IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2024] EWHC 792 (Admin)

No. AC-2024-LON-000299

Royal Courts of Justice

Wednesday, 21 February 2024

Before:

MR JUSTICE MOULD

B E T W E E N :

THE KING
(on the Application of BZ) Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT Defendant

ANONYMITY ORDER APPLIES
(CPR 39.2(4))

MR R TOAL (instructed by Bhatt Murphy) appeared on behalf of the Claimant.

MR M HOWARTH (instructed by Government Legal Department) appeared on behalf of the Defendant.

J U D G M E N T

MR JUSTICE MOULD:

1 This is a claim for interim relief, and for an order for anonymity under Civil Procedure Rule 39. I take the facts from the statement of facts and grounds. I think it is appropriate that I should set them out in a little detail.

2 The claimant is an Iraqi citizen. He was born in March 1989. In March 2000 he came to the United Kingdom with his mother. She claimed asylum, was recognised as a refugee and in 2001 granted indefinite leave to remain. The claimant was granted indefinite leave to remain and refugee status as her dependent child.

3 In June 2011 the claimant was convicted of battery and causing grievous bodily harm with intent and received a sentence of 30 months' imprisonment. In January 2013 the decision was made to bring his refugee status to an end. On 30 January 2013 he was served with a deportation order. He appealed against that decision. His appeal was dismissed in April 2013. On 21 September 2013 he was deported to Iraq.

4 At the end of January 2020, the claimant returned to the United Kingdom, entering the country illegally in breach of his deportation order. On 13 February 2020 he claimed asylum. He was granted immigration bail by the Secretary of State on 23 February 2020. Later in 2020 he made certain statements in relation to his experience in Iraq in support of his asylum claim. He said he had been subject to torture and he described some of the things that were done to him in order to torture him. He elaborated on that experience as being one of the reasons why he decided to return to the United Kingdom.

5 In May 2022 he was convicted of being drunk and disorderly, of two counts of failing to surrender to custody at an appointed time and for an assault on an emergency worker. He was interviewed in connection with his asylum claim in August 2022. He gave further details of his experiences in Iraq. Essentially, he describes it as his 'arrest'; it seems from what he said that he is alleging he was abducted from his place of work, thereafter tortured and questioned about his father, who had been with the Baath Party and was alleged to have committed crimes particularly against Kurdish people and Shia people. The claimant says he was taken to Kirkuk, detained for two years and tortured during that period. In December 2022 he was convicted of possessing a Class B controlled drug whilst a Community Order was in force and he received a further sentence of one week's imprisonment. At the same time he was sentenced for offences for which he had been convicted in May 2022, receiving overall a sentence of eight weeks' imprisonment.

6 On 19 January 2023 the claimant was detained under Schedule 3 of the Immigration Act 1971. On 15 August 2023 he was examined by a General Practitioner at the Detention Centre at which he was held in accordance with Rule 35 of the Detention Centre Rules. In reporting that examination the General Practitioner said this:

> "I have examined the detainee named above in my capacity as an immigration removal centre medical practitioner/healthcare professional in a short-term holding facility and hereby report that I have concerns that the detainee may have been a victim of torture. This is a factual report rather than a medico-legal one."

He then set out the claimant's account:

> "[He] claims to be the victim of torture in Iraq. He says at eight years old he was involved in a bomb explosion in a get-together which more

> likely was political as his mum told him that his dad allegedly used to work for BAATH which was operating against the government. Because of all this his family migrated to UK when he was 10 years old. He was deported to Iraq in 2016 after he was sentenced and on arrival in Iraq he was sent to prison as he did not have any identity. He says in prison he was constantly tortured as officials were trying to reach his dad. After two years his family bribed the prison officers and he was released and he left Iraq and came to Ireland where he lived for three years, and now he is in UK with the rest of his family and does not wish to go back to Iraq as his life would be in danger. He has multiple scar marks on his body."

7 The General Practitioner recorded the results of his own clinical examination. He noted scarring, multiple small scar marks all over the body, a laceration mark over the right thumb, a laceration over the wrist near to the base of the thumb on the right hand, an irregular scar mark on the left wrist and two irregular circular shaped scars on the left side of the chest. The report says:

> "On examination he has scars which may be due to the history given.
>
> Since the torture he has been depressed and anxious with flashbacks and nightmares. He has noted an increase in the severity of his symptoms since being detained since it reminds him of his previous torture."

The assessment was as follows:

> "[The claimant's] narrative appears consistent with his injuries in my opinion as a GP. He has no acute physical disability in the detention centre that I am aware of which impacts his being in the detention centre. However, he does have significant mental distress from the incident, and he will be referred to the Mental Health Team, as per protocol, to be assessed.
>
> My opinion is that ongoing detention will have adverse effect on his mental health (worsening of pre-existing mental health symptoms of anxiety/depression) due to the history given and being detained with an uncertain status."

8 That assessment and report was the subject of a response by the Home Office in a letter of 8 September 2023 which indicated that the claim of torture had been considered in line with the guidance set out in Detention Services Order 09/2016, as well as the Adult at Risk Policy. The letter continued: "In relation to your claim of torture it is not accepted that your account, as set out in the report, meets the above definition." The letter said:

> "… there is a lack of evidence in the account that you were 'powerless to resist' as a result of control or subjected to 'severe' pain or suffering.
>
> As such, you do not meet the Adults at Risk Immigration Detention Policy on this basis.
>
> Other vulnerability factors that have been considered are the mental health concerns raised by the General Practitioner. This means that

> you will meet the Adults at Risk in Immigration Detention Policy at **Level 3**."

9 Then, under the heading: "Balancing risk factors against immigration control factors" the letter said:

> "A primary consideration when detaining any individual under immigration powers is the imminence of removal. You have been detained since 19 January 2023, and the current barriers to your removal to Iraq is your Asylum claim and an Emergency Travel Document. You completed your Asylum interviews on 14 September 2022, and a decision is now imminent. As such, dependent on the outcome of your claim, your removal can proceed within 2-3 months via an Emergency Travel Document. However, should it take longer than this then casework will review your detention."

There was then reference to a number of factors which the author of the letter considered to weigh against release from immigration detention, namely the risk of absconding, the history of offending and the fact that although an assessment at level 3 of the Adult at Risk Policy was an indicator that release should be given, the Policy also indicated that detention could be maintained based on an assessment of public protection risk, and the facts of the offending history. The overall balance was expressed in this way:

> "Although this is a finely balanced decision, it is considered that the immigration factors outweigh the vulnerabilities in your circumstances. This means that, following consideration of the vulnerability factors which have been made in your case, the risks associated with your release are enough to justify your ongoing detention. As a result of this, a decision has been made to maintain your detention at this time, but this will be regularly reviewed in line with the Detention General Guidance and the Adults at Risk Policy in Immigration Detention Policy."

10 On 28 November 2023, a monthly progress report in relation to the claimant stated: "On 10 November 2023 we were notified that your Asylum Claim was refused but you have been granted Humanitarian Protection" and further noted: "You have been assessed as meeting Level 3 of the Adults at Risk Policy on the basis of evidence provided." Under the heading "Current barrier to removal - Your asylum claim was refused we are currently seeking further guidance about your Protection grant." Having indicated there had been a review of the claimant's case, the claimant was notified that the decision had been taken that he should remain in detention to effect his removal from the United Kingdom.

11 The next matter that I should refer to is the claimant's application for bail which he lodged with the First Tier Tribunal on 14 December 2023. In response to that application the Secretary of State produced a bail summary, which indicated that on 10 November 2023 the claimant's asylum claim had been refused but humanitarian protection had been granted. It indicated that there were barriers in place which frustrated imminent removal. In relation to the Secretary of State's position in opposing immigration bail, it was stated that the claimant was aware that the Home Office was actively seeking his deportation from the United Kingdom, and for this reason he was unlikely to comply with the restrictions imposed if he were to be released at that time, that is to say in December 2023. There was further reference to his offending history and the risk of him committing further offences.

12 The decision of the First Tier Tribunal was given on 28 December 2023. That decision was to grant conditional bail on the claimant's application in these terms:

> "The Tribunal grants immigration bail to the applicant subject to the following condition(s):
>
> Residence
>
> The applicant will reside at an address approved by the Home Office.
>
> By virtue of paragraph 3(8) of schedule 10 of The Immigration Act 2016 this grant of bail will not commence until such address has been approved by probation."

There was a further monthly report notified to the claimant on 29 December 2023, which essentially maintained the position that had been set out in the November report to which I have referred.

13 On 3 January 2024, the claimant submitted an application for asylum support under section 95 of the Immigration and Asylum Act 1999. On 12 January 2024, as I understand it, that application was refused on this basis:

> "Your application has been refused as you are currently living in an Immigration Removal Centre. I am therefore satisfied that your essential living needs, including accommodation, are being met in full. You may submit a fresh application for support if you are released from detention or make an application for bail."

Reference was made to the claimant's appeal rights. Perhaps understandably in the light of that reasoning, and given the order of the First Tier Tribunal for conditional bail, the claimant lodged an appeal with the First Tier Tribunal against that decision. On 12 January 2024 the First Tier Tribunal renewed the grant of immigration bail subject to the same residency condition. On 22 January 2024 the claimant's solicitors made a further application for accommodation under Schedule 10 to the Immigration Act 2016. That application was in turn refused, as I understand it by an undated letter which is at pages 84 and 85 in the court bundle.

14 On 22 January 2024 the claimant's solicitors wrote under the pre-action protocol to the Secretary of State indicating their intention to bring judicial review proceedings in relation to his detention under Immigration Act powers, and indicating that they requested that the defendant urgently supply an address for the claimant so that he may be released without further delay. That letter received no response from the defendant and so on 25 January 2024 the claimant's solicitors wrote again, indicating the lack of response and seeking a response as a matter of extreme urgency contending that the claimant was unlawfully detained, that he had been recognised since September 2023 as a level 3 Adult at Risk, and that his release was clearly justified. On 26 January 2023, having received no response to that second letter, the claimant's solicitor wrote a third time to the defendant and invited an urgent response to the contentions that were being made on behalf of the claimant. The letter indicated that unless a response was received by noon on 29 January 2024 proceedings would be issued. In fact the refusal of the application for support under Schedule 10 of the Immigration Act 2016 was, as I understand it, made on 29 January 2024 – that was the refusal I referred to a few moments ago.

15 Against that background, on 29 January 2024 the claimant's solicitors filed the claimant's claim for judicial review of the defendant's continuing detention of him under Immigration Act powers. On the same day, the claimant applied for urgent consideration of an application for interim relief. That application sought an order requiring the defendant to release the claimant from immigration detention with safe release accommodation arrangements in place within two days of the date of the order.

16 The matter came before Ritchie J on the papers on 30 January 2024. Ritchie J gave case management directions requiring the defendant to file and serve a response to the application for interim relief by close of business on 6 February 2024; and that unless by 4 p.m. on that date the defendant informed the court and the claimant that the claimant had been released from detention to an address provided by the defendant, or that he would be so released by 4 p.m. on 6 February 2024, the application for interim relief was to be relisted for a hearing as soon as possible after 7 February 2024 as the court could arrange. He adjourned an application for the claimant's anonymity to be considered at that hearing. Also, on 29 January 2024 the claimant's solicitors applied for accommodation under section 4 of the Immigration and Asylum Act 1999 in the alternative to their contention that the correct route to support was, indeed, the section 95 route on the basis that the claimant's asylum claim remained undetermined.

17 On 30 January 2024, the defendant responded to the claimant's pre-action letters, and I simply quote paragraph 6 of the defendant's response:

> "Consequently, the decision to maintain detention is in line with the IJ bail conditional grant is maintained until his further application for accommodation support is completed and considered."

On 5 February this year, the defendant filed his response to the interim relief application in accordance with the directions of Ritchie J. Paragraphs 5 and 6 of that response stated:

> "5. The Defendant seeks to oppose the relief application on the basis that the Claimant is a failed asylum seeker having been removed from the United Kingdom in 2013. The Defendant cannot provide *Section 95* support as he is a failed asylum seeker. A *Section 4* application was received on 2 February 2024 which is currently being processed as a matter of priority.
>
> 6. If the *Section 4* application is granted then there is no need for an interim order in this case."

Then Paragraph 23:

> "Given the application for *Section 4* support has just been received, it is the Defendant's position that the balance of convenience lies with not making an injunctive order for release. The Defendant should not be required by an order for provision of accommodation when she is now processing his recent application."

I note that that response was written on 5 February 2024 and we are now at 21 February 2024. On 9 February 2024 immigration bail, subject to the same condition, was renewed for a third time. On 12 February 2024, the defendant withdrew his refusal of support under

section 95 of the Immigration Act, which in turn led to the ending of the then current appeal against refusal, which I mentioned earlier.

18 On 16 February, the defendant notified the claimant of his decision on the humanitarian protection and human rights claim. So far as the issue of humanitarian protection was concerned, the defendant found as follows:

> "43. It has been claimed that you will be subjected to unlawful killing on return to Iraq and that your removal would therefore be in contravention of Article 2 of the European Convention on Human Rights. However, as it is not accepted that you were abducted and ill-treated by members of the PUK or KDP, or that you would be of adverse interest to current or former members of the PUK or KRI on return to Iraq you have not demonstrated a real risk of such treatment, and therefore you would not be at risk of serious harm if returned to Iraq.
>
> 44. It has been claimed that if you are returned to Iraq you will be subjected to inhuman and degrading treatment and that your removal would therefore be in contravention of Article 3 of the European Convention of Human Rights. However, as it is not accepted that you were abducted and ill-treated by members of the PUK or KDP, or that you would be of adverse interest to current or former members of the PUK or KDP on your return to the KRI, you have not demonstrated a real risk of such treatment, and therefore you would not be at risk of serious harm if returned to Iraq.
>
> 45. Therefore, you do not qualify for humanitarian protection."

The defendant also found that the exclusion set out in paragraph 339D of the Immigration Rules applied and, accordingly, at paragraph 103: "The deportation of the claimant to Iraq would not be in breach of the European Convention".

19 On 19 February 2024, the claimant's solicitors lodge his appeal against that decision to the First Tier Tribunal. That appeal is now pending. On that same date the defendant notified the claimant's solicitors of the grant of accommodation support under section 4 of the 1999 Act stating that:

> "Thank you for your application for support under section 4(2) of the Immigration and Asylum Act 1999. This letter confirms that your application has been granted. Once accommodation has been sourced we will write to advise you of the arrangements made for you to travel to your dispersal location."

The next review of the claimant's immigration bail is due on 28 February 2024. The claimant remains in detention, as I understand it, at IRC Colnbrook.

20 The principles upon which the Administrative Court considers applications for interim relief pending the hearing of a claim for judicial review were summarised in *R (on the Application of Medical Justice) v Secretary of State for The Home Department* [2010] EWHC 1425 (Admin) at [6] and [7]. The defendant's response to the application for interim relief in the

present case helpfully summarised the position at paragraphs 15 and 16. At paragraph 16 Mr Howarth, who appeared on behalf of the defendant before me today, said: "The key issue here is the balance of prejudice as between the defendant and the claimant." He further submitted that it was necessary to pay close regard to the potential impact on third parties in addition to the wider interests, including the desirability of allowing public authorities to implement their policies and decision, and he referred to authority in support of those submissions. In his skeleton argument in support of the application for interim relief, Mr Toal, on behalf of the claimant, stated that he took no issue with the summary of those principles set out in Mr Howarth's response on behalf of the defendant.

21 Dealing first with the question as to whether there is a serious issue to be tried, it seems to me that that is the case here. Indeed, I did not understand Mr Howarth to challenge that this was so. The claimant has been held in immigration detention since January 2023. He has been assessed as being an adult at risk at level 3 in detention since early September 2023. At the present time there appears to be no realistic prospect of early removal and, indeed, no prospect of early removal appears to have been present during the period of his detention under immigration powers, certainly not since the assessment of his risk at level 3 in early September 2023. It seems to me that there is a serious issue to be tried as to whether or not, applying the established principles in the *Hardial Singh* case, his detention was, or at least has become, unlawful over the course of the period since January 2023. The focus therefore turns to the balance of prejudice.

22 By way of context I note that bail on condition of the claimant being released into approved accommodation has been in existence since 28 December 2023, and bail has been renewed twice since that date on the same basis. There was an application on behalf of the claimant for accommodation support at the end of December 2023; that was made initially under section 95 of the 1999 Act. Following refusal of that application it was renewed, including in the alternative on the basis of section 4 of the 1999 Act, and as I have indicated that application was granted on 19 February 2024. It seems to me that those matters are of significance in considering the matter by reference to the so-called grace period, which is referred to in the Court of Appeal's decision in *R (AC (Algeria)) v Secretary of State for The Home Department* [2020] EWCA Civ 36, see in particular [33].

> "It is clear from that review [1] that the 'grace periods' are granted for practical purposes, reflecting the facts of each case and applying a test of reasonableness; [2] that this court has declined to set any overall or absolute limit to such a period as a 'long-stop' for all purposes; [3] that the periods have more usually been short, often a few days, but running up to a month, and [4] that there has been some tendency for the periods to increase."

In *R (Andrei Daniel Merca) v Secretary of State for The Home Department* [2020] EWHC 1479 (Admin) Fordham J took account of the guidance given by the Court of Appeal in *AC* in an application for interim relief of the kind that is before me today. At [12] he said this:

> "I have in mind the authorities in this area. They include the recent Court of Appeal decision on 'grace periods' in *AC (Algeria)* [2020] EWCA Civ 36 where at paragraph 43 the Court of Appeal described 2 weeks as 'ample' in those circumstances. I am conscious that the timeframe of this coming Friday is 2 weeks from both Cavanagh J's order and GLD's withdrawal of the section 95 refusal. We are therefore already in the middle, in effect, of a 14-day period, in which all steps

> needed to be being urgently taken. I am quite satisfied that, looking at the matter as at today, any period beyond 7 days would be unjustified . . ."

He then went on to refer to other cases. In paragraph 11 of his judgment he said:

> ". . . In my judgment, the time has come where it is both justified and necessary that there be a court order, and that the order should specify a tight time-frame during which all arrangements must now be made to secure the claimant's release. My order is intended to fix a deadline which is intended to be complied with. My intention is that all those concerned with decision-making and relevant arrangements work to that timetable."

23 In my judgment, similar considerations apply in the light of the factual background and procedural history to the present application. I have in mind in particular the fact that the claimant has been assessed as an adult at risk level 3 since September 2023, the fact of a pending appeal before the First Tier Tribunal, and the fact that he has been awarded conditional immigration bail on three occasions since the end of December 2023. I also take account of the defendant's concerns as to his risk of absconding, and of his offending history which is, on any view, serious, but it seems to me that the balance of prejudice here does favour instilling that discipline to which Fordham J referred in the *Merca* case.

24 It is, in my judgment, clear that there is no realistic prospect of removal of the claimant from this Country by way of deportation in the near future, certainly with his appeal pending before the Immigration Appeal Tribunal. I am also conscious of the fact that the basis upon which he was refused humanitarian protection in the recent decision of the Secretary of State was that in his judgment, the claimant's account of his mistreatment in Iraq, following his earlier deportation, was essentially untrue. As Mr Toal pointed out to me, in reaching that judgment in his closely reasoned decision to refuse him humanitarian protection, the defendant appears not to have taken account of the rule 35 assessment letter from the General Practitioner in August of last year. It does seem to me that, at least prima facie, it will be necessary for the First Tier Tribunal to consider the medical evidence and to consider the fact that the defendant clearly has marks on his body which are consistent with him having been ill-treated. They may be explained by other reasons, but they are consistent with him having been ill-treated, which in turn is consistent with his account of what happened to him when he returned to Iraq. In short, this is a case where the appeal cannot be considered to be entirely and obviously unmeritorious. It is, of course, entirely a matter for the First Tier Tribunal to make its own judgment on the merits of the evidence that is placed before it.

25 For those reasons I am persuaded that the balance of prejudice does favour the grant of an order by way of interim relief. It is important that an order of this kind does not impose such a challenging timetable that it becomes effectively impracticable to comply with it. Therefore, rather than the two days that was sought in the claimant's initial application I have decided that I should make an order requiring the release of the claimant from detention under Immigration Act Powers by no later than 4 p.m. on Wednesday, 28 February 2024.

26 In *Merca*, Fordham J granted liberty to apply. It seems to me that it is impossible to rule out, even allowing essentially a week for the defendant to comply with the order that I make, that there may be some supervening event which, despite his best efforts and those of his officials, renders it impracticable to fulfil my order within that timescale. In those

circumstances it seems to me appropriate also to grant liberty to apply in this case, but I do so expressly on the understanding that Fordham J sets out in paragraph 14 of his judgment in *Merca*, that is to say:

> ". . . I must leave the case with the confidence that the authorities concerned will address and take all possible steps to resolve this matter, and the confidence that the claimant's representatives will deal sensibly with any particular difficulty that is raised by the Secretary of State. . ."

In other words, the court will be entirely unpersuaded by any subsequent application made pursuant to liberty to apply which, on analysis, is revealed to be a delaying tactic or is not supported by cogent evidence that compliance with my order was, in the circumstances, simply not practicable. I put it as high as that.

27 The other matter that is before me today is the adjourned application for anonymity, which I consider in accordance with the well-established principles for consideration of applications of that kind under CPR rule 39.2(4). In support of that application Mr Toal drew my attention in particular to the claimant's witness statement, which was signed on 20 December 2020. The statement attests in some detail to his experiences on his return to Iraq following his deportation in 2013: paragraphs 9 to 15 inclusive, taken at face value, certainly raise a real risk that if the claimant's identity were to be publicised through these proceedings, and he were subsequently to be deported back to Iraq, he would be singled out for ill-treatment. The balance between open justice and those cases in which anonymity is justified is essentially a case-specific balance. In this case I am satisfied that for the reasons given by the claimant in his application for anonymity, supported by what is said in the witness statement to which I have referred and as submitted by Mr Toal in oral submissions before me, that the right course is to direct anonymity. I should say, for the avoidance of any doubt, that I have taken the claimant's statement at face value, and on that basis it provides a prima facie indication of a state of real risk were he to be returned to Iraq following publicity for this claim and, indeed, for his asylum claim. Whether, in fact, what he says in that statement is to be taken as accurate and credible will, no doubt, be considered carefully by the First Tier Tribunal in its consideration and determination of his appeal.

MR JUSTICE MOULD: Mr Toal, I think that concludes my ruling on the two matters that are before me for consideration, but you wanted to raise the question of costs I think?

MR TOAL: (Not near to a microphone) Indeed, my Lord, but I am sorry if I raised it prematurely.

MR JUSTICE MOULD: Not at all.

MR TOAL: I do ask that he has his costs for making this application.

MR JUSTICE MOULD: Yes.

MR TOAL: First, I would say all of the matters upon which you have reached the decision that you reached were canvassed repeatedly with the Secretary of State in detail in pre-action correspondence, then in the application, the grounds for judicial review, and the grounds for interim relief. Also, and importantly I would say, in the letter of 8 February, which is at page 86 in the application bundle – a letter from my instructing solicitor.

MR JUSTICE MOULD: Yes.

MR TOAL: Which again, very clearly set out all of the reasons why the Secretary of State should be acting with alacrity to provide accommodation to which the applicant could be released. I would say in the light of that correspondence the Secretary of State clearly knew that she had to, and should have acted far more quickly than she has done, but she, or he, could and should have either provided accommodation, or provided a date by which accommodation would be available without us having to come to court to ask you for the order that you have made.

MR JUSTICE MOULD: Yes, that is the basis of your application.

MR TOAL: It is the basis of my application. I would ask you to take a similar approach to that taken by Fordham J in the *Merca* case----

MR JUSTICE MOULD: Yes.

MR TOAL: -- at paragraph 15 where he made an order for costs in respect of the application.

MR JUSTICE MOULD: Is your client legally aided?

MR TOAL: He is, my Lord, yes.

MR JUSTICE MOULD: Thank you very much. Mr Howarth?

MR HOWARTH: (Not near to a microphone) First, the principle of costs follow the event – my learned friend has been successful on the application, and I do not seek to resist costs. On that basis, I do not think the Secretary of State's position can be advanced any further given that principle of costs have been met.

MR JUSTICE MOULD: That is very fair, Mr Howarth, thank you very much, yes.

MR HOWARTH: As a provisional offer of assistance, I received an email during the currency of your Lordship's determination that a property will likely be sourced in Reading, or at least considered for approval, by 27th, so hopefully in Reading that is for the 20th, well, in Reading, that is for the 20th given your Lordship's order.

MR JUSTICE MOULD: That reassures me that it is very unlikely that it will be necessary for either party to take advantage of liberty to apply, yes, good. Thank you. I do not need to ask you for any further help, Mr Toal. I shall order that the defendant shall pay the claimant's costs of this application, to be subject to a detailed assessment in the usual way if not agreed, and the usual order in relation to the claimant being a legally assisted person.

Could I ask, please, gentlemen, that you agree, if you can, a form of order, and that you submit it as soon as you can to the court. Perhaps once I have risen you could just get my clerk's email address from the Associate and communicate with her. Is there anything else?

MR TOAL: Not from me, my Lord.

MR JUSTICE MOULD: I am very grateful to you both for your submissions, both in writing and orally, and for taking so practical an approach to this application.

MR TOAL: Thank you very much, my Lord.

MR HOWARTH: I am grateful.

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