Neutral Citation Number: [2025] EWHC 1979 (Ch)

Case No: BL-2024-001772

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29/07/2025

Before :

SIR ANTHONY MANN, SITTING AS A JUDGE OF THE HIGH COURT

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Between :

(1) ARTHUR VIVIAN GEORGE **(2) WILLIAM THOMAS STOCKLER** **(3) ALEXANDER THOMAS STOCKLER**	**Claimants**
- and -	
THE CORPORATION OF THE HALL OF THE ARTS AND SCIENCES	**Defendant**

- -
- -

David Sawtell and Alexander Burrell (instructed by direct professional access for the claimants
Simon Taube KC and James Kirby (instructed by **Bates Wells and Braithwaite, London LLP**) for the defendant

Hearing date: 18th July 2025

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Approved Judgment

This judgment was handed down remotely at 10.00 am on 29th July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives and other websites.

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SIR ANTHONY MANN (SITTING AS A JUDGE OF THE HIGH COURT)

Sir Anthony Mann :

Background

1. This is an application for claimants' summary judgment in an action brought by 3 holders of rights to "permanent" seats in the Royal Albert Hall ("the Hall"), complaining that the defendant, which is the corporation which holds a long lease of the Hall and which lets the hall out for entertainment and other functions, has excluded them from the use of their seats in excess of its entitlement to do so. Of the something over 5000 seats in the Hall (the actual number depending on how the seating is configured), something over 1250 are "owned" permanently by various persons (numbering about 315), pursuant to arrangements in a charter of 1867. Those persons are known as "Members". That gives them the right to occupy the seats, to dispose of the right to take those seats on various of the occasions hosted by the Hall, or to invite the Hall to sell them for the Members as part of its box office. However, those rights are modified by statute and the Hall has the right to use those seats on a number of occasions in any given year – in the jargon of this matter those events are known as "Exclusives". This action claims that the defendant corporation ("the Corporation") has acted improperly in nominating too many occasions as Exclusives over the years since before 2008 and to date, though because of limitation the claimants confine their monetary claims to the period since 2018. Between them the claimants own 16 seats in Grand Tier boxes. The first claimant owns 12 and second and third claimants hold 4 seats jointly. It will generally be unnecessary to distinguish between the claimants, but where it is necessary to do so that will be apparent.

2. The rights that the claimants hold, and the relationship between the claimants on the one hand and the Corporation on the other, are unusual and interesting. They stem from the arrangement for funding the building of the Hall in the mid-19th century. The funding of the construction of the Hall was provided at least in part (£131,000, about 55% of the total cost) by individuals who subscribed as a result of a prospectus which promised a permanent right to seats for those who funded in that way. Those rights were created via the charter which created the defendant and made provision for the operation of the Hall. Most of the detail of that charter does not matter for present purposes and summaries will suffice where they are relevant at all.

3. The charter is dated 8th April 1867. The following provisions are relevant:

   i) The recitals recite:

   > "And whereas the persons hereinafter named, with many others, have subscribed towards the funds for the erection of the Hall, in consideration of having granted to them in return for their subscriptions, permanent seats in the Hall in manner appearing in the Schedule annexed hereto:"
   >
   > and also recite the agreement of the Commissioners for the Exhibition of 1851 to grant a lease of the site for 999 years.

   ii) Clause 5 provides that "Subject to the rights reserved to Members of Corporation, the Corporation may let the use of the Hall …"

iii) Clause 6 provides that no dividend shall be payable to any Member of the Corporation and for all profits to be applied for the purposes of the Corporation.

iv) Other provisions provide for such things as the governing body of the Corporation.

v) The Schedule provides for a register of members, and for the allocation of permanent seats in the Hall proportionately to the amount contributed. The detail does not matter. Paragraph 7 provides that the right of a Member to his seat shall continue for the whole term for which the Site was let, and paragraph 8 provided:

> "8. The interest of a Member in the Hall shall be personal estate, and not the nature of real estate."

4. The lease anticipated by the charter was granted on 25th March 1872 for a term of 999 years from 25th March 1867. That has the effect that the right of the Members to their seats lasts until the expiry of that 999 years (provided, of course, that the lease remains in force). In 1967 the Corporation applied for and was granted registration as a charity.

5. The provisions and operation of the Charter have been amended from time to time by supplemental charters and by private Acts of Parliament. The only one of those which is significant is the Royal Albert Hall Act 1966, which is currently in force and which contains the provision which lies at the heart of the present dispute. It governs the extent to which the Corporation can nominate events as Exclusives and thus exclude the seat owners from their rights to their seats at the relevant event. Section 14 provides:

> "14.-(1) Notwithstanding anything in the original charter, the charter of 1887, the Act of 1927 or the Act of 1951, the following provisions shall have effect:-.
>
> (a) The council may from time to time by resolution exclude the members from the hall on any day or days not exceeding seventy-five in any year on which the hall is let for any purpose for which the Corporation is empowered to let the hall other than a concert, a recital or a boxing or wrestling entertainment:
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> (b) In addition, the council may from time to time by resolution exclude the members from the hall-
>
> (i) on any day or days not exceeding twelve in any year on which the hall is let for any purpose for which the Corporation is empowered to let the hall;
>
> (ii) from one-third of the functions included in any series of six or more functions which are consecutive and substantially identical:
>
> Provided that the council shall not under the provisions of paragraphs (a) and (b) of this subsection exclude the members from more than one-half of the functions included in any such

> series as is referred to in sub-paragraph(ii) of the said paragraph (b).
>
> (2) Any additional rent received in respect of the letting of the Hall on any occasion on which the members are excluded from the ha!] pursuant to paragraph (a) or sub-paragraph (ii) of paragraph (b) of subsection (1) of this section which is attributable to such exclusion shall be applied by the council in or towards the reduction of the annual contribution."

6. In this case the Exclusives referred to in paragraph (a) are called the "Variety Exclusives"; those in subsection (1)(b)(i) as "Wildcard Exclusives", and those in subsection (1)(b)(ii) as "Series Exclusives". The events which have been treated as Exclusives by the Corporation but which exceed the limits of section 14 are called "Additional Exclusives". Events to which the charter rights otherwise applied are known as "Ordinaries".

7. As already indicated, the Corporation has acknowledged that it has exceeded the permitted number of Exclusives for a large number of years. In 2008 it acknowledged that it had been doing that but sought to justify the practice on the footing that ultimately it was for the benefit of all. For example, by doing so it managed to attract engagements by persons or promoters who would decline to engage unless the events were Exclusives (so that the performers/promoters would have the benefit of all the seats), and that operated for the ultimate benefit of the Members by bringing in more money for the Hall (and thus potentially reducing contributions for which Members are liable) and keeping up the prestige of the Hall as a primary and desirable venue.

8. This non-compliance was reported to Members and acknowledged by the Hall in a letter from the then President of the Corporation dated 16th May 2008, by which date the current claimants had acquired their seats and were thus all Members. The letter disclosed a summary of a report commissioned from PricewaterhouseCoopers which had considered the preceding practice and concluded:

> "In conclusion our work supports the view that Members have not been disadvantaged and that Council acted reasonably in deciding that the net financial benefit to Members from programming these events was likely to exceed the potential value to Members of alternative programming. As a result of the decisions taken the Hall benefited."

9. The Corporation was proposing an amendment to the 1966 Act to reflect the practice of allocation of events which had occurred over the previous decade and recommended that Members support the change. The changes were said to provide some benefits to Members in terms of such things as an overall cap on Exclusives, as well as providing for more Exclusives in certain circumstances but limiting some in a way not provided for by section 14. The details do not matter here. The Corporation also embarked on dealings with the Charity Commission which were thought to be necessary in order to effect a change in the arrangements. There was a proposal for a scheme under the Charities Act, but over the years that came to nothing.

10. Having disclosed its position, and indicated how it was intending to regularise the position, the Corporation continued its practice while it was considering how to regularise the position to enable it to adopt its then current practices on Exclusives in a compliant fashion, It seems to have got a form of approval from Members at meetings in 2008 and 2011. A report commissioned by the Corporation in 2013 from Sir Robert Owen recorded that a majority of those who responded to his request for views acknowledged that the provisions of section 14 of the 1966 Act were outdated, though that was not a unanimous view.

11. At a Special General Meeting held on 30th September 2012 the Members agreed, nem con, a resolution approving the Corporation's proposals to modify the arrangements for Exclusives as set out in a Memorandum and Guidelines document recommended by the Council. A document in substantially the same terms has been approved at every AGM of Members since then. The proposed modifications to the 1966 Act regime mainly affect the rights of the Corporation in relation to Series Exclusives and enable it to grant more, but again the details do not matter. Some of the provisions can be said to benefit Members in terms of the use of their seats.

12. At the end of the Memorandum the following words appear:

> "Council intends that this revised policy should continue to be operated from year to year, but in all events subject to a three year notice (except Cirque du Soleil which is subject to a five year notice) on any withdrawal or variation to allow for formal contractual arrangements to be honoured, and subject to it and the supporting Guidelines being noted with approval by the Members at each Annual General Meeting until either a scheme or other legislative amendment of Section 14 is effected or the Council puts forward a further amendment for noting with approval by the Members or the Members pass a resolution in General Meeting requiring the Council to reconsider the terms of the policy for Exclusive Lettings recognising that, notwithstanding long usage, these arrangements are without prejudice to the Members' proprietorial rights in law."

That text reflects the fact that the Corporation at any given time arranges and has arranged bookings for the Hall for periods up to 3 years in advance (and 5 years for Cirque du Soleil) and therefore needs to know where it stands in relation to the availability of Members seats for bookings. It needs to do so in order to maintain the Hall's status and attract bookings.

13. The Corporation has managed its affairs on the basis of those modifications of the operation of section 14 since 2008. It acknowledges, however, that technically its arrangements are outside the scope of that section. It has now promoted a private Act which is proceeding through Parliament at the moment. It has passed its stages in the House of Lords and its second reading in the House of Commons. That Act would bring the statutory regime into line with current practices, and contains a power for Members' rights to use their seats to be varied by special resolution. I was told that if it continues its progress it is estimated that it should get Royal Assent at about Easter 2026. I was also told by Mr Sawtell for the claimants that their understanding was that

a provision had been introduced by the House of Lords which was unacceptable to the Corporation and that unless that was reversed by the House of Commons the Bill would be unacceptable to the Corporation. The Bill is relevant to the grant of an injunction, and perhaps to the grant of a declaration, in this matter in a manner which will appear. For the purposes of this application I shall assume that the Bill has at least an arguable chance of being passed into law in a form acceptable to Corporation in the near future – around Easter next year.

The position of the parties in this action and in this application, in outline

14. The current position of the claimants is that they challenge the historic and future right of the Corporation to depart from the system created by section 14. On 17th June 2024 they wrote to the Corporation to demand tickets for their seats strictly in accordance with section 14. They maintain that the approval from year to year of a variation (by way of approval of the Memorandum and Guidelines) is ineffective to vary the limits imposed by the Act, and they are therefore entitled to damages for being deprived of the benefit of their seats, an injunction to restrain future departures from section 14 and a declaration that what has happened hitherto is beyond that which is permitted by section 14. In this application they claim the injunction and declaration, and an inquiry as to damages, and an interim award of damages of £500,000, based on what they say is their full claim which is just over £1m. That size of claim is based on a submission that one cannot and should not somehow sever the excess of Exclusives over that which is permitted and that the claimants are entitled to be paid a sum equivalent to the amount for which all their seats could have been sold for Exclusive events for the 6 years preceding the claim form (prior financial claims being statute-barred).

15. The defendant admits, as it has always admitted (at least since 2008), that it has been operating a system which is non-complaint with section 14. However, it says that until the demand for tickets in June 2024 the claimants have consented to or acquiesced in the practice embodied in the Memorandum and Guidelines and any claim for historic breach is therefore denied. The declaration, it is said, would serve no useful purpose and should not be granted. Nor should the injunction, because the situation going forward will be remedied by the bill when passed into law, there has been laches and in any event it would be unfair and oppressive to disturb contractual engagements already entered into, which is what would be required if the injunction were granted. An injunction would produce no benefit of substance.

16. The consent, acquiescence and laches relied on stems from the fact that until 2024 the claimants have never formally requested that they have their tickets for their seats, and for years did not object to what the Corporation was doing. They never voted against the adoption of the Memorandum and Guidelines year on year until 2023, knowing in the preceding period that the Corporation was relying on those Guidelines in contracting with users, accounting to the Members and running the Hall. In fact in 2020 the second claimant (who holds seats jointly with the third claimant) actually voted for the Memorandum and Guidelines (there is no evidence that the first claimant has ever done that).

17. So far as damages are concerned, the Corporation maintains that the valuation technique adopted by the claimants is flawed. It gives an excessive amount, and a proper analysis, which takes a wider look at the benefits from being able to offer more Exclusives, would

demonstrate no loss, or a lesser loss than that claimed by the claimants. Furthermore, the consent which is relied on was not merely a consent to a system which was confined to the operation of the Hall for the forthcoming year. It was consent to a system which had a 3 year booking "horizon" (and 5 years for Cirque du Soleil), and that would limit any damages claim in respect of any valid withdrawal of consent.

The summary judgment test

18. There was no dispute as to the applicable test for summary judgment. It can be taken from the judgment of Lewison J in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at 15:

> "i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 2 All ER 91;
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
>
> iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]
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> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;
>
> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction

> and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

19. This case certainly does not fall into the last of those paragraphs. In the light of the admissions by the defendant (repeated in its Defence), that it has not been complying with section 14 for years, and in the light of an apparent acceptance by the defendant that absent some other defence, excluding Members from their seats for anything other than a proper Exclusive would be an actionable interference with their rights, the questions on this application would seem to me to be as follows:

    i) Is there are real prospect of defending the case for historic breach, and to some degree a breach going forwards, on the basis of consent or acquiescence?

    ii) Is there a real prospect of defending the injunction claim going forward?

    iii) Is there a real prospect of defending the claim to a declaration on the footing that it would serve no useful purpose or otherwise?

Consent, acquiescence and laches

20. The Amended Defence in this case foreshadowed a number of different legal characterisations of the rights of the claimants, but it is unnecessary to go into those. It was common ground that the claimants had at least a licence, a breach of which could sound in damages and other remedies. The licence analysis was one which was treated as being the basis of the rights to the seats in *Customs & Excise Commissioners v Zinn* [1988] STC 57 at p 65g (Nolan J). The debate before me took place on the footing that the licence analysis was the correct one. Mr Sawtell submitted that the claimants had some sort of "estate" pursuant to paragraph 8 of the 1867 Charter, but that seems to be a misreading of it. That provision was not creating some additional legal estate; it was merely saying what the interest of the Members was not (ie it was not real estate, it was merely personal estate) rather than what it was in terms of creating a special interest. I agree that the correct analysis seems to be a form of licence.

21. There is no allegation of positive consent in this case, other than a limited case that might be made on the footing of one vote by the second claimant in favour of the Memorandum and Guidelines in 2020. Any case for consent must be implied consent closely linked to the alternative acquiescence case based on the claimants apparently standing by for many years knowing that the Corporation was operating the Exclusives regime in the manner in which it was, on the footing (as it saw it) that the scheme was for the ultimate benefit of all concerned (as was said to have been found in the reports of PricewaterhouseCoopers and Sir Robert Owen) albeit that it was trying to regularise the position. Putting the matter shortly, the claimants stood by for years, knowing what was happening and knowing that the Corporation was committing itself to a significant number of events which were not within section 14, on the footing that the annual approval of the Memorandum and Guidelines, with its 3 to 5 year event horizon, somehow justified its position. That brought in more money. If that had not happened the contributions required of the Members would have been greater, and the prestige of their seats potentially less. The Corporation has carried out an analysis of the voting at general meetings since 2018 so far as that can be done. While the records are not complete as to voting patterns, they do not reveal that the claimants ever voted against the resolution to approve the Memorandum and Guidelines until 2023, when it appears that the second claimant did. In 2020 the second claimant actually voted in favour of the approval.

22. I accept that the defendant has a real prospect of success in establishing an implied consent, or at least an acquiescence defence, in the light of those facts. It may be able to establish the sort of consent and acquiescence which were found in favour of the defendants in *Fisher v Brooker* (at first instance ([2007] FSR 255, para 94) when the court ruled against a copyright claimant in respect of his claim to royalties when he had historically not asserted a claim for decades. True it is that the parallels between that case and this are not exact, but they illustrate why it can be said that, at the very least, the defendants have a real, and certainly not fanciful, prospect of establishing such a defence on the facts. If there was consent/acquiescence it would (or could) be capable of operating beyond the date of any withdrawal in 2024 because its terms were intended to be forward-looking to an event horizon of possibly 3 or 5 years, as appears above. There is therefore also a real prospect of success in establishing that any consent/acquiescence could not be withdrawn on the basis of an immediate withdrawal in 2024. The history of the matter and its effect needs to be gone into with a degree of thoroughness which only a trial can provide, and a trial is necessary in order to determine the validity of this defence.

23. That being the case, I do not need to consider the question of the measure of damages and whether an interim award is justified. The claimants adduced some evidence of a Mr Viner, a director of a company whose business is the marketing and selling of tickets for events at the Hall. He gave the evidence in support of the £500,000 interim damages claim by propounding a calculation of at least a £1m as being the amount which the claimants would have received had they sold their tickets for all Exclusive events for the 6 years of the damages claim. Mr Taube KC for the Corporation initially resisted the admission of this evidence as being evidence of an expert nature given without leave and without the usual requirements for an expert. However, he did not pursue his formal objection and was content for me to receive the evidence for what it was worth. Although it no longer matters in the light of my decision on the need for a trial of the consent/acquiescence point, I have to say that I considered this evidence to be somewhat

flawed in its methodology, and the independence of Mr Viner was rather questionable in the light of the fact (which emerged only in the course of the debate and which was not disclosed by him in his witness statement) that his mother was a Member. In the circumstances I do not need to pursue that further.

The injunction claim

24. The claimants seek an injunction restraining the Corporation from restricting access to the claimants' seats beyond that which is permitted by section 14 and/or requiring the Corporation to permit them to have access to their seats when not properly excluded by section 14. I am satisfied that the defendant has a real prospect of resisting such an injunction at a trial, and in any event for the moment, for a combination of the following reasons.

    i) There is a real prospect that within a year the defendant will have the benefit of the private Act which it is promoting which will mean that its present exceeding of the section 14 limits will become academic for the future. There is no apparent prospect of its disregarding the limits contained in that bill which would justify an injunction for the future after the proposed Act becomes law. The more appropriate course is to wait and see whether the bill is passed. If it is there would be a good case for saying an injunction is, or has become, unnecessary and inappropriate.

    ii) The arguments of the defendant that an injunction would be oppressive and would require the unwinding of contracts seem to me to have considerable merit. Like it or not, the fact is that the Hall has in good faith granted contracts for Exclusives of the Hall for a significant period going forwards. It cannot accommodate all of them as Exclusives within the strict provisions of section 14, though all of them are said to fall within the operation of the Memorandum and Guidelines. The Secretary to the Corporation, Ms Susan Gent, gave evidence of the consequences of an injunction on the bookings and the need to "reallocate" Exclusives that have already been granted and to try to fit them within the section 14 regime. Her analysis is somewhat complex, but the bottom line of her evidence (which has not been disputed) is that there is a serious risk that the Hall would have to breach 15 contracts in 2025 and a further 7 contracts in 2026. Furthermore, any events which were no longer Exclusives (assuming they still went ahead) would require to have the claimants' seats made available to the claimants and taken away from non-Members who had already booked (whose number was not specified). There is a real prospect, putting it at its lowest, that a trial judge would find at a trial that that would be excessive and oppressive and refuse to grant the injunction in the terms sought even if the new Act were not passed.

    iii) The previous factor is tied up closely with the consent/acquiescence/laches point with which I have dealt. Laches is particularly significant here. The matters referred to in (ii) can be said to arise out of the delay in the claimants' actively asserting their rights against the whole background since 2008, and it can be said, with real prospects of success, that it would be wrong to impose the injunction in the light of that delay and what the Corporation has been doing in the meanwhile.

iv) Mr Taube also submitted that the claimants have demonstrated that really they are principally interested in money, so damages would be an adequate remedy. Mr Sawtell countered by submitting that this was a case in which a proprietary right had been infringed, and the usual remedy was an injunction. I was less convinced by Mr Taube on this point, but in the light of my previous findings I do not need to say any more about it.

The declaration

25. The third remedy sought by the claimants is a declaration that "the defendant's actions in restricting the Claimants' access to their seats in the Royal Albert Hall ("the Seats") beyond that which is permitted by section 14 of the Royal Albert Hall Act 1966 … to be unlawful" (according to the draft order attached to their application).

26. In one sense it would be easy to justify such a declaration because the Corporation admits what it has been doing, and admits that it has been exceeding its rights under section 14. So a declaration would be declaring that which both parties (to that extent) acknowledge to be the case. Mr Sawtell's skeleton argument relies on the fact that the Corporation does not seem to intend to change its future conduct despite its knowing that it was not justified by section 14 and "The making of a declaratory judgment, therefore, will have a meaningful effect in determining whether the Corporation has some basis for its ongoing conduct."

27. The principles governing the grant of an injunction are now well established and were summarised in *Rolls-Royce v Unite the Union* [2009] EWCA Civ 387 at paragraph 120. Omitting parts with no relevance here, Aitkens LJ said there:

"(1) The power of the court to grant declaratory relief is discretionary.

(2) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However the claimant does not need to have a present cause of action against the defendant.

(3) Each party must, in general, be affected by the court's determination of the issues concerning the legal right in question.

…

(7) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question it must consider the other options of resolving this issue."

28. The notes to CPR 40, at 40.20.2 provide:

> "The power to make declarations is a discretionary power. As between the parties to a claim, the court can grant a declaration as to their rights, or as to the existence of facts, or as to a principle of law (*Financial Services Authority v Rourke [2002] C.P. Rep. 14* (Neuberger J)). When considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose, and whether there

are any other special reasons why or why not the court should grant the declaration (ibid.)."

29. The claimants justify the need for a declaration because they say that the Corporation has been using the Memorandum and Guidelines as a shield for some years, and maintains that those documents are sufficient to justify their acts. It is appropriate for the court to declare that they have been acting in breach and the acts of the Corporation are not legitimised by the Memorandum and Guidelines. Emphasis is placed on admissions in the Amended Defence to the effect that the current practice is not authorised by section 14 and that the Memorandum and Guidelines are not authorised either.

30. Both sides accept that the grant of a declaration is discretionary. It is in dispute on this application whether the grant of the declaration sought would serve a useful purpose (see test in the notes to the White Book). The defendant says it would not – it has admitted that its practices under the Memorandum and Guidelines are not authorised by the 1966 Act, and it is not clear to me that there was ever a real dispute about that. Where the parties agree about that it is not apparent what useful purpose would be served by the declaration. Furthermore, it seems to me that the grant of a declaration in the terms now sought (which differ from those sought in the Particulars of Claim) would actually have a potentially obstructive effect. That is because of the use of the word "unlawful". It might be said that the grant of a declaration in those terms pre-judges the consent and acquiescence arguments which require a trial to determine them. If the Corporation succeeds on those arguments then the acts would not be unlawful for the periods, and to the extent, covered by the consent/acquiescence. It would be unfortunate if a debate on those defences was complicated by a debate about whether the declaration pre-judges it. If words were to be built into the declaration to prevent that possibility then the declaration becomes even less significant and purposeful.

31. For those reasons it would seem to me to be potentially unhelpful to have the declaration sought. It should not be granted on this summary judgment application. Whether any declaration at all is justified at a trial, when all the relevant issues and defences have been canvassed and ruled on, will be a matter for the trial judge. If the current bill has become law then it may be that a declaration will have even less significance because non-compliance will become purely historic, and the findings of the judge and the other relief granted will be all that the parties need; but that is a matter for the future. For the present I do not consider it inevitable that a declaration would be granted at the trial and there is a real prospect it will not be. Accordingly this part of the claim for summary judgment fails too.

32. I do not deal in this judgment with the question of whether compliance with CPR 19.3 is necessary in relation to the claim for a declaration (parties jointly entitled to the same relief should be joined to the proceedings unless the court orders otherwise). Bearing in mind the general nature of the claim for the declaration, which is not confined to the rights of the claimants alone, it might be said that other Members are equally entitled. At the hearing before me this point was not raised by either party, and neither had a clear answer to it. It may be necessary to resolve it at some point in the near future, but it will not be resolved by me on this application.

Conclusion

33. For those reasons, therefore, I shall dismiss the claimants' application for summary judgment.