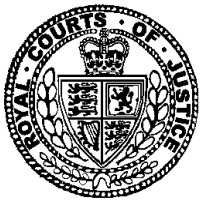


Neutral Citation Number: [2022] EWHC 1721 (Admin) Case No: CO/2262/2022

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN BIRMINGHAM

Tuesday 5th July 2022

Before:
MR JUSTICE FORDHAM

- -

Between:

THE QUEEN (on the application of
(1) CITY OF WOLVERHAMPTON COUNCIL
(2) BIRMINGHAM CITY COUNCIL
(3) COVENTRY CITY COUNCIL
(4) DUDLEY METROPOLITAN BOROUGH COUNCIL
(5) SANDWELL METROPOLITAN BOROUGH COUNCIL
(6) STOKE-ON-TRENT CITY COUNCIL
(7) WALSALL METROPOLITAN BOROUGH COUNCIL)

Claimants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

- -

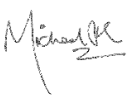
- -

Peter Oldham QC and Ronnie Dennis (Wolverhampton City Council) for the Claimants
Alan Payne QC and John Goss (Government Legal Department) for the Defendant

- -

Approved Determination

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. This is a Costs Determination on the papers in a judicial review claim: see the Administrative Court Judicial Review Guide 2021 at §24.5. I considered it appropriate that it be promulgated as a judgment in the public domain. The parties have reminded me of R (M) v Croydon LBC [2012] EWCA Civ 595 [2012] 1 WLR 2607 (8.5.12) and its predecessor R (Bahta) v SSHD [2011] EWCA Civ 895 [2011] 5 Costs LR 857 (26.7.11). My overriding objective is to do justice between the parties (M §32(iii)), having undertaken a reasonable and proportionate attempt to analyse the situation (M §36).

2. The disputed costs issues arose out of a claim which I had been due to hear on 12 and 13 May 2022, by way of a rolled-up hearing. The Claimants are seven West Midlands local authorities. They commenced the claim against the Defendant on 13 September 2021. On 6 May 2022, I made an order by consent that the claim be withdrawn and the hearing vacated, with directions as to written submissions on any disputed costs issue. The Consent Order included this Agreed Recital:

> ***UPON the Defendant undertaking that she had adopted a new policy of procuring accommodation for asylum seekers under section 95(1) of the Immigration and Asylum Act 1999 in the areas of all local authorities in England, Scotland and Wales whether or not they have volunteered for that purpose, having immediate effect, in place of the former policy applied by the Minister's letter of 12 July 2021.***

3. At the heart of this case was the Defendant's previous "policy of procuring accommodation for asylum seekers under section 95" (language taken from the Agreed Recital). As has been acknowledged, there had been a "Voluntary Asylum Dispersal Policy" (VADP), which meant that dispersal arrangements were implemented in the areas of local authorities which had "volunteered for that purpose" (again, using the language of the Agreed Recital). I will call those volunteering local authorities "VLAs". I will use "NVLAs" to connote those non-volunteering local authorities and "FVLAs" to connote those who were formerly VLAs but who had communicated that they no longer agreed to participate.

4. What happened, in essence as I understand it, was this:

   i) Expressing their concern at the unsustainability and unfairness of the VADP in light of the ongoing refusal of NVLAs – the majority of local authorities (some 60%) – to participate, the Claimants wrote to the Defendant (30 March 2021): (i) urging the adoption of a process involving a commitment to consider a mandatory asylum dispersal policy ("MADP") applicable to all local authority areas; and (ii) identifying themselves now as FVLAs. The Home Office responded (3 June 2021) agreeing that there should be a "review" and referring to the prospect of progress to a "rebalancing", with a "more equitable" system. On 12 July 2021 the Home Office wrote to the Claimants stating that the Home Office could not agree to suspend accommodating new asylum seekers in their areas. The position in that letter has been described in the Agreed Recital as a "policy" being applied. In that "policy" the Defendant was mandating asylum dispersal in the case of FVLAs.

ii) By a letter before claim (13 August 2021) the Claimants identified as the "matter being challenged" the mandating of asylum dispersal in relation to FVLAs. That was said to be unfair and unlawful on five grounds. The letter called for "action" in the form of the Defendant revoking the mandating of asylum dispersal on the Claimants. The letter made clear the Claimants' contention that the asylum dispersal policy was being operated unfairly and that what was needed was a fair and equitable system. The Defendant's response was unyielding.

iii) By a claim form and grounds for judicial review (13 September 2021) the Claimants challenged, on six grounds, as the impugned action the 12 July 2021 policy of imposing asylum dispersal on FVLAs. The remedy sought was (i) to quash the July 2021 policy and (ii) to prohibit the Defendant from imposing asylum dispersal on the Claimants' areas. The asylum dispersal policy being implemented by the Defendant was described as "unfair and unequal". A key point made was that, alongside asylum dispersal in the areas of VLAs, there was mandatory asylum dispersal in the areas of FVLAs but no asylum dispersal in the case of NVLAs. One point within the grounds for judicial review was the claim that it was "irrational" for the Defendant to decide that only FVLAs should become compulsory participants in asylum dispersal, when NVLAs (who had never volunteered) were not the subject of any compulsory dispersal. That "distinction" was what was said to be "irrational".

iv) On 1 December 2021 a "Ministerial Submission" invited the Defendant to agree a new MADP which dispersed asylum seekers across all local authorities, with accompanying financial incentives. It was said that this would access the pool of the 60% of NVLAs and would address the pressure arising from the intake of asylum seekers. Reference was made to a letter from the Local Government Association (LGA) dated 5 November 2021, to which a draft response was annexed. There would be a consultation exercise. The 1 December 2021 Ministerial Submission was disclosed to the Claimants in the judicial review proceedings, with redactions of passages referring to the judicial review proceedings and giving privileged legal advice.

v) On 9 December 2021 it was still envisaged that NVLAs would remain able to "veto" participation in asylum dispersal. There was a letter to the LGA (16.12.21) and a letter to a body called the Domestic and Economic Implementation Committee (22.12.21). There was a "pause" on 6 January 2022 – by reason of intervention by Number 10 Downing Street – while "alternative options" were being "explored". A witness statement (22.2.22) on behalf of the Defendant, in the judicial review proceedings, described the process of policy consideration as ongoing. The rolled-up hearing – ordered on 16 December 2021 – was fixed for 12 and 13 May 2022.

vi) There was another Ministerial Submission on 24 March 2022. This was eventually disclosed to the Claimants on 26 April 2022. That Submission described the ongoing policy position and invited the Defendant now to move to a full MADP, under which "no local authority" would have any right of "veto". The timetable which was invited was intended to result in an announcement of the new MADP on 29 March 2022. There was to be a consultation in relation to the "detail". The context was said to include the

pressure and intake. There was a discussion of the incentives. Redacted passages addressed the ongoing litigation and legal matters.

vii) On 13 April 2022 the Home Office wrote an open letter which communicated that there was now to be a full dispersal system (i.e. a MADP). Reference was made to the pressure and intake of applicants for asylum, and to moving towards a fairer system. There was a description of the new policy as involving full dispersal as opposed to dispersal within a minority of local authority areas. There was a description of "consultation", to take place in relation to "this" model. On 19 April 2022 the Claimants wrote, referring to the new "full" asylum dispersal policy, the abandonment of the previous policy position and the "unequivocal" contents of the letter of 13 April 2022. They attached a draft consent order which would have involved the agreed "quashing" of the policy of 12 July 2021, the Defendant paying the Claimants' costs of the judicial review proceedings and recording that the unlawfulness of the 12 July 2021 policy was "accepted" by the Defendant. Government Legal Department (GLD)'s response of 22 April 2022 was that the judicial review claim had now become entirely academic, and ought to be withdrawn. GLD explained that it was not "accepted" on behalf of the Defendant that the 12 July 2021 position had been "unlawful". Nor was it accepted that the Defendant should be liable for the Claimants' costs. The letter stated:

> ***… the new policy was not introduced as a result of this litigation but to address supply issues in dispersal accommodation.***

The letter reminded the Claimants that the Defendant's skeleton argument was due (to be filed and served by 4pm on 27 April 2022) and asked for a response by 4pm on 25 April 2022, referring to the costs that would then be incurred. The response from the Claimants sent on 25 April 2022 did not accept that the claim had become "academic" and made clear that the Defendant's skeleton argument was awaited. The Ministerial Submission (24 March 2022) was disclosed on 26 April 2022.

viii) By an application filed at 14:10 on 27 April 2022 the Defendant sought an extension of time for the skeleton argument due at 16:00 that day. The reason given for the extension of time was that "the Defendant considered" that the claim was "now academic". But that position was not agreed and the Claimants' response making that clear was (inexplicably) not provided. The application came before me on 29 April 2022, and I refused it. As I said in my Order: a "more promising basis" for asking for an extension of time would have been the ongoing communications between the parties and the attempts to avoid costs; but a timeframe for a response had been given (4pm 27 April 2022) and the response (provided to me by the Claimants' representatives) had been received by that deadline. I also referred to a concern, arising on the materials before the Court, as to the approach that had been taken by the Defendant in relation to a number of deadlines for stages of the litigation. I declined in all the circumstances to extend time for the skeleton argument, and it was filed later that day. On 29 April 2022 a set of slides was forwarded by GLD to the Claimants. These recorded that the ongoing "consultation" was only in relation to matters of "detail" and the principle of a full asylum dispersal policy (MADP) was not the subject of consultation. What was recorded in due course in the

Agreed Recital was that a "new policy of asylum dispersal to areas of all local authorities" had been adopted, with an undertaking (given on 4 May 2022) as to that adoption, with "immediate effect", in place of the previous policy.

Contested costs issues

5. The Claimants' position on costs, in essence as I see it, is as follows. The Defendant should pay the entirety of the costs of these judicial review proceedings – some £149,000 including VAT – on an indemnity basis.

   i) The impugned 12 July 2021 policy of mandating asylum dispersal on FVLAs has been replaced by a new policy. That is the "outcome" which the Claimants sought, in seeking to have the July 2021 policy quashed. The new policy addresses the concerns which the Claimants had raised, as the Defendant recognised in its skeleton argument, which is why the Defendant took the position that the claim had been rendered academic. The new policy constitutes "the relief sought, or substantially similar relief" (Bahta §59); it involves the Claimants "getting all, or substantively all, the relief … claimed" (M §50); it "accord[s] with the relief … sought" (M §51); it means the Defendant "effectively conceding" that the Claimants are "entitled to the relief" which they seek (M at §58); it means the Claimants can say they have been "vindicated" (M §61). The Claimants have been "wholly successful" (M §60(i)). The general costs principle in the case of a "successful party" is applicable (M §45). The Claimants have in substance achieved what they set out to achieve. The outcome reflects their claim. They are – in practical, real world terms – the successful party. They should recover their costs "unless there is some good reason to the contrary" (M §61). And in this case, there is no "good reason to the contrary".

   ii) So far as concerns the question of the causal link between the claim and the new policy, it will not do for the Defendant – through a letter from GLD – to seek to attribute the new policy to "supply issues". That is akin to the claim which was made in Bahta: that the claimants' entitlements to indefinite leave to remain in that case had been recognised, by settlement of the judicial review claims, for "purely pragmatic reasons" (Bahta §§45, 63), a claim which was rejected (Bahta §63). In Bahta the submission that indefinite leave to remain had been granted for reasons "wholly unrelated to the course of the judicial review proceedings" was "unsubstantiated" (Bahta §§52(i), 53). The same is true of the claim made in this case. Expressions like "purely pragmatic" call for a "clear explanation" which can "expect to be analysed" to ensure that the expression is not a "device for avoiding an order for costs that ought to be made" (Bahta §63). As late as 9 December 2021 the Defendant was maintaining the position that NVLAs should be able to "veto" involvement in asylum dispersal arrangements. That was eventually reversed. The change – to mandate all local authorities – was at the eleventh hour and on the eve of the judicial review hearing. The timing is revealing. Moreover, only extremely late in the day was it confirmed that (a) the full asylum dispersal mandated on all local authorities had been adopted as a policy with immediate effect and (b) consultation was only on matters of detail. There had been ample opportunity for the promised "review" and "consultation" – not progressed after the letter of 3 June 2021 – to achieve a fairer system for asylum dispersal. The new policy is unexplained, except by reference to the

legal challenge. It was the litigation, and the timing of the hearing, which were the trigger (providing the causal link) for the policy change ultimately adopted.

iii) There are other relevant features of the Defendant's conduct in the litigation. There was a conspicuous default of proper compliance in relation to the pre-action stage (Bahta §65). Bad points were taken throughout: that there was no July 2021 "policy"; that the VADP had been suspended since the pandemic; that the claim was too late; that it was premature. Deadlines were not complied with. Materials were not disclosed, including the Ministerial Submission of 24 March 2022, disclosed only on 26 April 2022. This is a case involving unreasonable conduct which is relevant to the question of costs and justifies costs on an indemnity basis.

6. The Defendant's position on costs, in essence as I see it, is as follows.

i) There should be no order as to costs up to 13 April 2022. The judicial review claim has been "overtaken by events". There has been a "supervening event". The claim has not been conceded. The Claimants have not obtained "the relief actually sought" in the quashing and prohibiting orders. The Defendant has adopted a new policy which renders the proceedings unnecessary. The circumstances do not support the contention that the judicial review challenge "caused or contributed to the change of policy". The development of the new policy was being actively considered before the litigation commenced. As is clear from the documents, the decision and its timing were influenced by a wide variety of factors, including the increased pressure from intake, the ongoing effects of the pandemic, and costs associated with very high levels of hotel-based contingency accommodation. The Claimants cannot properly characterise the adoption of the new policy as a "success" for them in the judicial review proceedings. Nor can it be said to be "tolerably clear" who "would have won" at the hearing (M §§62, 63). There is nothing approaching the unreasonableness that would be required for indemnity costs.

ii) Moreover, and in any event, the Claimants should pay the Defendant's costs (£7,393 plus VAT) incurred after 13 April 2022. That is because the position was made very clear in the letter of 13 April 2022. The Claimants responded to that letter, rightly, recognising the "unequivocal" position in now adopting a full asylum dispersal policy. The consultation was about the "detail". Costs were avoidable, including while anything material was clarified. The Defendant and GLD took clear and sensible steps to seek to avoid incurring costs in the litigation, specifically the costs of the skeleton argument. The skeleton argument was necessitated only because the Claimants declined on 25 April 2022 to accept – as they later did – that their judicial review claim had become academic and to agree that the legal issues did not now require resolution. It was the Claimants' refusal to agree that the claim had now become academic which was the basis of the refusal by the Court to extend time for the skeleton argument.

Discussion

7. In my judgment, the appropriate order in this case is that there be no order as to costs. I do not accept the Claimants' submissions that it is appropriate to make a costs order in their favour in the circumstances of this case, still less to order costs on an indemnity

basis. But nor do I accept the Defendant's submissions that it is appropriate to make an order that the Claimants pay the costs after 13 April 2022.

8. I deal first with the Claimants' costs claim.

i) It is right that the "target" for judicial review was the July 2021 policy position. The new asylum dispersal policy position which the Defendant decided to adopt (April 2022) takes – as the Agreed Recital records – the "place of" the July 2021 policy which the Claimants were seeking to quash.

ii) There is a difficulty in the Claimants' contention that the new policy position was in substance the relief sought in the judicial review claim. There is force in the Defendant's submission that the "outcome" was not the relief actually sought. The claim, as designed, focused on the contention that the Defendant could not impose asylum dispersal arrangements on the Claimants as FVLAs. The "outcome" would have been arrived at if the VADP had continued, but with asylum dispersal arrangements only in the case of VLAs. The claim could have been designed to target the action of failing to adopt an MADP, contending that an MADP was required as a matter of public law duty. Instead, the claim as designed targeted the action of mandating asylum dispersal arrangements on the Claimants as FVLAs.

iii) I do accept that a key theme in the claim was the Claimants' articulated position that mandating asylum dispersal arrangements on FVLAs was unfair and unreasonable, given that NVLAs were not similarly being mandated. I also accept that, had the Defendant announced an MADP at the pre-action stage (or at any subsequent stage), the Claimants would have been satisfied with that outcome and the Defendant would have been able to foresee that. In that broader sense there is a "vindication". In that broader sense the Claimants have in substance achieved what they set out to achieve. This reflects the original letter of 30 March 2021, in which the Claimants urged the adoption of a process involving a commitment to consider an MADP applicable to all local authority areas.

iv) The outcome which eventuated in the present case was a policy outcome, which was the product of a policy-making process, predating the claim, and addressing "bigger picture" policy merits. It is entirely appropriate – and in the public interest – that the Defendant, as Secretary of State, should evaluate the policy merits of what asylum dispersal policy is appropriate, in the context of any or all local authorities. The idea of an MADP, across the board, was not a new one. The Defendant submits – and, based on the witness statement evidence and the Ministerial Submissions, I accept – that there was a policy decision-making process with a flow and momentum, which preceded the judicial review proceedings; and which were not simply responsive to pre-action correspondence from the Claimants. One part of the context was the position of the Claimants and FVLAs. One part of the context was the 60% NVLAs. One feature was the position of the LGA, to which Government had responded. This sort of wider and prior policy decision-making context contrasts sharply with cases where the decision-making is about whether an individual should receive indefinite leave to remain (Bahta) or recognition of a particular age (M).

In my judgment, this brings into sharp focus – in the context and circumstances of the present case – the question whether the policy outcome and its timing were caused or contributed to by the judicial review claim. This question of "causation" has been addressed by both parties in their submissions. It is a familiar feature: see eg. R (Parveen) v Redbridge LBC [2020] EWCA Civ 194 [2020] 4 WLR 53 at §31. I do not doubt that one aspect of the context and circumstances was the position of the Claimants as FVLAs and the fact of the judicial review claim which they were pursuing, with its upcoming rolled-up hearing. That would be consistent with the fact of the redacted passages in the Ministerial Submissions, whose contents I cannot of course see.

v) I have endeavoured to undertake a reasonable and proportionate attempt to analyse the situation. Having done so, I have concluded that the new policy adopted in April 2022 was one which was adopted as being the right policy, on the policy merits, in light of all relevant considerations regarding asylum dispersal arrangements, including supply issues and demand issues. It was not, in my assessment, caused or materially contributed to by the fact of the judicial review claim or the Defendant's perception as to risk of defeat in the judicial review proceedings.

vi) It is true that the timing of the announcements in the Home Office letter of 13 April 2022 was in the run up to the judicial review hearing, in the context where preparations for the hearing were needed and minds will, at least to some extent, have been focused on those proceedings. There will have been communications and discussions – possibly meetings – to discuss the judicial review proceedings. However, the Court can see from the Ministerial Submission of 1 December 2021 the policy flow and overall, 'big picture' decision-making context which had gone before. The Court can also see the further steps and consideration that ensued after it. It is to be remembered that there had been no order giving permission for judicial review, and that the rolled-up hearing had been directed on the same day as the letter to the LGA: 16 December 2021. The order for a rolled up hearing did not, of itself, accelerate the process or precipitate a change in policy. Opt-out was being maintained at 9 December 2021. Progress was paused by Number 10 on 6 January 2022. Matters were revisited in the Ministerial Submission of 24 March 2022, with the announcement envisaged on 29 March 2022. The idea of dispersal arrangements across all local authorities to access the 60% who were not participating was an idea which had loomed large, in the context of dealing with the intake and pressure from the number of those claiming asylum, throughout. In all the circumstances, and based on what has been submitted and referenced by the parties, I cannot discern any particular perceptible change of direction or position which is referable to any step or imminent step in the judicial review proceedings, including the hearing that was to take place on 12 and 13 May 2022.

vii) In the Bahta case the Court was unimpressed by a claim – and a submission – being made about the judicial review claims having been settled for "purely pragmatic reasons" (Bahta §§45, 63). That was in a context where there was an entitlement to indefinite leave to remain, and an entitlement – under the law – to permission to work. The claimants were "entitled to the relief claimed and had to commence proceedings to obtain it" (Bahta §53). The Court was

"unimpressed by suggestions made in the present cases that permission to work was granted for reasons other than that the law required permission to work to be granted" (Bahta §63). The present case is very different. This was a policy decision-making process. And there are contemporaneous documents – including Ministerial Submissions – which refer expressly to the sorts of factors to which the Defendant and GLD have pointed as having been the basis of the decision. In this assessment of the evidence, I make clear that I have relied on the letter from GLD in which the writer stated that the new policy:

> ***… was not introduced as a result of this litigation.***

That letter was written by a solicitor, who is an officer of the court, and who will have had visibility as to the full and unredacted content of the Ministerial Submission of 24 March 2022. I have taken it that the writer of that letter satisfied themselves that they could properly say, in a letter which is now before the Court, that the new policy "was not introduced as a result of this litigation".

viii) In interpose the following. In the confidential draft of this judgment as circulated to the parties' representatives, I said at this point (referring to the contents of the previous paragraph 8(vii)):

> ***I also make this clear. If what I have said in this paragraph does not reflect the position – and if the solicitor were not to be of the view that the statement of fact cannot properly be made or maintained in light of the full and unredacted documents – then I would expect the Defendant's ongoing duty of candour and cooperation to entail bringing this promptly to the attention of the Court on receipt of these reasons in draft.***

I record that I received no such communication. I have therefore handed down this judgment, continuing to take it that the solicitor at GLD, with visibility as to the full and unredacted documents, takes the view that the factual statement quoted in paragraph 8(vii) could properly be made and maintained.

ix) This is not one of those cases where the Court can readily identify – even as "tolerably clear" (M §§62, 63) – which party would have prevailed on which of the various grounds that had been raised for resolution by the Court. I cannot – by way of a proportionate enquiry and on the papers – say who would have been found to be right and wrong about the point on which the Claimants sought, but failed, to elicit the Defendant's agreement: that the July 2021 policy had been unlawful. It is, elementarily, the position that a policy which Government concludes should be replaced on the policy merits does not, in and of itself, equate to a recognition, or support an inference, that a previous policy was – when in place – unlawful.

x) Finally, I have had regard to the various points made by the Claimants about the conduct of the litigation, and the pre-action stage; and the considerations raised by the Defendant relating to whether the Claimants ought earlier to have 'called off' the judicial review and obviated the need for the Defendant to incur costs in particular in relation to the skeleton argument.

9. In all the circumstances, exercising my judgment and discretion in relation to costs, informed by the authorities which the parties have cited, the appropriate costs position

in the proceedings is that there be no order for costs. Each party will bear their own costs. Neither party will have to bear any costs incurred by the other. That includes the position after 13 April 2022, and the Defendant's cross-claim for the costs after that date, to which I now turn.

i) I would not, in any event, have accepted that 13 April 2022 could be the appropriate cut-off. The position that was taken on behalf of the Defendant in correspondence gave the Claimants until 27 April 2022 to respond, as to whether the judicial review was now being withdrawn, giving a warning as to costs that would be incurred after that deadline. A more realistic costs application would therefore have involved the Defendant seeking her costs incurred after 4pm on 27 April 2022. But in my judgment, even that more limited order for costs, is not a correct or justified order. In the first place, the considerations raised by the Defendant have already featured in my overall evaluation that there should be no order for costs in this case. But even when I look, separately and distinctly, at the position after 4pm on 27 April 2022, I cannot agree that a costs order against the Claimants is just or appropriate.

ii) It is true that the Claimants themselves had put forward the contention on 19 April 2022 that the impugned July 2021 policy had now been "abandoned" and that there was to be a full MADP, arising out of what was "unequivocally" being said. Clarity and crystallisation understandably took some time to be achieved. There will have been an understandable desire to pin the position down; not least in light of a degree of oscillation in the defence of the Claim as to what was and was not a settled policy position, and when. It was proper for documents to be disclosed and considered; but this took time. In the event, what came was a clarity and crystallisation together with reassurance which came from the disclosure of internal documentation, from which it was being made clear that the ongoing "consultation" related not to the full MADP but only to issues of "detail". That was recorded in documentation (the slides) dated 28 April 2022, sent to the Claimants' representatives on 29 April 2022. The Ministerial Submission of 24 March 2022 was provided only on 26 April 2022. The skeleton argument had been due on 27 April 2022. It was filed on 29 April 2022. Added to that, are the concerns to which the Court referred in the reasons for the Order dated 29 April 2022, about the way in which the application for an extension of time for the skeleton argument had been approached, in light of the ongoing correspondence, as well as the concerns relating to the earlier conduct of the proceedings.

iii) In this context, it is also relevant that in the substantive Consent Order which the parties agreed the Agreed Recital recorded – in the nature of an "undertaking" – that the "new policy" had been adopted, and with "immediate effect". The undertaking was provided on 4 May 2022. In my judgment, in the context and circumstances of the present case, and having regard to the nature of statements which at various times had been accepted as policy or disavowed as policy, the firmness and immediacy seen in the Agreed Recital reflects a clarity and crystallisation which the Claimants, justifiably, regarded as needed.

10. In all the circumstances and for all these reasons the order that I will make is that there be no order as to costs.

11. For reasons of transparency, I record that – leaving aside corrected typos – this paragraph 11 and the text in paragraph 8(viii) above (minus the quotation) are the only new text added to the version of this judgment circulated in confidential draft.