue

85. The District Judge's position on this issue is as follows:

> "Prior to the commencement of the hearing, I was made aware that a large number of members of the public had attended in support of Mr Horn, and there were insufficient seats in the public gallery for all of those individuals to observe the proceedings. I was told discussions were taking place with court staff as to which individuals would enter the courtroom as I entered court all of the seats in the public gallery were occupied": [4] of his judgment refusing to state a case.

86. The District Judge does not, therefore, refer to having had any involvement in this issue. However, I assume for present purposes that paragraph 9.5 of the SFG is correct, and that he refused to permit members of the public use empty seats in the courtroom other than the public gallery. Mr Horn suggested during the hearing before me that these were the seats normally reserved for the press, probation officers and others.

87. Again, however, this was a case management decision involving judicial discretion. While another District Judge might have taken a more flexible approach, it was not arguably irrational to limit the numbers of people attending the hearing to the 8 in the public gallery.

Conclusion on Ground 2

88. Accordingly, Ground 2 is not arguable. It is not therefore necessary for me to consider LCC's argument under section 31(3D) of the Senior Courts Act 1981, to the effect

that notwithstanding any open justice issues it is highly likely that the outcome would not have been substantially different.

89. To the extent that this claim should really be characterised as a judicial review challenge to the refusal to state a case, the District Judge was entitled to conclude that these issues were entirely fact-specific and did not generate any questions of law for the High Court: see [24]-[26] of his judgment refusing to state a case.

Ground 3

90. Under this ground the Claimant alleges that the District Judge's denial of a request to record the proceedings was irrational and without reasonable excuse, and amounted to a further breach of the principle of open justice.

91. The Contempt of Court Act 1981, section 9(1)(a) provides that, other than for the purposes of court approved transmissions, it is a contempt of court to "use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court". Sections 9(1)(b) and (c) make it a contempt to "publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication"; or to "to use any such recording in contravention of any conditions of leave granted under paragraph (a)".

92. At [5] and [27] of his judgment refusing to state a case the District Judge recognised that he did have a discretion to allow an audio recording of the proceedings under section 9(1)(a), but that it would be a contempt to publish any such recording by playing it in the hearing of the public or any section of the public.

93. The District Judge noted that he was concerned if a recording was made there was a risk that it would be played to members of the public possibly without the understanding that such an action would amount to a contempt. He specifically indicated to Mr Horn that a written judgement would be provided giving his reasons within 28 days and that he was content for someone to sit next to him to assist him with note-taking. These were all relevant matters. It was therefore not arguably irrational for the District Judge to refuse to exercise this discretion, especially given that permitting such recording is very much the exception rather than the norm.

94. The Claimant effectively also challenges the validity of section 9. Reliance is placed on the increasing recognition of the need for open justice and transparency in the court process. The SFG at paragraph 13.1.3.1 notes that Supreme Court hearings are livestreamed. The same is true of Court of Appeal (Civil Division) hearings and sentencing remarks in certain criminal cases. Remote observation of hearings by video is becoming more common place; and that more judgments are published than ever before. Many people have mobile telephones capable of recording.

95. The Claimant submits that permitting the recording of proceedings imposes no public cost or administrative burden and would save the time and cost of obtaining a transcript of hearings after the event. Mr Horn indicated that those involved with the Claimant organisation have often found the quality of Magistrates Court recordings to be so poor that an accurate transcript cannot be provided. He suggested that

sometimes there is a lack of recording at all. These difficulties undermine accountability and transparency and disadvantage litigants, especially in appeals. In those circumstances he queried why it remains the case that court proceedings cannot generally be recorded by anyone other than the court itself.

96. The Claimant did not contend in terms that these developments in open and transparent justice render the Contempt of Court Act 1981, section 9 incompatible with the rights set out in the HRA. Accordingly, the only issue generated by this ground is the question of whether section 9 in its current form remains appropriate in the current climate. That is a question that cannot properly be addressed in these or probably any judicial review proceedings: legislative change is a matter for Parliament, and nothing in the Claimant's interesting arguments rendered the District Judge's decision in this case wrong.

97. Ground 3 is therefore not arguable. Again, therefore, I do not need to consider LCC's argument under section 31(3D).

Ground 4

98. Regulation 18 of the 1992 Regulations obliges a billing authority to "serve a notice in writing on every liable person in accordance with regulations 19 to 21."

99. Regulation 19(1) states that "The demand notice is to be served on or as soon as practicable after the day the billing authority first sets an amount of council tax for the relevant year…".

100. The Council Tax (Demand Notices) Regulations 2011 ("the 2011 Regulations") make provision for the content of demand notices and the supply of information by the relevant authorities.

101. Under ground 4, the Claimant contends that the council tax notices issued by LCC were unlawful in that they failed to comply with 2011 Regulations as they were entitled "bill" rather than "demand notice".

102. However, neither the 1992 Regulations nor the 2011 Regulations include any requirement that the word "demand notice" as opposed to the word "bill" must be used in the document sent to the payer; nor do they prohibit the use of the word "bill".

103. It is unrealistic to suggest that the recipient of such a document will be confused by the use of the word "bill" rather than "demand notice". The use of the word "bill" complies with the requirement for clear statutory language in the context of financial obligations on which the Claimant relies. I do not consider it arguable that the use of this word contradicts the requirements of predictability and fairness derived from Article 6 of the European Convention on Human Rights, set out in Schedule 1 to the HRA.

104. The District Judge was therefore right to reject Mr Horn's submissions on this issue and to refuse to state a case on it: see [15]-[19] of his judgment on LCC's application and [28] of his judgment refusing to state a case.

105. This ground is unarguable.

Ground 5

106. This ground is addressed at paragraphs 21-24 of the SFG. It is in two parts.

(i): The alleged unlawful delegation issue

107. The Claimant contends that the summons that was sent to Mr Horn was invalid because it was not issued by a magistrate but a member of court staff. That process is permitted by the Schedule to the Magistrates' Court (Functions of Authorised Persons - Civil Proceedings) Rules 2020 ("the 2020 Rules"), regulations issued pursuant to Part 6A of the Courts Act 2003. The Schedule lists certain judicial decisions that can be delegated to an authorised person rather than a magistrate, including the issuing of a summons. The Claimant contends that this process is unlawful.

108. Reliance is placed on the well-established principles derived from (i) *Entick v Carrington* (1765) St Tr 1029, to the effect that government officials cannot exercise public power without specific legal authority; and (ii) *R (Witham) v Lord Chancellor* [1997] EWHC Admin 237 to the effect that when changing the common law or affecting constitutional rights, Parliament can only do so with express clear language. However, here, there is specific legal authority for the delegation of this judicial function, expressed in clear language, in the form of Part 6A of the Courts Act 2003 and the 2020 Rules.

109. The Claimant argues that the 2020 Rules are *ultra vires* as they exceed the enabling authority provided by the MCA, section 44 and the Courts Act 2003, section 67B. The MCA section, 44 is merely the general power to "make rules for regulating and prescribing, except in relation to any criminal cause or matter, the procedure and practice to be followed (a) in magistrates' courts, and (b) by designated officers for magistrates' courts". The wording of the legislative scheme in the Courts Act 2003 illustrates that the Claimant's argument with respect to this specific function is flawed: section 67A(3)-(6) lists a series of functions which cannot be so delegated, and the issuing of a summons is not within that list.

110. The Claimant relies at paragraphs 21.1.3-21.1.5 of the grounds on a series of other cases involving magistrates, namely *R v Brentford Justices, ex p Catlin* [1975] QB 455, *R v West London Stipendiary Magistrate, ex p Klahn* [1979] 1 WLR 933 and *R v Gateshead Justices, ex p Tesco Stores Ltd* [1981] QB 470. However, none of these cases generate the general proposition for which the Claimants contend, to the effect that delegating the function of issuing a summons is in principle impermissible and fatal to the validity of the subsequent proceedings. Indeed, the latter case describes the introduction of the Justices' Clerks Rules 1970, which provided for the first time that certain tasks such as the laying of an information and the hearing of a summons could be delegated to an authorised person, namely the justices' clerk.

111. The District Judge was therefore right to conclude that an authorised court officer has the power to issue a summons in council tax proceedings and to decline to state a case on the issue: see [20]-[25] of his judgment on LCC's application and [29] of his judgment refusing to state a case.

(ii): The signature issue

112. The Claimant also takes issue with the fact that the summons did not bear the name of the person who had issued it, contending that this breaches the principle of open justice. I do not consider this arguable.

113. As the District Judge highlighted at [30] of his judgment refusing to state a case, the Magistrates' Courts (Amendment) Rules 2019, which amended the Magistrates Court Rules 1981 ("the 1981 Rules"), removed the requirement for a signature on a summons of civil applications (see rule 7).

114. Applying the framework set out above, the issuing of a summons is a properly delegated judicial function which has the effect, if the summons is complied with, of bringing the person who is the subject of the summons before a public hearing. That hearing meets the requirements of open justice. Such an approach is consistent with *R v Brentford Justices, ex p Catlin*, in which it was held that any defect or invalidity that there might have been in the summons was irrelevant because the document laid before the justices on the specified date was sufficient to constitute the information against the applicant; so that, when she appeared before the justices within six months of the offence, they were then and thenceforth "clothed" with jurisdiction. I therefore agree with the District Judge's conclusion at [31] of his judgment refusing to state a case, that any challenge to the legality of this legislation would be misconceived

115. For these reasons Ground 5 is not arguable.

Ground 6

116. The MCA, section 64 empowers the court to award costs on the hearing of a summons.

117. Further, under regulation 34(7) of the 1992 Regulations, a liability order made pursuant to regulation 34(6) "shall be made in respect of an amount equal to the aggregate of (a) the sum payable, and (b) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the order (which costs, including those of instituting the application under paragraph (2), are not to exceed the prescribed amount of £70)".

118. Under ground 6, the Claimant submits that there were irregularities in the way in which the District Judge calculated the costs reasonably incurred by the applicant in obtaining the order in Mr Horn's case. I pause to observe that the Claimant would, in my judgment, struggle to show any standing to advance this ground, which relates solely to the costs liability the District Judge assessed between Mr Horn and LCC.

119. As to the merits, the Claimant relies on the judgment of Fordham J in *R (on the application of Kofa) v Oldham Metropolitan Borough Council* [2024] EWHC 685 (Admin) at [26], though I think this is intended to be a reference to [35]. However, this does not assist the Claimant because in *Kofa* at [35] Fordham J was addressing the issue of whether the local authority could recover the costs of its counsel attending the renewed hearing for permission in the judicial review claim, an entirely different context.

120. The Claimant contended that the summons costs sought by LCC were unreasonable given that the application in respect of Mr Horn was part of a group or "block" of

applications (see further at [139] below). It was suggested that given the block nature of the application, the reasonable costs in each case were very limited, and in the region of £12, rather than the £56 LCC claimed.

121. The Claimant argued that the District Judge breached the principles set out in *R (Nicholson) v Tottenham Magistrates & Anor* [2015] EWHC 1252 (Admin). There, the costs order was found to be unlawful because the magistrates did not have sufficient relevant information about how the figures were calculated and the local authority had not been forthcoming in providing this information when it was requested by the claimant. It was not enough to simply rely on being told that the costs had something to do with administrative time and the number of people involved in making the application.

122. I cannot accept this submission.

123. The District Judge dealt with the costs issues at some length in his judgment on LCC's application at [26]-[40]. He specifically accepted the principle set out in *Nicholson*, noting at [36] that it is "clear authority that if a respondent requests clarification of how costs are incurred, he is entitled to an explanation".

124. Moreover, he explicitly applied the *Nicholson* principle in Mr Horn's favour: at [40] he held that he was not satisfied in the absence of an explanation of how the costs were calculated that LCC's claimed summons costs of £56, £350 for the attendance of its solicitor Mr Mann and £210 for the attendance of is witness Miss Mabbs had been reasonably occurred in obtaining the liability order. He did not therefore order Mr Horn to pay any of these costs.

125. The only costs the District Judge ordered Mr Horn to pay was the sum of £950 to reflect LCC's counsel's costs. The District Judge noted that prior to the hearing Mr Horn had provided a 21 page document setting out a number of detailed legal and procedural points relating to the lawfulness of the council tax regulations. He was satisfied it was appropriate and reasonable for LCC to instruct counsel to research and address these points at the hearing and that the figure claimed was reasonable: see [21] and [40] of the judgment. This was an unimpeachable decision that discloses no arguable public law error.

126. For these reasons Ground 6 is not arguable.

Ground 7

127. The Claimant contends that the District Judge failed to give a reasoned judgement for his decision which adequately addressed the key issues. It is said that he breached the requirements to follow precedent, acted irrationally and breached the principles of "open justice, transparency, fairness, accountability and legal development".

128. The District Judge clearly gave detailed consideration to the facts and the law and the issues raised by Mr Horn in his reserved judgment. Further reasons were effectively given in the District Judge's second judgment refusing to state a case. The reasons provided were plainly sufficient for Mr Horn and the Claimant to understand why the District Judge made the order he did. It is not arguable that the principles set out in the preceding paragraph were breached.

129. LCC contended that there was one issue which the District Judge did not address, namely its argument that based on regulation 57(1) of the 1992 Regulations and section 16 of the 1992 Act, the magistrates court had no jurisdiction to deal with these arguments. However, the fact that the District Judge did not consider it worked in favour of Mr Horn, as the District Judge could (and LCC contended, should) have determined LCC's application for a liability order on that basis alone.

130. For these reasons Ground 7 is not arguable.

Ground 8

131. The thrust of the complaint under this ground is that the District Judge erred in following the usual practice of magistrates by announcing the liability order orally in court and not making a physical order. Prior to 2003, physical orders were made, in accordance with a standard form. Instead, proof of the order is derived from a copy of the extract from the court register. Complaint is also made that the copy of the extract from the court register did not include the name of the District Judge who made the order.

132. It is argued that judicial functions must be exercised personally and cannot be delegated and that justice must be administered in public. The grounds also cite the *Witham* principle, referred to at [108] above.

133. The process leading up to the making of a liability order is as follows.

134. Before a billing authority can apply for a liability order, generally, it must serve on the person against whom the application is to be made a notice (a "final notice"), which must state every amount in respect of which the authority is to make the application: regulation 33.

135. If the amount stated in the final notice is wholly or partly unpaid at the expiry of the period of 7 days beginning with the day on which the notice was issued, the billing authority may apply to a magistrates' court for an order against the person by whom it is payable: regulation 34(1).

136. Such an application is to be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to that person to appear before the court to show why he has not paid the sum which is outstanding: regulation 34(2). A summons issued under regulation 34(2) can be served on the person in question by various means set out in regulation 35(2).

137. When the matter comes before the court, "[t]he court shall make the order if it is satisfied that the sum has become payable by the defendant and has not been paid": regulation 34(6).

138. A single liability order may deal with one person and one such amount (or aggregate amount) as is mentioned in regulation 34(7) and (8) or, if the court thinks fit, may deal with more than one person and more than one such amount: regulation 35(1).

139. The regulations therefore provide a clear system for the making of liability orders, including on a "block" basis. The regulations provide for the person at risk of the

liability order to be served with a notice of their liability to pay and a summons to attend court. If they attend court, they will hear the order being made.

140. The regulations do not require that the order is committed to any particular form of writing. However, the position is addressed by certain aspects of the 1981 Rules.

141. Rule 66(1) requires that every magistrates court shall keep a register in which there shall be entered (a) a minute or memorandum of every adjudication of the court; and (b) a minute or memorandum of every other proceeding or thing required by these rules or any other enactment to be so entered.

142. Rule 16(1) provides that a record of an order made on complaint required for an appeal or other legal purpose "may be in the form of certified extract from the court register". Further, rule 68 provides that the register, or an extract from the register certified by the designated officer as a true extract, shall be admissible in any legal proceedings as evidence of the proceedings of the court entered in the register.

143. The combination of these rules, and the right of the person subject to the order to be present when an order is being made, are, in my judgment, a fair and sufficiently open process.

144. It is not therefore arguable that this system amounts to an "unlawful dilution of judicial rights for administrative convenience" or a breach of any "right" to a perfected court order as the Claimant contends.

145. I note that arguments of this kind were made and rejected by Fordham J, albeit *obiter*, in *Kofa* at [12]-[13] and [29]-[30]. *Kofa* was another claim brought by a member or supporter of Peacekeepers International.

146. The process in this case had an added element of fairness in that the District Judge gave a detailed written judgment addressing all the arguments Mr Horn had advanced as to why the liability order should not be made.

147. Accordingly Ground 8 is not arguable.

Ground 9

148. This ground is set out at paragraphs 37 to 56 of the SFG.

149. It begins with a detailed historical overview of a series of constitutional principles. These include the principle that all individuals are equal under the law, the importance of the rule of law and the independent judiciary, the judicial oath, the rules of equity, the principle of precedent, the principle of legality namely the obligation on the court to interpret primary legislation compatibly with constitutional rights and values, the limits on the monarch's prerogative powers including the prohibition on retrospective punishment and the requirement for parliamentary approval to change the common law, and the principle of parliamentary. Reliance is placed on *Ashby v White* (1703) 91 ER 665, in support of the proposition that laws cannot be enforced against individuals without their consent.

150. The specific complaints against the District Judge are addressed much more briefly, at paragraph 53 to 54 of the SFG. These consist of a series of propositions. Many of

these contend that the District Judge failed to apply the constitutional principles summarised in the preceding paragraph by his conduct as described in Grounds 2-7: for example, it is said that he breached the requirement for justice to be seen to be done in an open way by the conduct embraced Ground 2; and failed to provide a reasoned judgement as alleged by Ground 7. It is far from clear to me whether Ground 9 as pleaded advances any new points.

151. In oral submissions Mr Horn took me to *Ashby*. My understanding, shared by LCC, is that the essential point being advanced under Ground 9 is that the District Judge erred in supporting the system of council tax which is constitutionally unlawful and invalid in light of *Ashby*.

152. The difficulty with such a point is that it was addressed and dismissed in *Kofa.* At [14], Fordham J summarised the point the Claimant derived from *Ashby*, namely that the council tax legislative framework of the 1992 Act and Regulations "does not and cannot bind any individual absent their individual consent". At [17], he dismissed the argument as follows:

> "…the specific constitutional principle identified by Ms Kofa – from Ashby v White – plainly does not have the effect for which she contends. That is no surprise. If it did, no rating or taxing statute would apply to authorise levying monies from an individual who had not consented to it. Rating and taxing statutes ensure legal prescription, securing rather than undermining the rule of law, entirely compatibly with the Bill of Rights and other constitutional statutes. The 1992 Act and 1992 Regulations are themselves legislative prescriptions forming part of the "law", to which "rule of law" we are all subject. Ashby v White was a case about actions said to have obstructed the claimant – an individual eligible under the rules of that age – from voting in an election of a representative to serve in Parliament. The full quotation is this:
>
> > *"By the common law of England, every commoner hath a right not to be subjected to laws made without their consent, and because such consent cannot be given by every individual man in person, by reason of number and confusion, therefore that power is lodged in their representatives, elected and chosen by them for that purpose, who are either knights, citizens, or burgesses".*
>
> The point being made was about consent as expressed through the ballot box, with elected representatives in Parliament then deciding collectively about the merits of primary legislation. That is what is reflected in the statutory preamble on which Ms Kofa relies. This focus is precisely because of the impossibility and inappropriateness of individualised consent to legislation, from "every individual … in person". The sense of laws made with consent of the citizenry is a statement about democratic accountability and broad consent through the chance to elect representatives to act as a legislature. The threshold of arguability with a realistic prospect of success is a

> modest one. But the constitutional arguments, in my judgment, come nowhere near satisfying it".

153. Fordham J's reasoning in *Kofa* applies directly to the arguments in Ground 9. The District Judge was therefore right to find that the reasoning in *Kofa* determined the constitutional issues advanced under Ground 9 and to decline to state a case on them: see [14] of his judgment on LCC's application and [23] of his judgment refusing to state a case.

154. I therefore conclude that Ground 9 is not arguable.

Conclusion on the application for permission

155. For all these reasons, I do not consider that the claim is arguable and refuse permission for that reason.

156. I consider that Grounds 4-9 were totally without merit and I certify them as such.

157. Had I concluded that the claim was arguable, neither the issues of standing, delay nor the existence of an alternative remedy would have been a bar to permission being granted, for the reasons given above.

158. Had I granted permission I would have ordered that Mr Horn be added as a Claimant under CPR 19.2(2)(a) and that the issue of whether the current Claimant has standing be determined at the substantive hearing. I would be likely to have given directions as to the future evidence required on the issue.

Costs

(i): LCC's Acknowledgment of Service and Summary Grounds of Defence costs

159. In refusing permission, Judge Ockelton provided at [2] of his order that the Claimant should pay LCC's costs of preparing its Acknowledgment of Service and Summary Grounds of Defence, summarily assessed in the sum of £2,412. This order was not to become final until such time as permission had been refused on all grounds after a hearing. That has now occurred.

160. Judge Ockelton's order made provision at [3](b)(ii) for the Claimant to make submissions contending that the costs order in [2] should not be made even if permission was refused on all grounds provided that search submissions were filed within 14 days of the date of his order.

161. The Claimant filed submissions pursuant to [3](b)(ii), albeit 1 day late. I am content to grant the accompanying relief from sanctions application made by the Claimant on 24 March 2025, given the modest extension of time sought and the lack of prejudice to the LCC. LCC has not taken up the opportunity provided by [3](b)(iii) of Judge Ockelton's order to make any responsive written submissions. The Claimant then filed further submissions on this issue after circulation of the draft judgment, without permission to do so. I have nevertheless taken them into account, not least as the Defendant did not object to these further submissions,

162. A successful defendant or other party at the permission stage who has filed an Acknowledgment of Service should generally recover the costs of doing so from the claimant, whether or not he or she attends any permission hearing: see the Guide at paragraph 25.4.5.1.

163. The Claimant contended that even if permission was refused, Judge Ockelton's costs order should not be maintained for a series of reasons.

164. *First*, the Claimant contended that the claim had a clear public interest. In my judgment this is not a powerful reason not to order the Claimant to pay the costs, especially given my conclusion that grounds 4-9 were totally without merit. To the extent that public interest issues underpinned those grounds, they had been fully argued before and comprehensively dealt with by the District Judge and/or were addressed in *Kofa*.

165. *Second*, the Claimant pointed to the court's delay in issuing the claim, arguing that this had led to LCC being able to rely on delay, when this was misconceived for the reasons set out at [32] above. Again, I do not find this persuasive: LCC addressed procedural bar issues other than delay, as well as the merits of the grounds, in its Summary Grounds. The Claimant also suggested that LCC's legal representatives had breached their professional obligations to the court. This was entirely unmerited: as noted at [35] LCC made an appropriate concession on the delay issue and was otherwise entitled to present its defence in the way it did.

166. *Third*, it said that the Claimant did not act unreasonably, vexatiously or abusively in the conduct of the claim. The general rule set out in paragraph 25.4.5.1 does not require such conduct to be found. Rather it is an illustration of the general costs rule in CPR 44.2(2)(a), to the effect that usually the unsuccessful party will be ordered to pay the costs of the successful party. In any event I have found that grounds 4-9 were "unreasonably" advanced as they were totally without merit.

167. *Fourth*, it is said that LCC has not demonstrated any prejudice justifying it in recovering its costs. Such prejudice is not required to apply the general rule. In any event, LCC has incurred prejudice in the form of costs and the starting point is that it is entitled to recover them.

168. *Fifth*, it is argued that if costs are awarded in public law claims of this nature, individuals or organisations will be deterred from bringing claims that will achieve legitimate scrutiny of local authority conduct. The same could theoretically at least be said in relation to many Defendants to judicial review claims, and yet the Guide sets out the general rule applicable to such claims.

169. *Finally*, the Claimant argued that it had achieved significant success on the preliminary issues (namely the issues of sufficient interest, delay and alternative remedies addressed at [16]-[36] above). That is correct, but it ultimately failed to show that any of the grounds were arguable. It must, therefore, overall be regarded as the unsuccessful party in costs terms.

170. Accordingly, there are no "exceptional circumstances" such as might justify me in departing from the general rule in paragraph 25.4.5.1, as paragraph 25.4.5.3 makes clear would be required. I will order that the Claimant pay LCC's costs of preparing

its Acknowledgement of Service and Summary Grounds of Defence, summarily assessed in the sum of £2,412, within 14 days of the date of my order.

(ii): LCC's hearing costs

171. LCC initially sought an additional £5,412 from the Claimant in their costs of the attending the renewal hearing.

172. In the draft judgment I highlighted that (i) a defendant or other party who attends and successfully resists the grant of permission at a renewal hearing will not usually recover from the claimant the costs of attending the hearing: paragraph 25.4.5.2 of the Guide; and (ii) LCC had not, to date, advanced any "exceptional circumstances" such as might justify a departure from this rule, as paragraph 25.4.5.3 again indicates is required. I asked that any such submissions be advanced in sufficient time for the Claimant to respond, before the final judgment was handed down. LCC thereafter confirmed that the application was withdrawn.

173. Accordingly, the sole costs order I make is that reflected at [170] above.