Case No: KB-2023-001123
Neutral Citation Number: [2024] EWHC 718 (Admin)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/03/2024

Before :

LORD JUSTICE WILLIAM DAVIS

MRS JUSTICE HILL DBE

- -

Between :

HIS MAJESTY'S ATTORNEY GENERAL FOR ENGLAND AND WALES — **Applicant**

- and -

BENJAMIN GRAY — **Respondent**

- -
- -

Bayo Randle (instructed by **Government Legal Department**) for the **Applicant**
The **Respondent** appeared as a Litigant in Person

Hearing date: 13 March 2024
Further written submissions: 15, 18 and 19 March 2024

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Approved Judgment

This judgment was handed down remotely at 2pm on 26 March 2024 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

Lord Justice William Davis and Mrs Justice Hill DBE:

Introduction

1. In these proceedings His Majesty's Attorney General for England and Wales applies for an all proceedings order against the Respondent, Benjamin Gray, under the Senior Courts Act 1981 ("the SCA"), s.42. This is the judgment of the Court to which we have both contributed.

The legal framework

The SCA, s.42

2. The power to make orders restraining vexatious legal proceedings derives from s.42(1), which reads as follows:

> "**42. Restriction of vexatious legal proceedings.**
>
> (1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground—
>
> (a) instituted vexatious civil proceedings, whether in the High Court or the family court or any inferior court, and whether against the same person or against different persons; or
>
> (b) made vexatious applications in any civil proceedings, whether in the High Court or the family court or any inferior court, and whether instituted by him or another: or
>
> (c) instituted vexatious prosecutions (whether against the same person or different persons),
>
> the court may, after hearing that person or giving him an opportunity of being heard, make a civil proceedings order, a criminal proceedings order or an all proceedings order".

3. Accordingly, the court must determine (i) whether one of the pre-conditions set out in subsection (1) are met; and if so (ii) whether to exercise the discretion to make one of the three types of orders referred to.

4. The three types of order are defined thus:

> "(1A) In this section—
>
> "civil proceedings order" means an order that—
>
> (a) no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;

> (b) any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and
>
> (c) no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;
>
> "criminal proceedings order" means an order that—
>
> (a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and
>
> (b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and
>
> "all proceedings order" means an order which has the combined effect of the two other orders".

5. Accordingly, these orders do not operate as an absolute bar to further proceedings being brought by someone subject to such an order. Rather, they act as a "filter", in that someone subject to one of these orders must first obtain the leave of the High Court before bringing further proceedings: *Attorney General v Barker* [2000] 1 FLR 759 at [2], per Lord Bingham.

6. Leave will only be granted for the institution or continuance of, or the bringing of any further application in, civil proceedings if the High Court is satisfied that "the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application": s.42(3). The test for leave for the laying of an information or for an application for leave to prefer a bill of indictment is similarly that the High Court is satisfied that "the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant": s.42(3A).

7. Orders of this kind may be for a specified period, but otherwise remain in force indefinitely: s.42(2).

General civil restraint orders

8. CPR Practice Direction 3C provides for Civil Restraint Orders. Paragraphs 2 and 3 deal, respectively, with Limited and Extended Civil Restraint Orders. The most draconian type of such orders, General Civil Restraint Orders ("GCROs"), are dealt with at paragraph 4.1. A GCRO, which can last for a maximum of three years, can only be made where:

> "…the party against whom the order is made persists on issuing claims or making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate".

9. Claims are totally without merit ("TWM") if they are "bound to fail, in the sense that there was no rational basis on which they could succeed": see the cases cited by Males LJ in *Sartipy v Tigris Industries Inc.* [2019] 1 WLR 5892 at [27].

Principles relevant to the exercise of the s.42 power

10. In *Barker* Lord Bingham described the concept of vexatiousness thus:

> "19. "Vexatiousness" is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process".

11. Mr Randle submitted on behalf of the Attorney General that it was not necessary for all three of these criteria to be present in order for a particular set of proceedings to be considered vexatious. We doubt whether that proposition is correct. Lord Bingham referred to all three criteria as evidencing "the" hallmark of vexatiousness, namely a singular hallmark; and he used the word "and" not "and/or" in introducing the third criterion.

12. However, it is not necessary for us to resolve this issue, because it is well established that a court considering making a s.42 order is bound by the findings or rulings of other judges as to whether particular claims, applications or proceedings were vexatious. In *Attorney General v Jones* [1990] 1 WLR 859, the Court of Appeal rejected an argument by Mr Jones that he could challenge the conclusions of various judges in the underlying proceedings in the context of an application for a s.42 order. At 863, the Court explained its reasons thus:

> "If any such conclusion was, or was thought to be, erroneous, the remedy was to appeal in those proceedings or, where it was said that the judgment was vitiated by the fraud of other parties, to take appropriate steps to have the judgment set aside. But if that was not done, the decision must stand and is capable of forming the basis for the court being satisfied upon an application under section 42 that Mr Jones had habitually and persistently and without any reasonable ground acted in the manner referred to in subsection 1(*a*) and/or (*b*)".

13. Accordingly, applying *Jones*, these proceedings are not a means by which the individual can re-litigate previous proceedings. If findings have been made that any claim, application or proceedings was TWM, that is conclusive evidence of their vexatious nature. Were it otherwise, the individual would be attacking the final conclusion of a competent tribunal which of itself would be vexatious.

14. In assessing whether the requirement in s.42 of proceedings or applications being instituted or made "habitually and persistently" has been met, the court must consider the cumulative effect of the individual's activity: *Attorney General v Covey and*

Matthews [2001] EWCA Civ 254 at [61]. In some cases, the individual will engage in attritional litigation against a single person or entity. It is not necessary for the party which is the subject of the vexatious proceedings to be the same throughout. The purpose of the legislation is not only to protect individuals or entities assailed by a vexatious litigant but also to ensure the proper administration of justice generally.

15. It must be recognised that to restrain someone from freely commencing or continuing legal proceedings is a very significant interference with that person's civil rights. It remains a restriction if the individual needs to apply to a High Court judge for leave to bring proceedings or make an application. In *Jones* at 865, two reasons were identified for the making of an order pursuant to s.42 in an appropriate case. First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection. Second, the resources of the judicial system are finite. If they are taken up with vexatious claims and applications, those with genuine causes of action will have their cases delayed unjustifiably.

16. The exercise of the court's discretion will therefore depend on its assessment of "where the balance of justice lies, taking account on the one hand of a citizen's prima facie right to invoke the jurisdiction of the civil courts and on the other the need to provide members of the public with a measure of protection against abusive and ill-founded claims": *Barker* at [2].

17. In *The Law Society of England & Wales v Sheikh* [2018] EWHC 1644 (QB) at [26], Jay J stated, "There is absolutely no reason why private parties, even parties exercising semi-public functions should have to come to the court at 2-yearly intervals to make further applications for GCROs. The matter needs to be determined once and for all by the Attorney General".

The evidence

18. The Attorney General's application was supported by a detailed statement from Frazer Halcrow, a Grade 7 Lawyer with the Government Legal Department, dated 1 March 2023. The exhibits to the statement included a detailed schedule of civil and criminal proceedings involving Mr Gray from April 2007 to June 2021; and a large number of the relevant judgments and orders.

19. Many of the proceedings brought by Mr Gray have been against the Chief Constable of Avon and Somerset Constabulary ("the Chief Constable"), following his arrests by the Chief Constable's officers. Accordingly, Mr Halcrow's statement also exhibited witness statements from Susan Dauncey and Andrew Knight, solicitors for the Chief Constable, setting out the detail of those claims.

20. Mr Gray responded to the application by way of two documents dated, respectively, 17 October 2023 and 9 December 2023. These ran to some 120 pages in total, to which he exhibited almost 4,500 pages of material. His Bundle 1 contained the material which he contended was relevant to the legality of the most recent GCROs ordered by Calver J and Ritchie J (see [44]-[45] below). His Bundle 2 contained the material which he contended was relevant to the "historical matters" cited in Mr Halcrow's witness statement going back to October 2005. The bundles included several other witness statements made by lawyers seeking to have the various GCROs extended, copies of many of the applications Mr Gray had made in civil and criminal cases, many of the

judgments and orders made against him and other evidence on which he sought to rely, such as press reports, items of correspondence, police internal complaint reports and evidence relating to unsuccessful criminal prosecutions that had been brought against him. The Bundles also included a significant number of legal authorities from which Mr Gray drew support.

The parties' positions in outline

21. The Attorney General has brought this application following a long history of vexatious litigation principally, but not exclusively, against the Chief Constable. GCROs have been in place on an almost continuous basis since 2009. The Attorney General's overall position was that the GCROs, and costs orders, have not deterred Mr Gray, that it is apparent that he is insistent on continuing to litigate in respect of the same matter and that in all the circumstances, an all-proceedings order was appropriate.

22. Mr Gray's core submission in the statements referred to above and the skeleton argument which he filed for the purposes of the hearing before us was that he has been the victim of "relentless and glaringly criminal violent and sexual assault, kidnapping, perjured false allegations, perverting public justice, robbery, attempted murder/GBH, torture and general corruption" at the hands of the judges named in the Attorney General's application, as well as other judges and "ministers of justice" in the High Court and Western Circuit courts not so named. On that basis, he contended that we should investigate the merits of the various orders and rulings made in relation to him.

23. We have examined the claims and applications made by Mr Gray and the orders and rulings made in relation to them in order to determine whether the conditions in s.42 are satisfied. However, we have not investigated the factual background to and/or the merits of any of those orders and rulings, as we are precluded from doing so, given the principle set out in *Jones*. Mr Gray made a series of other submissions which we address below.

The factual background

The first GCRO

24. This was made on 18 March 2009 by Mitting J: *The Queen on the application of Gray v The Ministry of Justice* [2009] EWHC 2462 (Admin). The order was made following 20 unsuccessful applications for judicial review which had been made by Mr Gray between July 2003 and February 2009. They related to a series of Defendants, including several police forces, courts and the Crown Prosecution Service ("the CPS").

25. Mitting J summarised the history highlighting several applications made by Mr Gray that had been determined to be TWM or hopeless. He accepted that Mr Gray had brought two applications for judicial review in 2008 against Bristol Magistrates' Court which had been allowed to proceed to a substantive hearing and resulted in action by the Magistrates Court. He concluded that "although not all of [Mr Gray's] applications for judicial review are without merit…almost all are". He noted that the "focus" of Mr Gray's claims and applications "appears usually to be the activities of police forces, recently the Somerset Constabulary and Magistrates' Courts and Crown Courts in Bristol". These broad patterns in Mr Gray's litigation - of having some, but very limited,

success; and of his claims focussing on organisations in the south-west - have continued.

26. Mitting J concluded that "so varied and numerous have been his claims and applications that I am satisfied that the making of an extended civil restraint order would not be sufficient or appropriate to restrain the misuse of court proceedings which the history demonstrates". He therefore made a GCRO.

The second GCRO

27. This was made by MacDuff J on 11 January 2010, for a further two years: Case No. HQ08X03503 *Gray v Chief Constable of Avon v Somerset*. At [2], the judge described Mr Gray as "a litigious man". He noted that he was aware of at least eight claims that Mr Gray had brought, of which at least seven had been unsuccessful, many having been struck out and with many applications and appeals having been made in the course of those claims which were characterised as being TWM. At [3], he observed that it was "common practice" for Mr Gray to dispute the findings of other judges on the basis that they were "corrupt", had "committed perjury" and/or had "conspired to pervert the course of justice". Mr Gray maintained his common practice in the hearing before us, as we explain further below. At [5]-[18] MacDuff J set out the history of the further litigation. The majority of the claims involved the Bristol CPS and the Chief Constable.

28. At [19], MacDuff J concluded that:

> "This cannot continue. Mr Gray brings cases, and makes applications and appeals which are wholly without merit He places an immense strain upon the system which has finite resources…Mr Gray has no incentive to curb his excesses. On the contrary. He is fees exempt and has no financial reason to stop issuing hopeless cases and applications. He owes thousands of pounds in costs; but his impecuniosity means that he is unlikely ever to pay those costs…His use of court resources is wholly disproportionate. It is clear that, unless he is restrained from doing so, Benjamin Gray will continue to bring cases, applications and appeals which are without merit. Only a [GCRO] will suffice."

The third GCRO

29. On 12 January 2012, the day after the second GCRO expired, Mr Gray issued five applications for judicial review. These were considered by Silber J, who found them all to be TWM. Accordingly, Silber J made a third GCRO which lasted from 20 March 2012 to 20 March 2014 on the basis that Mr Gray "persists in issuing claims which are totally without merit": see the later judgment of Swift J in *The Queen on the Application of Gray v Attorney General's Office* [2013] EWHC 3337 (Admin) at [2].

30. Shortly before the third GCRO came into force, on 8 March 2012, Mr Gray lodged (i) at least four claims for judicial review (CO/2516/2012, CO/2517/2012, CO2518/2012 and CO/2520/2012), for which permission was refused by Ouseley J on 16 July 2012 and which were determined TWM; and (ii) application notices in two further cases (CO/339/2012 and CO/634/2012) seeking leave to bring contempt of court proceedings against persons he alleged had made false statements in acknowledgements of service. These applications were struck out by Haddon-Cave J (as he then was) on 14 June 2012

as "hopeless, frivolous, scandalous and vexatious": *Gray v Bristol Crown Court* [2012] EWHC 2442 (Admin) at [1]-[3] and [13]-[14].

Claims and applications brought during the currency of the third GCRO

31. During the operation of the third GCRO, Mr Gray brought many claims or applications which were determined TWM. We note the following in particular.

32. In Claim No 2YK23480 *Gray v Avon and Somerset Constabulary*, Mr Gray made an application that was dismissed by DJ Britton as being TWM on 14 May 2013.

33. Applications (that were withdrawn part way through the hearing) that sought to strike out the defences in Claim Nos. 3YL66586; 3YM15992 and 3YM50150 (understood to be against the Chief Constable) were certified TWM by DJ Britton on 19 November 2013. In those same three claims, applications for HHJ Cotter QC (as he then was) to recuse himself from further participation were dismissed on 24 October 2014 as being TWM.

34. These three claims were struck out by HHJ Cotter QC on 17 November 2014, following Mr Gray's failure to send any submissions/evidence in response to an application and failing to appear at the hearing.

35. Mr Gray had brought further claims against the Chief Constable (3YK14936 and 3YK14990). He made at least two applications which were dismissed as being TWM by DJ Britton on 19 July 2013. HHJ Cotter QC gave judgment in Mr Gray's favour for £1 on the basis of false imprisonment for one or two minutes on 5 September 2014. However, HHJ Cotter QC said "this was but a very minor element of Mr Gray's case and he effectively lost his claim": *Gray v Chief Constable of Avon and Somerset* at [30]. HHJ Cotter QC ordered Mr Gray to pay 90% of the Chief Constable's costs. This case was later described by Warby J (as he then was) in *Chief Constable of Avon and Somerset v Gray* [2016] EWHC 2998 (QB) at [27] as a "pyrrhic victory" for Mr Gray. Applications for permission to appeal were refused as being TWM by HHJ Denyer QC (in relation to claim 3YK14936 only) and Longmore LJ on 13 August 2013 and 4 March 2015 respectively.

36. At [20] and [52] HHJ Cotter QC observed:

> "20…As regards the civil and criminal justice systems generally he is the most distrustful litigant I have come across in 14 years as a Recorder and full time Judge…
>
> 52. I am of the view that he will use any future civil trial against this Defendant as a platform to air his views on the Judiciary, the members of which, it appears almost without exception, he considers corrupt and/or not fit for office":

Claims and applications brought after the expiry of the third GCRO

37. After the third GCRO had expired Mr Gray continued to issue claims: see, for example, Claim No HQ14X02944 *Gray v Crown Prosecution Service*, which was issued on 22

July 2014 and struck out on 21 January 2015, with a subsequent application in that matter also being struck out by Master Eastman, with both certified TWM.

38. On 22 September 2014, DJ Britton wrote to Teare J, as the Presiding Judge for the Circuit, highlighting three cases brought by Mr Gray against the Ministry of Justice (Claim No A83YJ395); The Bristol Post (Claim No A33YJ095), and Medacs (3YM15996), which he had struck out and declared to be entirely devoid of merit.

The fourth GCRO

39. This was imposed by Teare J for the period 4 November 2014 to 4 November 2016. However, it appears from Warby J's later judgment in *Gray* [2016] EWHC 2998 (QB) at [37] that Teare J was only aware of a few of the decisions highlighted above. However, Teare J found that Mr Gray had persisted in issuing claims or making application which were TWM and that a GCRO was appropriate: *Gray* [2016] EWHC 2998 (QB) at [13].

40. This GCRO was extended by Warby J to 18 November 2016 and then for a further two years until 17 November 2018. After considering Mr Gray's history of litigation Warby J observed as follows in *Gray* [2016] EWHC 2998 (QB):

> "37. It is clear from the evidence, and from my observations of Mr Gray at the hearing before me, that he remains the obsessive and highly unreasonable litigant which his history suggests, and which other judges have found him to be. There is every reason to believe that if he were not restrained or restricted in some way he would persist in making applications which are TWM. He has issued claims which are TWM before, and I see a real risk that he would do so again…
>
> 44…In my judgment, the history and what it reveals of Mr Gray's character, disposition and likely future behaviour, lends strong support to the conclusion I reached: that it is necessary in the interests of justice to ensure that any claim or application he wishes to bring is first reviewed by a judge".

Events after the fourth GCRO was put in place, including extensions of the GCRO

41. During the course of the extended fourth GCRO, in 2017, Mr Gray initiated a private criminal prosecution in the Westminster Magistrates Court against various individuals, including a security manager at Tesco, a civilian police investigator and a Chief Inspector. However, the application for the issue of criminal summonses was refused on 10 October 2017 by DJ Michael Snow because he believed that the claim was vexatious and that Mr Gray appeared to have made the same or similar applications before.

42. There was a period during which no GCRO was in force, following a refusal to further extend the GCRO, a decision which was subsequently reversed on appeal. The GCRO was subsequently extended by the Court of Appeal for a further two years until 21 July 2021, albeit that it was amended on 11 January 2017. Notably Mr Gray made two applications during the course of that appeal that were TWM. During the period in

which no GCRO was in force, Mr Gray issued several claims. One claim against Tesco was settled, but most of the claims were dismissed, struck out or certified TWM.

43. In addition, during the currency of the GCRO, in December 2020, Mr Gray made two further applications for criminal summonses as a private prosecutor. Both were refused. It is apparent from the information with which we have been provided about them that there were no proper grounds for the applications.

44. On 23 July 2021, the GCRO was extended again by Calver J until 20 July 2023. He determined that there was "no doubt" that the evidence before previous courts demonstrated the continuing need for a GCRO: *Chief Constable of Avon & Somerset v Gray* [2021] EWHC 1992 (QB) at [16]-[19]. At [20]-[27], Calver J highlighted the many claims that had been brought by Mr Gray when the GCRO expired. At [31]-[34], he noted that Mr Gray had made a multi-faceted application on 4 June 2021 without having first obtained permission as required under the GCRO. This, he concluded, provided strong supporting evidence of the need to extend the GCRO. In particular the judge stated at [34] that "it can…be seen that applications which are totally without merit and indeed vexatious are still being pursued by Mr Gray".

45. On 7 July 2023, the Chief Constable having issued an application to extend the GRCO but a hearing having not taken place of that application, Ritchie J made a further GCRO on an interim basis and without a hearing from the parties. That GCRO remains in force.

46. Whilst Mr Gray has not recently made further claims that the Attorney General is aware of, we note that GCROs have been in force on an almost continuous basis since March 2009.

47. Moreover, Mr Gray was serving an 18 month prison sentence in HMP Edestoke from 4 November 2022 until 20 July 2023. That term of imprisonment related to his convictions for assaulting an emergency worker and other offences, arising out of an incident at Bristol Crown Court 30 November 2021. He had punched a police officer in the face and spat at several other officers.

48. In sentencing him on 4 November 2022, Recorder Sellers observed that Mr Gray had gone to Bristol Crown Court with the intent to cause disruption. He noted that Mr Gray had been told in interview that his spit had landed on the cheek and in the eye of a police sergeant, and had said that he was "delighted and really glad" that this had occurred. The Recorder described this as one of the "more chilling aspects of the case"; and continued by saying that was "an absolute reflection of the disdain and contempt" in which Mr Gray held those people who had been "working in the roles that day that they had chosen to support society". The Recorder also imposed a restraining order on Mr Gray, prohibiting him from entering Bristol Crown Court unless duly required.

Service of the application

49. Mr Gray contended that he had not been properly served with the application. Although he raised this issue towards the end of his submissions, it is appropriate to consider it first. He said that the paperwork had been left at his house when he was still in prison. This was accurate. The Attorney General accepted that the paperwork was initially sent to Mr Gray at his home address by regular post on 13 April 2023. It was not known that Mr Gray had been in prison since April 2022 and was not released until July 2023.

50. However, the Attorney General re-served the paperwork on Mr Gray electronically through his chosen email address on 7 November 2023 and we were provided with the Certificate of Service to that effect. Further, on 10 November 2023 the Attorney General applied for an adjournment of the hearing of the application that had been listed for 22 November 2023 to allow Mr Gray time to prepare. This was granted by Soole J by order dated 15 November 2023.

51. The contents of the two statements filed by Mr Gray demonstrate that he has had ample time and opportunity to consider Mr Halcrow's evidence. The statements address that evidence. Further, Mr Gray has had sufficient time to prepare his own case. That is demonstrated by the service of voluminous evidence on which he relied.

52. Accordingly, we are entirely satisfied that Mr Gray had been properly served with the application and had a fair opportunity to prepare his response to it.

Jurisdiction and recusal

53. At section 8 of his 9 December 2023 statement and in his skeleton argument, Mr Gray challenged our jurisdiction to make the order sought. At our invitation, he developed his arguments in this regard at the outset of the hearing.

54. First, he contended that the application had been improperly commenced under Part 8 of the CPR. By way of a letter sent to the court on 15 March 2024, after the hearing, Mr Gray argued that his counter-application to have the matters he raised referred to an independent police force (as detailed below) should also be considered under Part 8.

55. Under CPR 8.1, unless any enactment, rule or practice direction states otherwise, the Part 8 procedure is only appropriate where the applicant seeks the court's decision on "a question which is unlikely to involve a substantial dispute of fact". Mr Gray contended that proper consideration of his evidence required the resolution of a large number of disputes of fact. He argued that Part 7 should have been adopted so that, for example, a Case Management Conference ("CMC") took place.

56. We consider that Part 8 was appropriately used for this application. *Jones* makes clear that we would not be permitted to resolve the factual disputes underpinning the judgments and orders made by the previous judges. None of the other issues raised by Mr Gray which we address below required resolution of issues of fact. A CMC would have added nothing. Soole J had given directions for the conduct of the hearing. Mr Gray had provided witness statements and extensive documentation, and both parties had served skeleton arguments.

57. Although Mr Gray contended to the contrary, this application was categorically not a trial of the kind that might take place under Part 7, let alone one, as he stated in his 15 March 2024 letter, that should have taken "several weeks". Rather, the application depended on legal submissions as to whether the written evidence provided and the overall circumstances of the case satisfied the s.42 test, within the confines of what was permissible as defined in *Jones*. Mr Gray's counter-application was properly considered within those parameters.

58. We observe that even if the wrong part of the CPR had been used, that would not have invalidated any step taken in the application unless the court so orders; and the court

could have made an order to remedy the error under CPR 3.10. In any event, any such error would not dislodge the court's primary jurisdiction, derived from s.42.

59. For these reasons we do not accept the submissions Mr Gray made in his 15 March 2024 letter that the use of Part 8 was itself a breach of his right of access to a court under Article 6 of the European Convention on Human Rights, as enshrined in Schedule 1 to the Human Rights Act 1998, or evidence of bias by us.

60. Second, Mr Gray argued that no judge would be able to consider his opposition to the application fairly given that he had made particular complaints against Warby LJ (relating to acts when he was Warby J) who on 29 June 2023 was appointed to the Judicial Appointments Commission ("JAC") as a Senior Judicial Commissioner and Vice Chairman. Mr Gray submitted that all High Court Judges and Lord and Lady Justices of Appeal owed their appointment to Warby LJ. Mr Gray said that all such judges were beholden to Warby LJ. Thus, they would not be able to adjudicate fairly in a case where a decision of Warby LJ was in issue.

61. This argument is flawed on the facts. The JAC is a statutory body which selects candidates for the judiciary based on merit. It makes recommendations for posts up to and including the High Court but does not ultimately make the appointments. It follows that Warby LJ is not directly responsible for the appointment of judges. In any event, we were both appointed as full-time judges before Warby LJ took up his appointment on 29 June 2023.

62. This argument is also conceptually flawed. Judges are independent office-holders. In the absence of something which might indicate bias (actual or apparent) in a particular case, any judge is capable of adjudicating fairly in all proceedings where they have jurisdiction. That may include proceedings against the Lord Chancellor who has statutory responsibility for matters relating to the judiciary. In appellate proceedings a judge or judges will consider rulings or decisions taken by other judges. That is how the independent judiciary operates.

63. Third, irrespective of the particular influence of Warby LJ, Mr Gray argued that we could not, fairly, consider whether the findings made by the various judges to whom we have referred above were sound. Any judge considering an application pursuant to s.42 in relation to him would have an interest in rejecting any argument to the contrary. All judges would wish to protect the concept of judicial immunity in law and practice.

64. His submission was that we should refer all of the judges who had made orders against him to an independent police force for investigation for offences such as those of misfeasance in a public office and perverting the course of public justice. For us to make such a referral would involve subjecting fellow judges to investigation. Mr Gray said that we would not wish to do that out of loyalty. Moreover, were we to make such referrals, it would open the gates to other judges being investigated in other cases. That might include us. For those reasons, his arguments as to how the application pursuant to s.42 should be managed gave rise to a clear conflict of interest. He said that it would be like "turkeys voting for Christmas".

65. We cannot accept these arguments. The logical consequence were the arguments to be well-founded would be that no judge in this jurisdiction could fairly determine the application. Thus, in any case where a respondent put forward such arguments, s.42

would be rendered otiose, and the Attorney General denied access to a court. That factor alone is sufficient to rebut the propositions put forward by Mr Gray. Further, we repeat what we have said about the functioning of an independent judiciary.

66. Fourth, he submitted that given his allegations of corruption, collusion and connivance by the various judges previously involved in his cases, our only jurisdiction was to refer the evidence he had provided to an independent police force. Even if we have a power to make such a referral, that would not exclude our jurisdiction pursuant to s.42.

67. As Mr Randle rightly pointed out, the court's jurisdiction is derived from s.42 and is clear on the face of the statute.

68. We therefore confirm the provisional view we indicated during the hearing, that we considered that we did have jurisdiction to hear the application.

69. Beyond the general arguments about judicial fairness noted at [60]-[65] above, Mr Gray advanced no submissions during the hearing to suggest that there were specific reasons why either of us, in particular, should recuse ourselves from hearing the application. He did not raise any issue of actual or apparent bias on our part. He has made such applications before. He is familiar with the concept of bias. In his post-hearing correspondence, however, he accused us both of being "corrupt" and "the cronies and henchmen/women for Warby LJ and the gang" and suggested that we had "psychologically tortured" him during the hearing. We reject those allegations, and do not consider they provide a credible basis on which we should recuse ourselves.

The s.42 pre-conditions

70. The factual background we have set out indicates that since at least 2003, Mr Gray has brought a large number of civil claims and applications that have been found to be entirely without merit, leading to a large number of GCROs being put in place. This indicates that multiple judges, over a lengthy period of time, have identified a pattern of conduct from Mr Gray in that he has pursued civil proceedings and applications in civil proceedings which are vexatious within the *Barker* meaning set out at [10] above. It is also clear that since around 2017, he has pursued several criminal prosecutions which meet that description.

71. In his skeleton argument Mr Gray accepted in terms that he has been "subject to the TWM orders and judgments itemized [sic] in Mr Halcrow's submissions".

72. He argued that these decisions were the result of criminal corruption on the part of the judges concerned and collusion with CPS, the Chief Constable, their legal representatives and numerous civilians. He contended that this corruption, collusion and connivance is apparent from close examination of the facts of the cases and the judges' failure properly to take account of those facts. The judges had routinely ignored "every particle" of the evidence he had provided. They had failed, for example, to watch crucial audio-visual footage which supported these claims. They had "cherry picked" submissions or evidence that supported his opponents' positions. The effect of this "whitewash" approach was to permit or even encourage the Chief Constable's officers and others to continue to mistreat him: he submitted that the GCROs operate as a "de facto fatwa, that permits police to arrest, fabricate evidence about, torture, sexually assault me etc."

73. However, in light of *Jones*, arguments to the effect that the earlier judges' findings were wrong were not open to Mr Gray on this application. At the outset of the hearing, we indicated to Mr Gray that in light of *Jones*, which was binding on us, he was not entitled to seek to go behind all the orders and judgments of the earlier judges. We explained it was open to him to try and persuade us that the *Jones* principle was wrong. Further, he could develop arguments relevant to the s.42 discretion or the other elements of the order sought by the Attorney General. To examine the evidence underlying the previous orders and judgments was not something we were otherwise permitted to do.

74. Mr Gray contended in his skeleton argument that if *Jones* remained good law, no application for a s.42 order would ever be refused: the hearing of such an application would simply be a "charade in which the order sought [was] a foregone conclusion and a Putinesque stitch up between one party and the judge". That is not the consequence of *Jones*. In order to obtain a s.42 order the Attorney General must satisfy the court not only that the s.42 pre-conditions are met but also that the court should exercise its discretion to make the order sought. Such orders are not made simply because the Attorney General applies for them. The court will listen carefully to and consider the arguments advanced by the person against whom the order is sought both in respect of the statutory conditions and in relation to the exercise of the court's discretion. Indeed, as will become apparent, we have not been persuaded that the fullest version of the order sought by the Attorney General was appropriate in this case.

75. In Mr Gray's oral submissions he effectively argued that *Jones* was not binding on us because a Divisional Court with a criminal jurisdiction was superior to the Court of Appeal (Civil Division). We explained to him that the capacity in which we were sitting was as a Divisional Court of the King's Bench Division. We exercise a civil jurisdiction. We are subject to the Civil Procedure Rules. We also clarified that no Divisional Court is superior to the Court of Appeal, albeit that a Divisional Court includes a judge from the Court of Appeal.

76. Mr Gray was also highly critical of the rather emotive language some of the previous judges had used about his conduct and his apparent mindset. He contended that the language used about him at times was unfair and had been repeated by several judges.

77. We confirmed to him that this was not relevant for the purposes of determining whether the s.42 pre-conditions were met: that issue could be assessed merely from the existence of the TWM orders and the GCROs, rather than the comments the judges had made in making them. Mr Gray's mindset was, however, relevant to the element of the s.42 discretion which related to the prospect of him bringing further vexatious claims in the future, to which we return below.

78. For these reasons, in our judgment it is clear that all three pre-conditions for the making of a s.42 order, set out in s.42(1)(a), (b) and (c) (see [2] above) are met.

The s.42 discretion

79. The Attorney General submitted that, while there is plainly a public interest in litigants having full and proper access to the courts, there is an overwhelming public interest in making the order sought against Mr Gray, for an indefinite period. This is because it is abundantly clear that Mr Gray has no intention of stopping pursuing claims in respect of matters that have already been determined by the courts and for which his only route

to any further possible remedy was an appeal. Such attempts to re-litigate matters are classic examples of relevant persistent behaviour: *Attorney General v Millinder* [2021] EWHC 1865 (Admin) at [5].

80. It is also clear that the adverse costs orders made to date have not proved a deterrent to Mr Gray: in respect of his litigation with the Chief Constable, costs orders in excess of £100,000 have been made. Although a charging order has been obtained in respect of much of those costs, Mr Gray has not paid any costs to date.

81. The Attorney General argued that not only does Mr Gray's approach expose his chosen defendants to untold and unreasonable expenses, it also uses up the resources of the courts on meritless applications.

82. Overall, the Attorney General contended that this is precisely the type of case in which a s.42 order is necessary. GCRO's have been justified and renewed on an ongoing basis over multiple years. As in *Sheikh* (see [17] above), there is no reason why other parties should be expected to keep coming back to court on a regular basis to renew GCRO's against a vexatious litigant. A s.42 order was said to be the only means by which the matter can be determined "once and for all".

83. In our judgment there was significant force in all of these submissions. Mr Gray's intention to continue litigating the same issues was clear from the manner in which he opposed the application; and the arguments he made to us. He said in terms "unless and until I am put before a jury I will not be persuaded [that the earlier orders were correct]" and "I will continue to make [these claims] until my last breath". In an email sent to the court after the hearing he said that, as soon as we had delivered judgment, he intended to bring a private prosecution against one of us for misfeasance and collusion.

84. We share the view expressed by Calver J in *Gray* [2021] EWHC 1992 (QB) at [36], that unless some restriction is put in place (in that instance a GCRO) on Mr Gray's access to the courts, he will "undoubtedly issue numerous further claims".

85. In August 2023 Mr Gray completed claim forms in relation to proposed proceedings against the Crown Prosecution Service and against the Chief Constable. He also drafted particulars of claim. The claims were for malicious prosecution and false imprisonment respectively. He included those documents together with underlying evidence in the hearing bundle. He asked us to review those documents and to give him leave to bring the claims, even if we made the s.42 order. As a matter of form we have no jurisdiction to do so, as the claims have not yet been issued. However, in our judgment, their existence underscores the need for the order sought. If the new claims have merit, leave could be granted for Mr Gray to bring them. We do not accept the argument he made, that because he could illustrate that these new claims have merit (if they do), there is no basis for concluding that he will not also bring claims in the future that do not.

86. Mr Gray's further submissions during the hearing were wide-ranging and not always easy to follow. Although he reassured us that he was not trying to go behind the previous orders and judgments, some of his arguments did so. For example, he continued to allege that previous judges had failed to watch CCTV or consider other objective evidence that showed he had not done the things of which he had been accused or that demonstrated that police officers and others had behaved unlawfully. That

submission invited us to review the decision-making process of previous judges and the evidence they considered.

87. Doing the best we can, we have distilled the arguments Mr Gray advanced which we consider did not contravene the *Jones* principle as follows. Although he did not frame them as such, we have considered them in the context of deciding whether to exercise the s.42 discretion.

88. First, Mr Gray argued that a s.42 order would constitute a violation of his Article 6 rights. This submission was that no s.42 order could be Article 6 compliant.

89. Arguments to this effect were advanced and dismissed in *Covey and Matthews*. At [60], the Divisional Court cited the decision of the European Court of Human Rights in *Tolstoy Miloslavsky v United Kingdom* (1999) 20 EHRR 442 at [59]:

> "59. The Court reiterates that the right of access secured by Article 6(1) may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. However, the Court must be satisfied, firstly, that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Secondly, a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aims sought to be achieved".

90. At [61], guided by what was said by the European Court in *Tolstoy*, the Divisional Court concluded that the s.42 order in the case of Dr Matthews did "pursue a legitimate aim" and that there was "a reasonable relationship and proportionality between the means employed and the aims sought to be achieved". Furthermore, the Court observed that because of the ability of the court to give permission for the bringing of any proceedings which are justified, the limitation which is imposed "does not restrict or reduce the access left to the individual to an extent that the very essence of the right of access to justice is removed."

91. The Attorney General did not shy away from the fact that Mr Gray has been successful in some of his claims, but observed that the vast majority of his claims have been found to be vexatious. Furthermore, if Mr Gray does have merit worthy claims in the future, the ability to apply for leave under s.42 provides him with appropriate protection.

92. We agree with that analysis. By analogy with *Covey and Matthews*, we do not therefore accept that a s.42 order would breach Mr Gray's Article 6 rights.

93. In support of his argument in relation to Article 6 Mr Gray relied on the judgment of Stuart-Smith J (as he then was) in 2019 when that judge refused to make a further GCRO: [2019] EWHC 1954 (QB). We find no support for Mr Gray's arguments in that judgment. First, Stuart-Smith J relied on circumstances which do not apply now. Indeed, the Court of Appeal, in overturning the decision of Stuart-Smith J, subsequently found that they did not apply then: [2019] EWCA Civ 1675. Second, Stuart-Smith J did not refer in terms to Article 6 in his judgment. He considered the effect of the fees regime on Mr Gray's access to justice. His conclusion on that issue also was overturned by the Court of Appeal.

94. Mr Gray raised the issue of the fees regime again before us. He argued that his inability as a vexatious litigant to apply for assistance with court fees in respect of further civil claims or applications further hampered his access to court.

95. However, as Mr Randle explained in post-hearing submissions, if leave is granted to such a litigant under s.42(3), they can apply for a refund of any court fees incurred: see the Civil Proceedings Fees Order 2008, Schedule 2, paragraph 19.

96. Moreover, the underlying premise of Mr Gray's argument in this respect was rejected by the Court of Appeal as noted above. Irwin LJ, with whom Newey and Lewison LJJ agreed, considered *R(Unison) v Lord Chancellor* [2017] UKSC 51, [2017] 3 WLR 409, where the Supreme Court addressed the principles by which a court might properly conclude that a fee regime unlawfully restricts the constitutional right of access to justice, noting that the facts in that case were very different from those applying here.

97. The effect of Irwin LJ's judgment at [37]-[41] is that (i) even where a litigant may have difficulty in paying a court fee while in receipt of benefits, without detailed evidence showing that the individual would be unable to access the money required for an application by borrowing, support from friends and family, by legal aid or legal representation subject to a damages based agreement or conditional fee agreement, it is not open to a court simply to conclude without more that the fee represented a bar to litigation; and (ii) in any event, the requirement to pay an application fee can be a measure to deter the bringing of frivolous and vexatious claims or applications.

98. Applying those principles here, while we have no reason to doubt Mr Gray's assertion that as he is on benefits of £348.78 per month, he would struggle to pay the £59 court fee, we have no more detailed evidence of his financial circumstances of the kind referred to under (i). In any event, the sentiments of (ii) suggest that the rules with respect to court fees in this regard pursue a legitimate aim and are a proportionate restriction on the access to a court for those found to be vexatious litigants.

99. Second, Mr Gray contended that the underlying proposition was that he had persistently brought claims based on falsehoods on his part. In that event, it must follow that he was guilty of criminal offences such as perjury or doing acts tending and intended to pervert the course of public justice. The proper course would be for him to be prosecuted and tried in a criminal court. He argued that the only reason this had not occurred was because the previous judges involved in his cases "knew full well" that he had done nothing wrong. In any criminal trial he would be acquitted.

100. This argument does not provide a basis for not making a s.42 order. Consideration of the argument would involve us going behind the findings of previous judges, contrary to *Jones*. The fact that proceedings are found to be vexatious does not, of itself, mean that the person pursuing them has committed any criminal offence. Even if there were reasonable grounds for concluding that Mr Gray had committed any such offence, that is a matter for the prosecuting authorities, not this court. The sole questions we need to address are whether the s.42 pre-conditions are met, and if they are, whether the s.42 discretion should be exercised.

101. Third, Mr Gray contended that the s.42 application was an abuse of process because the corruption, collusion and connivance of the judges involved also amounted to criminal offences. The criminal law had been broken by the making of the various GCROs. The

judges had all committed the criminal offence of misconduct in a public office. He referred to *R v Bembridge* (1783) 3 Doug KB 327, 99 ER 679, the first clear articulation of the modern offence of misconduct in public office, involving an accountant in the armed forces. He also cited *R v Llewellyn-Jones* [1968] 1 QB 429, where the conviction of a county court registrar on six counts of misbehaviour in a public office was upheld on appeal. He argued that the criminal law, which includes common law offences such as misbehaviour in a public office and perverting the course of justice, "trumps" the civil law that was used to make the GCROs.

102. Mr Gray specifically alleged that Mr Halcrow was motivated by a desire "to suppress evidence of heinous criminal wrongdoing in high office from being put before the civil or criminal courts, in order not only for the perpetrators of such wrongdoing to escape justice and accountability, but so the [Chief Constable] can continue their lawless reign of terror and vendetta over me and the criminal justice system ad nauseam".

103. He urged us to refer to all of the evidence he had provided in response to the application to a police force other than Avon & Somerset and/or the Attorney General personally and/or to an independent barrister to consider criminal proceedings against the judges involved. He argued that it was an abuse of process for the Attorney General to have brought this application rather than consider the possibility of such criminal proceedings. For this court to accede to the application would similarly amount to an abuse.

104. Again, we do not accept the premise of this argument. It once again would require us to investigate the decision-making process of the judges concerned. We could not refer allegations of criminal conduct on the part of judges without any consideration of the substance of the allegations. As before, this would offend the principle in *Jones*. Let us suppose that by some route we were able to identify that there was evidence of criminal conduct by judges or others. That might be relevant to the exercise of our discretion. It would not mean that the Attorney General's application was an abuse of process. As it is, there is no route by which we could identify criminality in the making of previous orders which would not offend the principle in *Jones*. The issues we need to determine start and end with the s.42 pre-conditions and the matters legitimately relevant to the exercise of our discretion.

105. We accept the general principle that no court should exercise a discretion if to do so would itself constitute an abuse of the court's process. However, we do not consider that is the case here. It is not necessary to refer to all the allegations Mr Gray has made against the judges previously involved in his cases. None of them generates the sort of abuse of process for which he contended. We give the following examples merely by way of illustration.

106. Mr Gray selected *Warby J* (as he then was) for particular criticism. He submitted that Warby LJ had a vendetta against him and was in collusion with the Chief Constable. This, he said, was evidenced by the judge's socialising with the Chief Constable at a police awards function.

107. In his skeleton argument he described this function as taking place "in May 2017, only weeks before the draconian GCRO being sought by [the Chief Constable]". In fact, Warby J's judgment in [2016] EWHC 2998 (QB) was handed down on 23 November

2016; and the report of the awards ceremony indicates that the event took place in May 2019 (as Mr Gray's earlier statement recognised).

108. More importantly, there is no suggestion in the report that the judge attended the event. All that is recorded is that the judge commended police officers for their conduct in a criminal investigation that led to a trial over which the judge had presided. Those commendations would have been announced publicly at the conclusion of the trial. The later ceremony simply acknowledged was the judge had done. Commendations of that kind are commonplace.

109. The fact that Warby J issued commendations is no evidence of him "stepping well beyond his role" as Mr Gray contended. Still less does it indicate that Warby J was complicit with the Chief Constable. Mr Gray's assertion that the judge attended a social event with the Chief Constable was misconceived. The reasons for Warby J making the order he did are clearly set out in his judgment. There is no basis for going behind the terms of the judgment.

110. Mr Gray is plainly concerned at a "clique" of judges in the Bristol area, many of whom he contends were once barristers in practice at Albion Chambers or 2 Kings Bench Walk chambers. It is not uncommon for Circuit Judges to be drawn from local sets of barristers' chambers, or indeed for judges generally to be familiar with counsel who appear in front of them. But judges remain independent office-holders, and in appropriate cases will recuse themselves. We have seen nothing to lead us to conclude that Mr Gray was unfairly treated for this reason.

111. Mr Gray was particularly exercised by the selection of judges to hear criminal cases in which he was involved when those cases were transferred away from Bristol Crown Court. It is unnecessary for us to set out his conspiracy theories in relation to the allocation of judges. We are satisfied that they are ill-founded and misconceived.

112. He advanced a series of criticisms against *Ritchie J*. Indeed, much of his 17 October 2023 statement was focussed on this area. Many of Mr Gray's criticisms contravened the *Jones* principle, such that we could not engage with them. One matter he raised was that Ritchie J extended the GCRO on 7 July 2023 without Mr Gray having been served with the application. We have seen correspondence suggesting that the application had not been served on Mr Gray in prison. That may well be correct, given the difficulties in serving this application set out at [49] above.

113. However, we can see from his reasons that Ritchie J extended the GCRO because the extant GCRO made by Calver J was due to expire (on 20 July 2023) before the Chief Constable's application to extend it (dated 30 June 2023) could be heard, and noting that Mr Gray was soon to be released from prison (also on 20 July 2023). In our judgment, Ritchie J's interim extension of the GCRO was entirely appropriate, albeit that it has been in place for slightly longer than the "short" period Ritchie J anticipated: see [6] of his reasons.

114. Mr Gray could have applied to set aside the order under CPR 23.8 on the basis that he had not been served with the application. Alternatively, he could have sought to appeal it as Ritchie J's order made clear. In any event, the Chief Constable's application to extend the GCRO has been superseded by this application by the Attorney General, of

which Mr Gray was not only on notice, but in respect of which we have considered all his written and oral arguments with care.

115. In his 9 December 2023 statement, Mr Gray was very critical of *Fulford LJ*. While sitting in retirement, this judge had refused Mr Gray leave to appeal the convictions arising out the 30 November 2021 incident referred to at [47] above. Mr Gray contended that Fulford LJ could not fairly have assessed the application given that part of his defence of self-defence relied on assertions that he had been sexually assaulted by male police officers. This, he contended, was because Fulford LJ "has been forced to apologise for having close contacts with convicted paedophile Tom O'Carroll from the Paedophile Information Exchange ("PIE")".

116. Mr Gray's assertions about Fulford LJ inaccurately reflect the facts, which are made clear from the news article on which Mr Gray relied. The facts are that Fulford LJ apologised for the links between the National Council of Civil Liberties ("NCCL") and PIE in the 1970s. As a junior practitioner the judge had had "brief involvement" with the NCCL, an entirely respectable organisation concerned with civil liberties. He made clear that he has always been deeply opposed to paedophilia and felt deeply uncomfortable when Mr O'Carroll attended occasional meetings of the NCCL gay rights committee. Misconduct allegations were investigated by the Judicial Complaints Investigations Office. Fulford LJ was completely exonerated of those misconduct allegations.

117. It is not remotely sustainable to suggest that the contents of this apology and these historical issues rendered it impossible for Fulford LJ to determine Mr Gray's application fairly. Furthermore, this case and Mr Gray's application for leave to appeal in it did not form part of the Attorney General's application for the s.42 order.

118. Mr Gray also suggested that the case management of this application by *Soole J* illustrated a malicious and unlawful handling of the proceedings; and that Soole J was also corrupt. He initially referred to Soole J as a "more junior judge". We explained that he is a highly experienced King's Bench Division judge and currently the judge in charge of the King's Bench Civil List.

119. Mr Gray submitted that it was manifestly unfair for Soole J to have listed the application when Mr Gray as unaware of its existence. This illustrated, he said, that Soole J wished to "rubber stamp" the application while Mr Gray "looked away". This submission is entirely without foundation. It is clear from the history we have outlined at [49]-[50] above that as soon as the Attorney General became aware that there was an issue over whether Mr Gray had been served with the proceedings, an application to adjourn the hearing was made, and granted, by Soole J.

120. Mr Gray also argued that Soole J's listing the hearing of the application with a time estimate of one day was a deliberate attempt to curtail the extent to which he could canvas all the evidential points on which he wished to rely. In his 15 March 2014 letter he referred to Soole J's "sadistic foreshortening of the hearing".

121. Again, this is an entirely unsubstantiated allegation. The one-day time estimate was entirely appropriate. It reflected the time needed to address the admissible issues. As it transpired, a day was sufficient to allow Mr Gray to put all the arguments he wished and which we considered to be relevant. The hearing was case managed such that

counsel for the Attorney General was permitted one hour to make submissions. The rest of the hearing was given over to Mr Gray's oral arguments. Contrary to the suggestion in his letter we are satisfied that the combination of his written documents and oral advocacy gave Mr Gray a fair opportunity to advance his position. In any event the time estimate had been suggested by the Attorney General in the 10 November 2023 adjournment application. It was not Soole J's proposal.

122. Finally, in his 15 March 2024 letter, Mr Gray contended that Soole J had erred in not transferring the proceedings to be considered under CPR Part 8, given the contents of his counter-application. This argument was flawed for the reasons set out at [52]-[57] above.

123. Mr Gray has also been highly critical of court staff; and we have seen correspondence to this effect, including in the context of this application. In his statement dated 17 October 2023, he referred to there being evidence of "cronyism" within the listing process in respect of his cases and applications and evidence of "misfeasance" within the listing and administrative processes. We have also seen email correspondence in the context of this application, in which Mr Gray has described a senior member of the Royal Courts of Justice KB civil staff as "a proven liar, "corrupt" and a "lying lickspittle". This was in reply to the member of staff communicating to Mr Gray our response to his 15 March 2024 letter, indicating a timescale for him to make further brief submissions to us. Mr Gray declined to take up that opportunity.

124. Fourth, Mr Gray submitted that it was a waste of public funds for the Attorney General to pursue this application. It would have been more effective for the public purse if his early civil claims had been settled, such that he would have been content and would not have pursued further claims. It was perverse to do otherwise.

125. We do not consider that these issues were of relevance to the exercise of our discretion. They involved an exercise in hindsight. We cannot be concerned with what might have been. Moreover, the Attorney General made clear through counsel that part of the rationale for the application was to reduce the pressure on public resources. This was because, if the s.42 order were made, it would remove the need for costs to be incurred by making repeated applications to extend the GCRO. Further, it should reduce the pressure on the resources of the various courts caused by dealing with repeated vexatious claims or applications. Whether or not the Chief Constable and the others Mr Gray had sued chose to settle the claims he brought against them was plainly a matter for them, not the Attorney General or us.

126. As part of this argument, Mr Gray referred us to press reports suggesting that a "convicted attempted rapist" named Bashdar Qarani had, in 2017, been awarded £27,000 in compensation for false imprisonment. He contended that this was manifestly unfair, given that he had been awarded nothing. We note that Philip Mott QC (Sitting as a Deputy High Court Judge) gave clear reasons for finding that Mr Qarani had been falsely imprisoned at [2017] EWHC 507 (Admin). It appears that damages were agreed or assessed thereafter. We cannot see that the Secretary of State for the Home Department appealed those findings. Plainly, however, the judgment made in Mr Qarani's case is of no relevance to the decisions made in Mr Gray's claims.

127. Fifth, Mr Gray advanced certain points challenging the actions of the Attorney General and her legal team.

128. He contended that Mr Halcrow was not qualified to advise on the application as he was not "even" a barrister; and that Mr Randle does not hold himself out as having expertise in criminal or police law. Decisions as to who to instruct are entirely matters for the Attorney General. From our perspective both Mr Halcrow and Mr Randle presented the application entirely properly and we had no concerns that they were not competent to do so.

129. Mr Gray also pointed out that a further professional involved in preparing the case, Vivan Gandhi, was not a properly regulated solicitor or barrister in England and Wales. Mr Gandhi had not issued the application on behalf of the Attorney General. In any event, Mr Ghandi is a qualified solicitor working a public department. His position is addressed by the Solicitors Act 1974, s.88. This allows solicitors to work in a public department without the requirement to have a practising certificate as long as they are on the Law Society's roll.

130. Mr Gray submitted that the Attorney General should have considered all his evidence personally before bringing the application. With respect, that is unrealistic. Mr Halcrow's witness statement, supported by the usual statement of truth required by the CPR, made clear he was authorised by the Attorney General to act on her behalf. That was entirely proper and in accordance with usual professional practice.

131. Finally, Mr Gray submitted that the Solicitor General should also have been involved. The Solicitor General supports the Attorney General in her role as the Government's chief legal adviser. Whether or not the Attorney General sought assistance from the Solicitor General in relation to this application was a matter for her.

132. Accordingly, for these reasons, we did not find any of the issues raised by Mr Gray to be persuasive. For the reasons set out at [79]-[85] above, we are satisfied that on the facts of this case the balance of justice falls in favour of making a s.42 order.

The extent of any order

133. The Attorney General contended that the order should be an all proceedings order. This was because after Mr Gray was made the subject of GCRO's he began initiating unsuccessful criminal proceedings in the Magistrates Courts as opposed to the ordinary civil courts. This, it was submitted, speaks of a person who will avail himself of any opportunity to further his cause, no matter how hopeless. The Attorney General argued that in these circumstances it is clear that Mr Gray must be restrained in his ability to pursue both civil and criminal proceedings. Mr Gray advanced no particular arguments against this proposition. We consider it sound, given that Mr Gray has to date pursued both civil and criminal proceedings without merit. Accordingly, the order we shall make will be an all proceedings order.

Whether any order should include '*Vaidya*' terms

134. In *Attorney General v Vaidya* [2017] EWHC 2152 (Admin) Bean LJ, with whom Goss J agreed, expressed the view that when a s.42 order is made against a vexatious litigant, it should be "standard practice" to include a paragraph prohibiting the vexatious litigation from acting as a McKenzie friend: p.12 of the transcript. This course was followed in *Millinder* at [43].

135. We note that Dr Vaidya had been a party in fourteen specific cases and had "appeared on behalf of others" in four others: pp.3-4 of the transcript. Mr Millinder had sought to pursue claims and applications purporting to act for one or other of his companies, as well as in his own name: [43].

136. We appreciate that Bean LJ's observation is broadly expressed and does not depend on the person in question having acted as a McKenzie Friend before the s.42 order is made. With all due respect to his general observation, we do not consider it appropriate to apply it here. There is simply no evidence that in all his years of litigating Mr Gray has done so in anything other than his own name. He rather glibly said to us that he has "no friends". What we took from that is that he has no intention of acting as McKenzie Friend for anyone else. Should he seek to do so, vexatiously, the Attorney General can apply to have the order we make varied. However, at this point we do not consider that *Vaidya* terms appropriate.

Whether any order should include *Millinder* terms

137. In *Millinder* at [44]-[45], the Divisional Court determined that an order prohibiting a Respondent from sending any correspondence, emails or other communication to His Majesty's Courts and Tribunals Service ("HMCTS"), which would include any judge, court or court official, unless it is an application seeking leave from the court (as required under s.42), was a "necessary adjunct to the power therein for the court to prevent abuse of its own process".

138. The Attorney General argued that Mr Gray has made his disdain for many members of the judiciary and the court system clear and has given some members of the judiciary cause to fear for their safety due his actions. This proposition is borne out by the evidence we have seen.

139. For example, within Mr Gray's bundles was a letter from HCMTS dated 6 July 2013 suggesting that (i) he had been warned about his behaviour at court in 2008 but that this had "had little impact on [his] behaviour"; (ii) there had been a series of further incidents between 27 July 2009 and 23 April 2010 when he had been abusive and threatening to court staff; and (iii) it was therefore considered necessary to take the "unusual step" of revoking his licence to attend the premises of Bristol County, Crown and Magistrates Courts for 12 months.

140. We have also seen email correspondence from the Civil Delivery Manager at Bristol Civil and Family Justice Centre dated 11 October 2016 indicating that it had been considered necessary to put an order in place banning Mr Gray from attending there, but that he had nevertheless written to the court "threatening to attend the counter here". There was also a letter from HMCTS dated 6 May 2021 banning Mr Gray from attending the public counter of the Bristol Civil and Family Justice Centre for 12 months in light of incidents on 18 February 2017 and 21 April 2021 when Mr Gray was said to have been abusive and threatening to members of staff, causing (in the case of the latter incident) security staff to be called.

141. More recently, Mr Randle took us to a letter sent by HMCTS on 28 January 2022, with the approval of the local judiciary, banning Mr Gray from Bristol Crown Court for 12 months after he was said to have (i) racially abused and assaulted security staff and police officers at Bristol Crown Court on 30 November 2021 (as evidenced by the

convictions referred to at [47] above); and (ii) acted aggressively towards the judiciary and HMCTS staff at Bristol Magistrates and Tribunal Hearing Centre, requiring the attendance of Serco security officers, on 2 December 2021. We reiterate that Recorder Sellers concluded on 4 November 2022 that Mr Gray's convictions in relation to the 30 November 2021 incidents justified a restraining order prohibiting him from entering Bristol Crown Court unless duly required.

142. For these reasons, the Attorney General argued that it is appropriate to place restrictions on Mr Gray's contact with HMCTS.

143. Mr Gray denied that he had behaved in the way alleged in the 28 January 2022 letter. He contended that it was unfair for us to take its contents into account as it amounted to unsubstantiated hearsay. He accepted that the 30 November 2021 incident had led to him being convicted of criminal offences, but contended that he is seeking to appeal these. In fact, we have been informed by the Criminal Appeal Office that having been refused leave to appeal his convictions by Fulford LJ, and then having renewed the application on 27 February 2023, Mr Gray abandoned his appeal on 11 December 2023. Accordingly, those convictions stand.

144. We note that the Attorney General was not asking us to make any order banning Mr Gray from attending court premises. However as in *Millinder* we consider that it is a "necessary adjunct" to the s.42 order that he be prevented from communicating with courts other than for the purposes of making an application for leave under s.42, or as is otherwise necessary if, for example he is a defendant in criminal proceedings. Such an order is particularly appropriate given the tone of the communications Mr Gray has adopted with members of court staff over this application: see, for example, [123] above.

145. Appropriate limits should also be placed on the volume of communications that Mr Gray be permitted in relation to any such application for leave, as was done in *Millinder*. The final draft order submitted by the Attorney General proposed that in seeking leave under either ss.42(3) or 42(3A), Mr Gray shall not send more than five messages (whether by correspondence or email) in respect of any such request; and that any communications sent in breach of this provision will not receive any response nor be placed on the court file. We consider that these limitations are proportionate. The final draft also addressed a sensible point made by Mr Gray during the hearing, in that the draft now makes clear that the limitations do not apply to proceedings (such as future criminal proceedings) which are brought against Mr Gray rather than those which are initiated by him.

146. The Attorney General sought provision within the order that Mr Gray be precluded from acting through an alias. As with the McKenzie Friend issue, we do not consider that such a provision is appropriate at this stage, in the absence of any evidence that Mr Gray has ever been anything other than completely transparent about his identity.

Conclusion

147. We therefore discharge the GCRO made against Mr Gray on 7 July 2023 by Ritchie J. We substitute it with an all proceedings order under s.42. Mr Gray's name shall be added to the list of vexatious litigants published by Her Majesty's Courts and Tribunal Service. The s.42 order makes clear that:

(i) Any civil proceedings instituted by Mr Gray in any court or tribunal before the making of this order shall not be continued by him without the leave of the High Court under section 42(3);

(ii) No application (other than one for leave under section 42(3) of the Senior Courts Act 1981) shall be made by Mr Gray, in any civil proceedings instituted in any court or tribunal by any person, without the leave of the High Court under section 42(3);

(iii) No information shall be laid before a justice of the peace by Mr Gray without the leave of the High Court under section 42(3A) of the SCA; and

(iv) No application for leave to prefer a bill of indictment shall be made by Mr Gray without the leave of the High Court under section 42(3A).

148. The order includes designated High Court judges the Attorney General has identified as the appropriate judges to whom any applications for leave Mr Gray makes in future must be addressed.

149. The order also includes provisions to limit Mr Gray's communications as set out at [144]-[145] above.