IN THE HIGH COURT OF JUSTICE **AC/2021/LON/002527**
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

B E T W E E N :

THE KING
(on the application of THE DUKE OF SUSSEX)

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

COSTS ORDER

UPON considering (1) the claimant's submissions dated 4 March 2024 and accompanying materials; (2) the defendant's submissions dated 11 March 2024 and accompanying materials; and (3) the claimant's reply dated 14 March 2024

IT IS ORDERED THAT

The claimant shall pay the defendant 90% of the defendant's reasonable costs, to be assessed if not agreed.

REASONS

1. The order of 28 February 2024 provides that the issue of costs "shall be determined on the papers or (if so directed) at a hearing. The claimant contends that a hearing should be held "especially in light of the complex procedural background against which the costs issue arises." The claimant points to the "substantial number of documents that concern (in particular) D's conduct during the litigation and its relevance to costs". The claimant says it is not uncommon to have an oral hearing for consequential matters, citing R (HM) v SSHD [2022] EWHC 695 (Admin).

2. I am entirely satisfied that the issue of costs can be justly resolved without a hearing. The relevant documentation has been filed and the parties' written submissions are detailed and extensive. I can see no apparent *lacuna* as to which I might need additional elucidation. HM was a very different case, involving "… a failure of governance which allowed an unlawful policy to operate for an unknown length of time prior to November 2020. When that policy

was challenged by lawyers acting on behalf of the claimants in these cases in November 2020, those responsible for it failed to explain it clearly to the Government Legal Department lawyers and counsel who was instructed in the case" (paragraph 10). That issue required a hearing for its proper determination, including how the admitted breaches of the duty of candour should be addressed in terms of costs. As I shall explain, the issues in the present case are much narrower and there is no suggestion of any failure of the kind described in HM. I accordingly agree with the defendant that it would be disproportionate to hold a hearing in the present case, particularly bearing in mind that part of any such hearing might need to be held in private.

3. The claim for judicial review was dismissed on all the pleaded grounds. Ordinarily, the defendant, as the successful party, would be entitled to have the claimant pay the defendant the latter's costs in defending the claim. The claimant, however, submits that the claimant's costs liability to the defendant should be subject to "a reduction of 50-60% … because of the way in which documents and information were disclosed by" the defendant. Despite pre-action requests for information about RAVEC's procedure and the categories of individual to whom protection is provided by RAVEC, the claimant says the defendant "chose not to disclose essential documents and information until December 2022, when the Detailed Grounds of Resistance … and evidence were served." This meant that the claimant had to amend his grounds of claim and file further evidence. The claim thereafter was focussed on the amended grounds of challenge. The claimant submits that the defendant has not provided a good explanation for the late disclosure. The order for costs should reflect "the unjustified, late disclosure; the additional costs and delay and his partial success" in the judicial review.

4. It is convenient to deal first with the submission that the claimant achieved "partial success" in his judicial review claim. His reasons for so submitting are that the judgment agreed with the claimant that RAVEC's Terms of Reference set out its policy; that the Terms of Reference were justiciable by way of judicial review; that the defendant should not be accorded deference because the subject matter concerned national security and international relations; that the relevant standard for considering why a decision-maker deviated from policy was not *Wednesbury* irrationality; that permission to bring judicial review should be granted in respect of grounds 6A, 6B and 6C; and that an extension of time should be granted.

5. There is no merit in this "partial success" submission. As I have already said, the judicial review claim failed on all of the pleaded grounds, including grounds 6A, 6B and 6C. The fact that the court did not accept each and every submission of the defendant as to the path to take towards dismissal of the claim does not alter the fact that the claimant comprehensively lost. The case is not one where an issues-based costs order could possibly be justified. The granting of permission in respect of certain grounds has to be seen in the context that the judicial review proceeded in part on a "rolled-up" basis. The extension of time merely meant that the relevant

ground fell to be considered in substance; but when it was, it failed.

6. I turn to the issue regarding disclosure of documents and information. The claimant says that, at the pre-action stage of the proceedings, the only publicly-available document describing RAVEC's functions was that containing the 2008 Terms of Reference. In his PAP response letter of 6 September 2021, the defendant did not inform the claimant that the 2008 Terms of Reference were no longer in force; and that those in force at the time of the impugned decision of 28 February 2020 were dated 2017. As at September 2021, the relevant Terms of Reference were those of 2021. The PAP response also made no reference to certain individuals within what was later described in the witness evidence as the Other VIP Category. A request by the claimant in a letter of 8 September 2021 for a copy of RAVEC's decision-making policy was met with the response that there was no such document. A letter of 15 September 2021 asking the defendant if there were "any other exceptions to the policy" and about various individuals who fell within the categories set out in the PAP response letter received the reply of 17 September 2021 that "it would be inappropriate to discuss the protective measures in place for any other individual".

7. It was on this basis that the claimant's statement of facts and grounds was filed on 20 September 2021. On 25 February 2022, the defendant informed the claimant for the first time that the 2008 Terms of Reference had been superseded. The new Terms of Reference were said not to be publicly available. The claimant did not know, however, that the impugned decision had been taken at a time when the 2008 Terms of Reference were no longer in force; nor did he know the content of the 2017 and 2021 Terms of Reference. The defendant's summary grounds of defence filed on 7 April 2022, did not describe the content of the two later Terms of Reference and did not reference all those who were subsequently said to be within the Other VIP Category. The claimant says that this last omission was relevant to grounds 1 and 3, in respect of which Swift J refused permission to bring judicial review.

8. The claimant says it was only after permission was granted in respect of certain grounds that the 2021 Terms of Reference were disclosed in an unredacted form. This occurred on 26 August 2022, in the context of other proceedings. It was not until December 2022, upon receipt of the defendant's detailed grounds of defence, that the claimant learnt about the 2017 Terms of Reference, the Evaluation Criteria and the existence of the Other VIP Category. All of this led to the filing of grounds 6A, 6B and 6C.

9. A letter from the defendant dated 16 February 2024 states that there was no requirement to disclose the Terms of Reference earlier because "RAVEC's documents and particularly the Terms of Reference simply did not apply to the Claimant". The claimant says that the defendant's disclosure obligations are not determined by the defendant's views on the merits of the claim. It is sufficient to trigger the duty of disclosure if, on an objective analysis, the

Terms of Reference were relevant to the claim. Whether something is relevant is not necessarily determined by whether it founds or assists a ground that is in the event unsuccessful.

10. The claimant submits it is no answer that the PAP response and summary grounds provided a general explanation of RAVEC policy because the Terms of Reference were highly material. They addressed a range of issues, including RAVEC's process and, in any event, the defendant's explanation of the RAVEC policy/protected categories was incomplete. Further, no explanation has been given of why the defendant did not correct the claimant's misapprehension regarding the continuing relevance and application of the 2008 Terms of Reference.

11. So far as concerns the Other VIP Category, the explanation in the PAP response and summary grounds of defence was materially incomplete. The defendant's letter of 16 February 2024 argues that, given the sensitivity of the existence and content of the Other VIP Category, it would have been "wholly inappropriate" to address it at any earlier stage. The claimant responds that the names of the persons could have been provided in the context of a confidentiality ring, as eventually occurred; and that "sensitivity" does not explain why there was incomplete information in the PAP response/summary grounds about the categories of persons provided with protective security. The existence of the category, as opposed to the persons covered by it, is not confidential.

12. The claimant submits that the defendant's late disclosure has resulted in significant additional costs for both parties. As a result of the lateness, the claimant has had to amend the grounds of claim and the defendant has had to amened the detailed grounds of defence. Neither of these steps should have been necessary at this stage.

13. The defendant points out that he has not breached any direction or order of the court and that, unlike cases such as R (JM) v SSHD [2021] EWHC 2514 (Admin), relied on by the claimant, the matters complained of were on any view addressed well before the hearing in December 2024. The defendant submits that, in fact, there is no substance in the complaint because there was, in truth, no lateness. CPR 54.14(1) provides that written evidence is to be served with any detailed grounds, following the grant of permission. The first reference to the defendant filing documents comes in PD54A 9.1(3), which provides that where a party filing Detailed Grounds intends to rely on written evidence or on documents not already filed, he must provide a paginated and indexed bundle containing that evidence and those documents. PD54A 10.1 states that "In accordance with the duty of candour, the defendant should, in its Detailed Grounds or evidence, identify any relevant facts, and the reasoning underlying the measure in respect of which permission to apply for judicial review has been granted." The recognition that this may justify a claimant amending their claim is addressed by PD54A 11.1-11.4. Thus the defendant says "it is the standard and the expectation of the applicable Rules

that the Defendant's evidence (including documents) will be provided with the Detailed Grounds, after permission has been granted."

14. The defendant points to case law such as R (Hoareau) v SSFCA [2018] EWHC 1508 Admin) for the principle that the duty of candour applies in a more attenuated form prior to the grant of permission; and is more extensive afterwards. That is why disclosure of documents or the provision of evidence prior to permission (and even more so pre-action) is the exception and not the norm. That, the defendant says, is precisely what happened in the present case. There was no pleaded ground which alleged inconsistent treatment or which directly required the disclosure of the Other VIP Category, or which relied upon the terms (or lack of terms) of any RAVEC process such as might be set out in the Terms of Reference. This, the defendant says, "is the duty of candour operating as it should."

15. The defendant says that he wished to set out a full and complete account of RAVEC, how it operated, and the categories of persons within its cohort "at the juncture provided by the CPR: in his evidence addressing the claim and placing the grounds of challenge in their factual context." The defendant did not consider that "a drip-feed of documents and correspondence was the proper approach … including because a holistic view of the evidence in its near-final form was needed to take advice and decisions on what confidentiality protections were needed and the form in which they should be most appropriately sought". Whilst "it is almost always possible to provide disclosure at an earlier stage … no duty obliges the Defendant to do whatever is possible at the earliest possible stage. On the contrary, the CPR and the duty of candour set the scope of those obligations and situate the duty to serve evidence and documents at a single point in time: the post-permission service of the Detailed Grounds." The defendant considers that the gravamen of the claimant's complaint is that the defendant simply did not provide the claimant with material upon which the claimant ultimately chose to rely at trial at an earlier point in time, which would have been more convenient for the claimant. That, the defendant says, is not unreasonable conduct, such as to warrant penalisation in costs.

16. There is no doubt that the duty of candour does apply before permission is granted to bring judicial review. As the Divisional Court held at paragraph 16 of HM:

> "There has sometimes been some doubt as to whether the duty of candour applies before the permission stage or before the stage when proceedings are issued. The Treasury Solicitors Guidance, says this:
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> "The duty of candour applies as soon as the Department is aware that someone is likely to test a decision or action affecting them. It applies to every stage of the proceedings, including letters of response, under the pre-action protocol, summary grounds of resistance,

detailed grounds of resistance, witness statements and counsel's written and oral submissions."

We proceed on the basis that that guidance accurately reflects the law..."

17. In paragraph 13 of Hoareau, the Divisional Court, citing R v Lancashire County Council ex parte Huddleston [1988] 2 All ER 941 at 945, held that "There is duty of candour and co-operation with the court, particularly after permission to bring a claim for judicial review has been granted." (my emphasis)

18. What the duty of candour requires in terms of the disclosure of information concerning a decision etc of a public body will be highly fact and context-specific. That is true, both before and after the grant of permission. In the present case, I consider that the defendant can properly be criticised for failing to inform the claimant of the existence of the 2017 Terms of Reference until December 2022. The defendant was aware that the claimant knew of the publicly available 2008 Terms of Reference. The claimant mentioned them in his PAP letter to the defendant. By not informing the claimant about the 2017 Terms of Reference, the defendant accordingly let the claimant labour under the misapprehension that the decision of 28 February 2020 had been taken at a time when the 2008 Terms were operative. Given the differences between the two sets of Terms, this misapprehension was material. The claimant specifically asked on 8 September 2021 for a copy of "RAVEC's decision-making policy" but was met with the response that there was no such document. This appears to have been because the defendant did not consider the Terms of Reference to be a "policy" and so they were not relevant to the claimant's potential challenge. I agree with the claimant that whether information is relevant to the challenge has to be judged objectively, in the sense that the defendant should ask himself whether (despite his own view) there is a real likelihood that the other party could deploy the information to advance his case and/or undermine the defendant's case. The fact that the court may ultimately decide that the information, whilst relevant, was not such as to lead the court to find in favour of the claimant does not mean the information could be withheld, although that fact can have a part to play in deciding whether and, if so, what sanctions might flow from the failure to disclose. Thereafter, there was further delay in providing the claimant with the 2017 Terms of Reference, as described in paragraphs 7 and 8 above.

19. So far as concerns the Other VIP Category, the claimant's request of 15 September 2021 to be informed if there were "any other exceptions to the policy" was met with the response that it would be "inappropriate to discuss the protective measures in place for other

individuals". I agree with the claimant that the existence of a category or categories of persons, as opposed to any identities, could have been communicated earlier to the claimant. It was not until the defendant filed Detailed Grounds of Defence in December 2022 that the claimant learnt of the existence of the Other VIP Category, through one of the defendant's witness statements.

20. It is important to guard against imposing a disproportionate burden on a defendant at the pre-action stage of a judicial review and encouraging speculative threats of action which are no more than fishing expeditions on the part of a potential claimant. The claimant's pre-action correspondence therefore needs to highlight an issue which, applying the criteria described in paragraph 18 above, merits an appropriate response from the defendant. As I have sought to emphasise, context is all-important. I also accept that, in many cases, the issue is unlikely to be sufficiently plain until the statement of facts and grounds is filed and the defendant is responding by way of summary grounds of defence, at which point amendment of the grounds may be necessary without there being any fault on the defendant's part.

21. The defendant submits that the RAVEC process detailed in the 2017 Terms of Reference did not need to be disclosed at any earlier stage than the filing of the detailed grounds of defence because there was no pleaded ground that alleged inconsistent treatment between the claimant and others or a pleaded ground that relied upon the terms (or lack of terms) of any RAVEC process, such as might be set out in the Terms of Reference. I agree with the claimant that his ground 1 did, in fact, contend that he should have been treated as "another exceptional category" and that the failure to do so was unlawful. As for process, ground 4 argued that a person in the position of the claimant was entitled to be informed about what RAVEC's policy was and how it operated.

22. It will be evident from what I have said above that I do not consider the defendant can rely upon PD54A in order to neutralise the claimant's complaints about late disclosure (see paragraph 13 above). Taken to its logical conclusion, the defendant's submission risks hobbling the duty of candour in relation to any earlier point in time. What the PD serves to show is that the duty of candour will be fully engaged at the point when the detailed grounds are due and that care should be taken before deciding that the duty has been breached by non-disclosure at an earlier point in time. This is made pellucid at paragraph 15.3.2 of the Administrative Court Judicial Review Guide 2023, which states that "…what is required to discharge the duty at the

substantive stage will be more extensive than what is required before permission has been granted." Applying the requisite care, I have concluded that the claimant was entitled to earlier disclosure of the relevant RAVEC Terms of Reference and the existence of the Other VIP Category.

23. A more difficult question is when the defendant defaulted on his duty. I refer to what I have said at paragraph 20 above. I am very conscious of the dangers in placing undue demands on those involved in preparing responses to pre-action protocol letters from claimants. It should be only in clear cases that the court is likely to find that there has been a default at this point, of such a kind as to warrant some form of sanction. Not without hesitation, I have concluded that, on the facts as described above, the defendant should have disclosed the existence and contents of the 2017 Terms of Reference and the existence of the Other VIP Category, before the claimant filed his statement of facts and grounds. Both matters were sufficiently engaged as a result of the claimant's pre-action submissions.

24. I have spoken so far in terms of the duty of candour. The defendant, however, says that the claimant's submissions of 4 March 2024 do not allege a breach of this duty. In the claimant's reply, it is said that "The appropriate label for D's conduct is – C submits – ultimately a matter for the Court. However, it is wrong to suggest that C considers that there was no breach of the duty of candour."

25. The defendant points out that in JM, Farbey J decided that a failure by the defendant to produce material until very late in the proceedings was not a breach of the duty of candour, albeit that it might have consequences in terms of costs:

> "84. Mr Buttler submitted that the defendant's failure to disclose the ministerial submissions, the September 2020 decision and the October 2020 decision until the day before the hearing amounted to a breach of the defendant's duty of candour which applies in judicial review proceedings. The process of assisting the court by disclosing all relevant documents – including those which do not assist the defendant - had gone wrong here.
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> 85. Mr Buttler pointed to the fact that the Claim Form had been issued in December 2020. It ought to have been obvious to the defendant from the outset of the claim that she needed candidly to explain the decision-making process and her decisions from March 2020 (when Covid restrictions began) to the October 2020 decision. That explanation ought to have been set out in evidence and in the detailed grounds of defence.
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> 86. Mr Buttler submitted that the breach of duty was exacerbated because the claimant's solicitors had as long ago as 28 October 2020 made a formal request for disclosure of

the decision documents for the purposes of the *MK* case, which had covered the same legal ground. Given that the solicitors had expressly requested the material on behalf of MK, the Government Legal Department ("GLD") must have made enquiries of the defendant's officials in relation to that request, albeit that the claimant's solicitors had received no response. Mr Buttler submitted that there is a suspicion that this material was deliberately withheld by the defendant because it was thought unhelpful to her case. I should at any rate be slow to find that such late disclosure was the result of innocent error without first making an inquiry of GLD and directing a solicitor within GLD to provide a full explanation in a witness statement.

87. On behalf of the defendant, Mr Payne apologised for the lateness of the disclosure. The solicitors' request for disclosure in *MK* related to a claim that had been withdrawn and that had not challenged the October 2020 decision. There was no direct match between the GLD response to the disclosure request (which was accurate in the context of the *MK* case) and the documents which had as a matter of candour to be placed before the court in the present case. The duty of candour must be assessed in the context of this claim and not other proceedings.

88. Mr Payne submitted that the disclosure of the letter to Chief Executives of 27 October 2020 (which conveyed the October 2020 decision) would as a matter of law have sufficed to discharge the defendant's disclosure obligations but he accepted that, for the sake of transparency and context, it was right and proper for the October ministerial submission and decision to be disclosed. While the focus of the claim was the October decision, it was right and proper for the August submission and the September decision to be disclosed once the material had come to the attention of the defendant's lawyers.

89. I was invited to separate the lateness of disclosure from non-disclosure. The defendant had disclosed the documents - albeit late - and so the court had not in the event been misled by anything done by the defendant. The reason for lateness was that, in the difficult working conditions of the pandemic, there had been more than one solicitor involved in the case within GLD. Successive solicitors had been involved for short periods of time. The short-term solicitors had lacked the knowledge to know what should be included in the case papers. Mr Payne asked me to conclude that their lack of knowledge was understandable. Having received an explanation as to what had happened, which had been provided by counsel on instructions, there was no need for anyone at GLD to provide a witness statement.

90. The ordinary rules of disclosure of documents in civil litigation are not automatic in judicial review but public authorities have a "self-policing" duty to assist the court with full and accurate explanations of all the facts relevant to the issues which the court must decide (*R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812, [2018] 4 WLR 123, para 106). The underlying principle is that "public authorities are not engaged in…trying to defend their own private interests. Rather they are engaged in a common enterprise with the court to fulfil the public interest in upholding the rule of law" (*R (Hoareau) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWHC 1508 (Admin), para 20).

91. There was no duty on the defendant to provide the emails or the ministerial submissions per se; but the substance of the information in the documents which shed light on the decision-making process in my judgment fell to be disclosed as a matter of candour.

> The late disclosure was regrettable: the court had to list a further hearing in part so that the claimant's lawyers would have a proper opportunity to consider fresh documents. I accept the explanation for lateness which Mr Payne provided and would not regard it as proportionate to require a confirmatory witness statement from GLD. The explanation does not amount to a good reason for the delay.
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> 92. On the other side of the scales, the documents were in the end submitted by the defendant. The court was not misled. In the circumstances, I shall not treat the late disclosure as a breach of the duty of candour. I accept Mr Buttler's submission that the consequences will need to be revisited when the court determines questions of costs. I should record the high standard of professional conduct displayed by Mr Payne and Ms Idelbi in dealing with their client's delay."

26. I confess to some unease at the suggestion that a party can be in default in not disclosing material in a judicial review, without in some way breaching the duty of candour and co-operation. There is, after all, no duty of disclosure, in the absence of a direction or order of the court. As we have seen, PD54A 9.1(3) is concerned with evidence on which a party intends to rely, rather than something which must be disclosed under the duty of candour because it is capable of supporting the other party's case. PD54A 10.1 is expressly reflective of the duty of candour. Whether the court has been misled is an incomplete touchstone for identifying if there has been a breach of the duty of candour. In most cases, the court will be in possession of the full facts by the time of the substantive hearing. To that extent, it may not have been misled. There may still, however, be a breach of the duty that needs addressing because of what has occurred (or not) at an earlier point. I therefore consider that the defendant's failures fall to be treated as a breach of the duty of candour. The important point that emerges from JM is, however, that there can be different degrees of culpability and different consequences arising from such a breach, the identification of which must inform the court's decision as to what, if any, sanction should follow. It is to this that I now turn.

27. So far as culpability is concerned, I do not consider that it has begun to be shown that there was any bad faith or improper motive on the part of the defendant in not disclosing the 2017 Terms of Reference. The failure appears to have resulted from adopting a subjective view of the nature of those Terms. So far as concerns the Other VIP Category, the initial refusal appears to have been driven by an entirely understandable concern to protect the identities and, thus, safety of the persons concerned, albeit that there was a failure to realise that relevant information could be imparted at that point, at least, without disclosing identities. It is unclear whether the stance adopted in the defendant's submissions of 11 March 2024 was in the minds

of those responsible for reacting to the PAP letter and the statement of facts and grounds but, if it was, it was at worst mistaken.

28. I am not persuaded that the consequences of the defendant's breach have been as severe as the claimant asserts. I agree with the defendant that the evidence in the shape of the claimant's second witness statement is mostly concerned with other matters of reply that would have been raised in any event. Furthermore, significant parts of the amended grounds would have been included by amendment in any event, because they concerned later decisions of RAVEC in 2022 and 2023.

29. The claimant says that if the relevant information had been provided at the pre-permission stage, "the costs incurred would have been considerably lower. C would have been in a position to plead the claim on an informed basis; the permission hearing may not have been necessary; the hearing of the substantive claim would have taken place much sooner … A key reason for the delay is the late disclosure and the amendments that were required to C's case thereafter …".

30. There is a great deal of unsupported speculation in these submissions. It is important to observe that this judicial review has had an extremely complex procedural history. Part of this was the claimant's initial application for the entirety of the claim to be confidential and his subsequent approach to confidentiality restrictions leading to a hearing before Swift J in 2022, which was the subject of sufficient judicial criticism that it merited a costs order and which, in any event, took time and effort to resolve. The complaint that the defendant's failures have delayed the resolution of the claim has to be set against the important fact that the claimant significantly delayed bring his challenge to the decision of 28 February 2020 and that the court accordingly had to decide whether to exercise its discretion to extend time. I accept the defendant's submission that the delay has generally made it more challenging to assemble his witness evidence, not least because certain individuals had moved on in the interim. Whilst I accept that the confidentiality ring process might have commenced sooner, had the defendant disclosed earlier the existence of other categories of persons under the RAVEC purview, there is, again, simply no satisfactory way of telling how much of the overall delay is attributable to this issue.

31. The present case also is far removed from those where a breach on the part of the defendant has meant that a hearing has had to be stood out or adjourned; or where a further hearing has

been rendered necessary. The relevant information was supplied long before the substantive hearing and the proceedings were subsequently case-managed in the light of the amended grounds of claim and defence.

32. The defendant prays in aid the following matter. In November 2023, the claimant breached the terms of the confidentiality ring order by emailing certain information to a partner of Schillings, who was not within the confidentiality ring, and to the Rt Hon Johnny Mercer MP. Fortunately, the breach was almost immediately detected by Ms Fatima KC, who acted promptly to inform Ms Afia of Schillings. She in turn informed the defendant (via the Government Legal Department) as well as taking action to minimise the effects of the breach. The defendant nevertheless says that these breaches (for which the claimant has apologised) caused the defendant to incur unnecessary costs, as can be seen from the correspondence which ensued.

33. The claimant submits that the defendant did not raise any issue relating to costs at the time of the claimant's breaches. The defendant's submissions state that he would not otherwise have raised such issues but does so now, as the claimant "positively asserts that the approach to costs must '*do justice between the parties'*".

34. Whilst I do not wish to be taken as minimising the seriousness of the breach, I do not consider that it bears upon the determination of the costs issue in the same way as the matters addressed at paragraph 30 above.

35. For the reasons set out above, I am in no doubt that the claimant's submission that his costs liability should be subject to a reduction of 50-60% is unsupportable. For the avoidance of doubt, the reasons include the finding that the claimant has not been partially successful in the substantive claim. I nevertheless conclude that the defendant's breaches are, in all the circumstances, sanctionable. They have resulted in the case being largely contested by reference to new grounds, which have not been subjected to the normal permission process. The breaches resulted from misapprehensions on the part of the defendant as to the duty of disclosure, which this decision has had to address at some length. It is therefore right that there should be a modest but still significant reduction in the award of costs to the defendant. I consider that the appropriate reduction is 10%.

Sir Peter Lane