Neutral Citation [2025] EWHC 3120 (Admin)

Case No: AC-2025-BHM-000283

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre,
Priory Court, 33 Bull Street,
Birmingham, B4 6DS

Date: 7th November 2025

Before:

HIS HONOUR JUDGE TINDAL
(Sitting as a Judge of the High Court)

- -

Between:

THE KING (On the application of ZUHAIB KHAN)

Claimant

- and -

COVENTRY UNIVERSITY

Defendant

- -
- -

PROFESSOR NIAZ A SHAH (instructed by **Kingston Solicitors**) for the **Claimant**
MR HIRSCHMANN for the **Defendant**

- -

APPROVED JUDGMENT

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HHJ TINDAL:

Introduction

1. This is a claim for Judicial Review by the Claimant, who was a student at the Defendant, Coventry University. The Claimant is a Pakistani National with leave to enter as a student sponsored by the Defendant in March 2024. He finished the first year, but in July 2025 he missed the deadline to pay his tuition fees by a few days and the Defendant withdrew his sponsorship. The Claimant challenges both that decision and the Defendant's failure to restore sponsorship even after he had fully paid his fees only days later. The case raises the balancing act sponsors need to perform between compliance with Home Office requirements and fairness to sponsored students who could be required to leave the UK if no longer sponsored.

Legal Framework

2. I gratefully adopt the summary of the legal framework in the Skeleton Argument of Mr Hirschmann for the Defendant. The Immigration Act 1971, section 3(2) makes provision for the Secretary of State to lay before Parliament rules "*as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons required by this Act to have leave to enter*". Pursuant to that power the Home Secretary has produced rules called "*Immigration Rules: Appendix Student*". The Home Secretary has additionally produced four Guidance documents: Document 1 covers applying for a Student sponsor licence, Document 2 covers sponsorship duties, Document 3 covers compliance assessments and sanctions for non-compliance, and Document 4 covers the effect of Higher Education regulatory reform on Student sponsors.

3. In *R(Kaur) v Birmingham City University* [2024] EWHC 3185 (Admin), DHCJ Butt KC summarised the relevant principles on sponsorship of students:

> "33. The student immigration route (formerly known as Tier 4) is a route by which prospective students can enter the UK to study including within Higher Education. A sponsor is required who is licensed by the Home Office.
>
> 34. The requirements for entry to the UK via the student route are set out in the Immigration Rules: Appendix Student…
>
> 35. Sponsors who are licensed by the Home Office will issue eligible students with a [Certificate of Studies – i.e. a] CAS. This is an electronic document with a unique reference number issued by a student sponsor to a person it has agreed to sponsor. Students from overseas require a CAS to apply for entry to the UK through the student route. The CAS will be an important part of UKVI's consideration when asking whether to grant permission to enter….
>
> 36. Both parties have referred to government guidance issued to educational institutions. This is primarily contained within Student Sponsor Guidance…
>
> 39. The courts have on a number of occasions emphasised the heavy duties imposed upon a sponsor and the high degree of trust in sponsors who are granted licences: see the summary of legal principles set out in *R(London St Andrews College) v SSHD* [2018] EWCA Civ 2496 at [29] and the approval of the first instance judgment at [69]:
>
> > "it must be understood that the grant of [sponsor] status is a fragile gift, constant vigilance about compliance is a minimum standard required for such sponsors. The burden of playing an active role in the support of immigration control is a heavy one. The SSHD is entitled to review purported compliance with a cynical level of supervision."
>
> 55. It is agreed the Defendant is subject to stringent duties as a sponsor. The Defendant must be vigilant, report and, if necessary expel students who have failed to meet the requirements even if partway through a period of study. The Defendant was obliged to play an active role in support of immigration control.'

4. Haddon-Cave LJ summarised education sponsors' duties in *St Andrew's College*:

> '29. I summarised the legal principles applicable to Tier 2 and Tier 4 sponsorship cases in *R(Raj & Knoll) v SSHD* [2015] EWHC 1329 (Admin) and my summary was cited by Tomlinson LJ in *R(Raj & Knoll)* v SSHD [2016] EWCA Civ 770 in the Court of Appeal at [23]:
>
> > '(1) The essence of the system is that the Secretary of State imposes 'a high degree of trust' in sponsors granted ('Tier 2' or 'Tier 4') licences in implementing and policing immigration policy in respect of migrants to whom it grants Certificate of Sponsorship ('CoS') or Conformation of Acceptance ('CAS') (per McGowan J in *London St Andrews College* at [12] (and see Silber J in *R (Westech College) v SSHD (*2011) EWHC 1484).

(2) The authority to grant a certificate (CoS or CAS) is a privilege which carries great responsibility: the sponsor is expected to carry out its responsibilities 'with all the rigour and vigilance of the immigration control authorities' (per McGowan J in *St Andrews College* at [13]).

(3) The Sponsor 'must maintain its own records with assiduity' (per McGowan J in *London St Andrews Colleg*e (supra) at [13]).

(4) The introduction of the Points-Based System has created a system of immigration control in which the emphasis is on 'certainly in place of discretion, on detail rather than broad guidance' (per Lord Hope in *R(Alvi) v Secretary of State for the Home Department* [2012] 1 WLR 2208 at [42]).

(5) The CAS in the 'Tier 4' scheme…is very significant: the possession by a migrant of a requisite CAS provides strong, but not conclusive, evidence of some of the matters which are relevant upon the migrant's application for leave to enter or remain (*Global Vision* per Beatson LJ at [12], citing Lord Sumption SCJ in R *(New London College Ltd) v SSHD* [2013] UKSC 51.

(6) There is no need for UKBA to wait until there has been breach of immigration control caused by the acts or omission of a sponsor before suspending or revoking the sponsorship, but it can, and indeed should, take such steps if it has reasonable grounds for suspecting that a breach of immigration control might occur (Silber J *R(Westech College)* at [17-18]).

(7) The primary judgment about the appropriate response to breaches by licence holders is that of the Secretary of State. The role of the Court is simply supervisory. The Secretary of State is entitled to maintain a fairly high index of suspicion and a "light trigger" in deciding when and with what level of firmness she should act *R(The London Reading College Ltd) v SSHD* (2010) EWHC 2561 (Admin) per Neil Garnham QC.

(8) The courts should respect the experience and expertise of UKBA when reaching conclusions as to a sponsor's compliance with the Guidance, which is vitally necessary to ensure that there is effective immigration control ((per Silber J in *R (Westech College)* at [29(d)]).'

30. I would endorse the following…principles [of' Silber J in *R(Westech)*…

(1) The SSHD has stringent powers to suspend or revoke a sponsor's licence if the SSHD becomes concerned that a sponsor is not complying with its obligations and must be sensitive to any factors which might suggest the possibility of any breaches of immigration control having occurred or being about to occur because of lapses or omissions committed by a Sponsor (per Silber J in *Westech,* supra, at [17]).

(2) There is a clear need in some circumstances for the SSHD to invoke the SSHD's powers where there is a risk that the sponsor might not be complying with its duties provided of course that UKBA complies with its public law duties (per Silber J in *Westech*, supra, at [18].

(3) The expertise and experience of the SSHD (and UK Border Authority ('UKBA')) in being able to detect the possibility that a sponsor might not be or be at risk of not complying with its duties is something that the courts must and does respect because, unlike the SSHD, courts do not have this critically important experience or expertise (per Silber J in *Westech* [18]).

> (4) An entity which holds a sponsor licence has substantial duties to ensure that the rules relating to immigration control are adhered to strictly and properly, such that if the SSHD were concerned that a sponsor is not complying with those duties, it would entitle, if not oblige, UKBA to prevent that sponsor from either granting more CAS or revoking its licence (per Silber J in *Westech*, supra, at [19])….
>
> 39… The Guidance Documents are what they say on the tin, namely guidance documents. As such, they have to be read sensibly, purposefully and holistically. They are not statutes or to be construed rigidly and myopically….
>
> 65. In any event, there does not have to be an actual breach of a sponsor's duties for the SSHD to be entitled to exercise her powers. The SSHD has a broad residual discretion to suspend or revoke sponsor status where the SSHD has reasonable public law-compliant grounds for suspecting either there is a risk the sponsor might not be complying with its duties, or that there is a risk a breach of immigration control might occur (c.f. Silber J in *Westech* [17]-[18])."

5. The Defendant University is an approved sponsor so has these duties in the Home Office's 'Student Sponsor Guidance Document 3: Student Sponsor Compliance':

> "3.4 UKVI will always take action when it considers that a sponsor poses, or may pose, a risk to immigration control….
>
> 3.7 … where there is a serious breach indicating a significant or systematic failing, the sponsor no longer meets the eligibility or suitability requirements for holding a Student sponsor licence, or UKVI considers that the sponsor constitutes a serious threat to immigration control, UKVI may decide to revoke the sponsor's licence. This may also occur where there has been sustained non-compliance over a period of time, or where there have been a number of breaches which are isolated or minor in themselves but – taken together – indicate a serious or systematic failing.
>
> 3.10 Accordingly, if UKVI believes:
>
> * a serious breach has occurred; and/or
>
> * that there has been sustained non-compliance over a period of time; and/or
>
> * that a number of isolated or minor breaches have occurred which taken together indicate a serious failing;
>
> it is unlikely to consider that the provider will retain its Student sponsor licence….
>
> 3.13 UKVI will monitor data on course designations and liaise with the appropriate regulatory body, where areas of concern are noted.
>
> compliance concerns [e.g.] Failure to withdraw sponsorship from non-compliant students."

6. The Defendant has a duty to report students in various situations by virtue of Document 2: Sponsorship Duties Guidance. One example is para 7.5(c) which states:

> **"If** c. A student does not enrol within the enrolment period.
>
> **Then** you must: Report it to us within 10 working days of the enrolment period ending, including the reasons for nonenrolment, for example; a) they missed their flight; b) they decided not to come to the UK; c) they delayed their enrolment; d) they are doing a course with a different sponsor; or e) we have refused them permission to come to, or stay in, the UK If we have refused a student permission to come to, or stay in, the UK, you do not need to report the nonenrolment as soon as you become aware of the refusal. The time-limit is still 10 working days from the date the enrolment period ends."

Another example from the same guidance is paragraph 7.5(f):

> "**If**: A student defers their studies after they have arrived in the UK and is no longer actively studying. You may continue to sponsor a student who has deferred their studies for up to a maximum of 60 calendar days (except for recognised vacation periods) providing you can continue to carry out your sponsorship duties and the student will be able to complete their course within their existing period of permission. If you think the student will not resume their studies after 60 calendar days, you must withdraw sponsorship.
>
> In exceptional circumstances, such as serious illness or injury, you may continue to sponsor a student for longer than 60 calendar days, providing the student can still complete their course within their existing period of permission when they resume their studies. It is for you to decide whether you are prepared to continue sponsoring a student during a deferral and, if necessary, provide evidence to verify this decision to our compliance officers
>
> **Then**: You must report that the student has deferred their studies within 10 working days of agreeing the deferral. If you withdraw sponsorship, the student's permission to stay is no longer valid and you must advise them to leave the UK. Once the student is ready to resume their studies, you must assign a new CAS and the student must reapply for a new visa."

Background

7. I can take the contractual background from the Defendant's Summary Grounds of Resistance. The Claimant was given a conditional offer to study at the Defendant on 7th March 2024 for a BA Business Management and Leadership Honours (RQF Level 6). It was said to be conditional upon the following terms:

> 'The University will charge tuition fees in accordance with the "Tuition Fees and Conditions and Refund Policy. Please ensure that you read the 'tuition fee terms and conditions"': https://www.coventry.ac.uk/the-university/key-information/registry/withdrawal -refunds/
>
> International Students (Non-EU) are required to pay a tuition fee deposit at each Academic Stage/Year to secure a place. Before you can fully enrol onto your course, or each Academic Stage/Year, £8000.00 of your full tuition fees for the relevant Academic Stage/Year must be received by the University.

> Please ensure you allow sufficient time (approx. 7-10 working days) for your payment to be processed by your bank, received by the University and credited to your student account. You may not be able to attend classes and have full access to University facilities, if you do not fulfil all the requirements for enrolment….
>
> How to Pay (you will need to quote your Student ID number and full names when making payment): Provide your official sponsorship/financial guarantee letter (covering the full cost of your courses).
>
> Online – https://www.coventry.ac.uk/cuc/international/how-to-pay *** In some instances, we may need to track your payment to process your application further, so please include a scanned copy of your MT103 form when you send us your evidence of payment by email.
>
> Please note that students or 3rd parties may no longer be able to pay in Cash deposits at the branch counters at some UK banks. We strongly advise you make your tuition payment(s) using one of the options highlighted above."

8. The University's Tuition Fee and Refund Terms and Conditions stated:

> a. Clause 5 concerns the 'Payment plan for self-funded International Students'. Clause 5(b) states that 'International students (save for Nigerian students) who are studying full-time and self-funding their full or partial course fees, must pay a minimum of £8,000 to complete enrolment each year. This payment of £8,000 is required to release the Confirmation of Acceptance of Studies letter. International students who do not require a student visa will still be required to pay the minimum payment of £8,000 to complete enrolment. International students studying part-time and self-funding are required to pay the academic year's fees in full before enrolment. Student Finance England does not provide student loans for international students.'
>
> b. Clause 10 concerns "*Consequences of delayed/non-payment*'.
>
> i. Clause 10(b) states 'The Coventry University Group also reserves the right to withdraw any offer or cancel any accepted place on the course where required payments have not been made before enrolment and/or Coventry University Group reserves the right to withhold course materials, course progression, degree certificates and graduation until the tuition fee payments due have been paid.'
>
> ii. Clause 10(c) states 'Please note that even if someone other than you make any payments, or agrees to make any payment, on your behalf you remain liable for full payment until Coventry University Group has received cleared funds. Any rights the Coventry University Group may have against the payer are not affected.'

The page behind 'https://www.coventry.ac.uk/cuc/international/how-to-pay' (referenced in the University's conditional offer letter) states the following:

> a. Under "*How do I make a payment*" that when paying via Convera's Global Pay for students they must enter details and will then be sent instructions that 'will contain an important reference that you must ensure

> your bank quotes when making the payment. This reference allows Coventry University to identify and allocate your fees quickly.'
>
> b 'How long does it take for Coventry University to receive my payment ?' that 'Depending on the payment method, it can take between 2-5 days for Convera to receive your funds. Once your payment has been received, Convera will aim to send your payment to Coventry University within 24hrs, unless further information is required to assist with compliance.'

9. I particularly emphasise it was part and parcel of the Defendant's offer to the Claimant that he would have to pay tuition fees of £8,000 per year:

> "International students (Non-EU) are required to pay a tuition fee deposit at each Academic Stage/Year to secure a place. Before you can fully enrol onto your course, or each Academic Stage/Year, £8,000 of your full tuition fees for the relevant Academic Stage/Year must be received by the University. Please ensure you allow sufficient time (approx. 7-10 working days) for your payment to be processed by your bank, received by the University and credited to your student account. You may not be able to attend classes and have full access to University facilities, if you do not fulfil all the requirements for enrolment."

It also said in that letter the student must have paid a minimum of £8,000 to enrol as cleared funds received by the deadline. As referred to in that policy, the Defendant university did not take direct payments, but payments were to be made from the student's bank account to the third party fee management company Convera; and then on from there to the university.

10. On 17 June 2025 the Defendant notified the Claimant that he had to re-enrol. It informed him that teaching started on 23 June and he was expected to have enrolled by that date. However, a few days after that on 30th June, the Defendant circulated revised deadlines: that enrolment began on 9 June (21 days before the email in question which also post-dated teaching beginning on 23 June), but the end of enrolment was 7 July, but there was provision for exception and enrolment appeals on 8 and 9 July. It is clear from that the enrolment deadline was 7 July.

11. On 3 July 2025, the Claimant made the first of two payments of £4,000 from his bank accounts, the first from his Lloyds bank account, to Convera. That payment

was received by the Defendant university the following day on 4 July with the correct reference on it. The problem in this case arises because on the same day 4 July, the Claimant paid the other £4,000 from a different Barclays bank account to Convera which was not properly referenced. As I shall explain, that did not find its way, to the university until 21 July, which was well after the enrolment deadline.

12. Ironically, back on Monday 7 July the Defendant university thought the Claimant had successfully enrolled as they said in an email. But that same afternoon the Claimant was emailing the university to suggest he did not have access to his course materials and it was clear the second £4,000 had not been received. He emailed the university on 8 July explaining he had used two bank accounts. On Wednesday 9 July, the Claimant received an email from someone at the university confirming the payment deadline had been extended to 15 July, stating:

> "Providing you have paid enough to enrol before this date, you will be released to enrol. As soon as the correct funds hit our account, you will be released for enrolment. With regards to your assignment due at the end of the week it may be worth applying for an extension or deferral…"

13. The Claimant went to great efforts over the next couple of weeks to correspond wth Convera to track down the payment he had sent on 4 July (as is clear from his Barclays statement). It appeared to have disappeared down an 'administrative black hole' at Convera, who eventually traced it and found it had the incorrect reference. This was the most minor mistake by the Claimant that could happen to anyone. But the consequences for him of this administrative tangle have been catastrophic. Whilst that is not the Defendant university's fault, there was an extra layer of complexity with the Claimant dealing with its payment agent Convera.

14. It is not disputed the Claimant attended his course on the 1st, 3rd, 4th and 7th July. The Defendant university has no record of the Claimant attending his course after

that date, but it is clear from documentation between the university and the Claimant that not only on 9 July but also on 10 July he was emailing the university in relation to his assignment which he later submitted. Indeed, as late as 11 July the university staff were emailing each other in relation to the Claimant's request to defer his assignment and seemed to think he had enrolled and appeared on the class attendance register. It appears that was an internal mistake within the university because in fact he had not been formally enrolled. This was not apparently clarified until 18 July. So, there was considerable muddle until that point, even within the university let alone with the Claimant, as to whether or not he had enrolled.

15. In the intervening period the Claimant continued to email the university, including on 15, 16 and 18 July, explaining why he had by that stage missed the deadline for enrolment on Tuesday 15 July. He even offered to make a direct bank transfer to the university but a staff member said all payments had to go through Convera.

16. On Friday 18 July in the morning the Defendant finally notified the Claimant that he had not enrolled as he had missed the deadline and, as a consequence, they were withdrawing his visa sponsorship and had already notified the Home Office.

17. On 21 July, the following Monday, the outstanding £4,000 from the Claimant arrived in the Defendant university's bank account via Convera. The Claimant himself that afternoon explained the situation to the university yet again and offered to show receipts, demonstrating that he had in fact paid Convera back on 4 July. But on Tuesday 22 July the university again said he had missed the enrolment deadline and reiterated that it had withdrawn his sponsorship and notified the Home Office accordingly.

18. On 24 July the Claimant submitted his first complaint to the Defendant university, which was not entirely clear about what he was asking. He repeated what he had earlier said and asked what he could do to make things right. It was implicit he was asking the university to change their decision and that was clearly stated by the Claimant in a rather clearer complaint email on 28 July. He explained to them that he has been told that he had to return to his home country of Pakistan which was causing him tremendous stress and confusion and added:

> "I kindly request that you reconsider your decision or provide a fair solution under these exceptional circumstances."

On 30 July, the Claimant then appealed his non-enrolment deadline, saying:

> "I kindly request the university to reconsider my case and allow me to continue my studies either through a reinstatement or by confirming my eligibility for the next available intake. I remain committed to fulfilling all my academic and compliance obligations."

19. As explained in the second witness statement of the Defendant's Director of Sponsorship Compliance and Quality Assurance, Ms Madden, the June-July teaching intake had started on 23 June and ended on 1 August. As I have explained, students were permitted to enrol up to 7 July and the deadline for payment was 15 July. The next teaching block and intake was September 2025. The teaching started on 8 September and ended on 17 October, but students could enrol up to 22 September and exceptional enrolment finished on 29 September. That was two months after the Claimant's request on 30 July to resume his studies for which he had now fully paid. Indeed, Ms Madden accepted if the Claimant had enrolled into the course in September 2025, he could have completed all the teaching required within his current visa period (which ended on 2 May 2026) unless he had to defer the assessments due to unforeseen circumstances. Even though the Claimant had lost a few weeks' teaching time, he had plenty of time and willingness to catch up.

20. However, that did not happen because the Defendant had already withdrawn the Claimant's sponsorship and did not consider rescinding that with the Home Office before it curtailed the Claimant's leave, which did not happen until 15 September, almost six weeks after the Claimant's request to resume studies on 30 July. This is surprising, as Ms Madden said in her second witness statement at paragraph 14:

> "Had the Claimant submitted a clear and timely written request indicating his intention to defer his studies until September, under paragraph 7.5(f)… the University would have been in a position to seek clarification from UKVI" [i.e. the Home Office] "as to whether such an arrangement was permissible. In the absence of such communication, the University was unable to explore alternative options or advocate on his behalf within the bounds of UKVI guidance."

However, Ms Madden may not have had her attention drawn to the fact that in his 30 July complaint letter (which was disclosed in this case quite late but was a letter the Defendant university had received) the Claimant had specifically told the university that he did want to continue his studies either through a reinstatement or confirming his eligibility for the next available intake.

21. However, this point was not discussed by the Defendant university in its response to the Claimant's complaint on 14 August 2025. It simply repeated the Claimant was ineligible for a late enrolment appeal (which fell outside the scope of the complaints procedure), that his payment was not received until outside the extended enrolment date of 15 July and then added this:

> "The university as sponsor for international students is obliged by the UKVI regulations to report any student who has failed to enrol, and to withdraw sponsorship. This is not a university decision but one that is imposed by the UK Home Office….It is not possible for the university to further review its decision relating to your enrolment… If you wish to resume your studies you will now need to apply for a new CAS and Visa" and it set out how to do so. Then it also said: "Please be aware that it is now too late for you to request a return to study in September 2025."

This is rather difficult to square with Ms Madden's statement quoted above, which accepted the university could have communicated with UKVI about deferment.

22. On 16 August, the Claimant's solicitors sent a pre-action protocol letter stating:

> "The university had the right amount of the fee by 18 and 21 July 2025. His classes are starting on 25 September 2025. He has not missed classes, and there is no gap in his studies. Reporting him to the Home Office was not justified, reasonable and unfair. The university has breached its contractual obligations based upon the principle of fairness and natural justice. The consequences of withdrawing sponsorship are extremely harsh and disproportionate financially, physically and impracticable. Financially, it is very harsh as he had to go back to Pakistan, reapply for a visa and pay for air tickets. It is draining physically and emotionally. He is under tremendous stress and has registered himself with a mental health support provider and the university well-being team. It has seriously undermined Mr Khan's immigration history, which will have serious post-study consequences as well. To avoid undue hardship to Mr Khan and complaints and/or legal action against the university, *we request that the university restore the sponsorship and notify the Home Office that his sponsorship has been restored to prevent visa curtailment and that Mr Khan can continue his classes in September 2025."* (my italics)

Therefore, the Claimant's solicitors were quite clear on 16th August - a month before the Home Office curtailed the Claimant's visa which was itself still before the September enrolment deadline - that they were requesting the Defendant university to contact the Home Office to rescind the withdrawal of sponsorship.

23. There was a holding response initially from the Defendant university, then a more detailed response on 29 August reiterating the Claimant's failure to enrol on time and the fact the university had not received the funds in good time. On 2 September the university's solicitors gave this final response to the pre-action protocol letter:

> "Your Client requests that the University: 1. Retract and review our withdrawal of your Client's student visa sponsorship; 2. Permit your Client to enrol on the Course and conclude your Client's late enrolment appeal; and 3. Inform the Home Office that our sponsorship of your Client's student visa is still valid. For the reasons outlined above, we can confirm that we will not withdraw our notification to the UKVI nor inform the Home Office that our sponsorship is still valid. In respect of enrolment

> onto the Course, your Client has missed the enrolment period and therefore is unable to enrol for this intake."

24. However, there was no reference in those pre-action responses to what Ms Madden said in her first statement of 16 September, after the claim was issued but still before the enrolment deadline:

> "As reports are made in accordance with the Sponsorship Guidance, it is uncommon for the University to retract notifications made to the UKVI. However, I can confirm that the University can, if it wishes, decide to retract a notification of withdrawal of sponsorship to the UKVI via the online portal (the Sponsorship Management System 'SMS'). The difficulty however, is that the University does not know how long it would take for the UKVI to respond, and we do not know if /when the Home Office curtails a visa. Before the University would consider a retraction, it needs to contact the Home Office via a separate UKVI portal to query whether the visa in question has been curtailed. Again, we are unable to predict the timescales for responses as it varies depending on the UKVI's workload. To clarify, a retraction cannot be made once a visa has already been curtailed….. As mentioned above, the University can retract a notification of withdrawal of sponsorship, but it will be questioned by the Home Office as to why the retraction is being sought. We therefore need to justify our position and confirm that, for example, a student had been engaging with their studies and is able to continue on the course successfully. Our university ID card swiping system shows that Mr Khan only attended on campus teaching on 1 July… 3… 4 and 7 July and did not attend any classes/seminars/lectures in person after that date. Considering the circumstances, the University would not have withdrawn its notification to the UKVI in July 2025 as Mr Khan would not have been released from enrolment due to nonpayment and not meeting the … conditions. I understand from Registry that Mr Khan is unable to return to his studies immediately as he has missed a significant amount of teaching as his term started on 23 June not 8 September as he alleges. To clarify, a student studies in 'blocks'. Mr Khan has missed the June-August block. He is currently missing the September-October block. The University exercises its judgment in determining when a student can re-start learning, and usually this is at the start of a teaching block so that a student will be able to participate fully in all teaching and learning activities."

But as I observed when granting permission, the risk of delay to restoration of sponsorship causing too much loss of teaching time depends how quickly the initial request is made. If the Defendant had made enquiries with the Home Office on or shortly after 21 July, at that stage the Claimant had only missed at most two weeks' teaching. That was no more teaching than would be missed by a student enrolling

on the deadline on 7 July a fortnight after teaching had started, which the Claimant had attended, indeed submitting an assignment. There was no teaching in August and the Home Office did not curtail his leave until 15 September.

25. Indeed, in Ms Madden's second statement of 10 October after I granted permission, she admitted 'loss of teaching time' was not considered at the time by the Defendant (my italics):

> "Academically, Mr Khan was not in a position to re-enrol after 21 July … as he would have missed too much teaching and learning, of which he did not have access to the required materials, and the teaching block was due to finish the following week. *This was not a material fact in the University's decision making* as the 15 July 2025 deadline was a commercial deadline, however, it is important to clarify the academic position, especially if Mr Khan is claiming the University should have enrolled him once the payment had been received on 21 July 2025."

Indeed, Ms Madden also gave a totally different answer why the university had not contacted UKVI (an inconsistency in the Defendant's case, not a dispute of primary fact: *R(F) v Surrey CC* [2023] 4 WLR 45):

> "While paragraph 7.5(f) of the UKVI Sponsorship Guidance permits continued sponsorship of students who defer their studies for up to 60 calendar days, in Mr Khan's case he was not enrolled, and under current university policy, non-enrolment due to failure to pay tuition fees is not considered a valid basis for continued sponsorship or an exceptional circumstance. As we are unable to monitor students who are not actively enrolled, this provision is only applied in exceptional circumstances such as serious illness or maternity leave. In Mr Khan's case, as he would not have been actively enrolled during the relevant period, we were unable to fulfil our obligation to monitor him in accordance with our sponsoring duties under the Student visa route. This duty includes tracking academic engagement and attendance, which is only possible when a student is actively enrolled. As such the provision could not be applied, consequently deferment until September was not a viable option. Furthermore, Mr Khan has not provided any specific justification or supporting evidence to explain why he believes he is eligible for the issuance of a new CAS and visa while remaining in the UK, or explain the basis upon which he would complete his studies under his initial CAS. Had he submitted a clear and timely written request indicating his intention to defer his studies until September, under paragraph 7.5(f) of the guidance the University would have been in a position to seek clarification from UKVI as to whether such an arrangement was permissible. In the absence of such communication,

> the University was unable to explore alternative options or advocate on his behalf within the bounds of UKVI guidance."

But the Claimant was desperately trying to enrol, by 21 July had paid all the tuition fees, by 30th July, had asked to continue his studies, as did his solicitors on 16th August during a break, well before the next block started, that Ms Madden accepts would have enabled him to finish his course on time within his original visa period.

Procedural History

26. The claim was presented on 7 September 2025 drafted by Professor Shah and the grounds originally spanned to five grounds. The first ground contended the £8,000 paid to Convera on 4 July should be deemed as a payment to the Defendant for the enrolment period. The second ground was that the enrolment period ended on 7 July. The third ground was if the enrolment period ended on 15 July, that was too quick to withdraw the sponsorship when the Defendant was aware that a portion of the fee was in the pipeline. The fourth ground was that it was irrational for the Defendant not to withdraw its notification of withdrawal of sponsorship after it received the remaining fee on 21 July. The fifth ground was that the Defendant's decision of 18 July disproportionately interfered with the Article 8 ECHR rights of the Claimant. The relief sought was a quashing of the Defendant's decision and an injunction requiring the Defendant to issue the Claimant a new CAS.

27. However, the Home Office within a week of the claim being issued cancelled the Claimant's visa, after the Court on 11 September expedited a response from the Defendant. The grounds of resistance on 16 September by Mr Hirschmann not only opposed the five grounds in principle, but raised three preliminary points. The first was the claim was not amenable to Judicial Review as it gave rise only to private law rights. Second, it was contended the claim was out of time as it was not

brought promptly. Thirdly it was contended the claim was academic, effectively because the Claimant had missed too much time in relation to his studies.

28. On 25 September 2025, I refused permission on Grounds 1 and 2, essentially on the footing that I agreed with Mr Hirschmann's argument they both were issues of contractual interpretation raising private law issues. However, I granted permission on Grounds 3, 4 and 5 having determined the claim was neither out of time (the decision under challenge was on 18 July and the claim was issued less than two months later) nor academic because if the decision stands, the Claimant now has to leave the country and go back to Pakistan. In granting permission on Grounds 3 and 5, I accepted the authorities are very clear the Home Office applies a 'light trigger' with sponsor compliance with duties under the guidance e.g. in *R(St Andrews College)*, but I suggested there may be a difference between an obligation to report a non-enrolment under para 7.5(c) of the UKVI Guidance, which has to be done within 10 days of non-enrolment; and withdrawing sponsorship which appears from a different paragraph of that guidance to be different. Likewise, on Ground 5, I said that Article 8 ECHR was arguably engaged and the decision to withdraw sponsorship, if not the decision to report, was something arguably interference with the Claimant's Art.8 private life and arguably disproportionate.

29. In granting permission on Ground 4, I considered that it was in reality a complaint that the Defendant acted irrationally and wrongly in failing to retract its withdrawal of sponsorship after it had received payment on 21st July 2025. Ms Madden had accepted that it could have attempted to do this under Home Office Guidance, but said the Claimant did not attend studies after 7th July. But the Defendant knew by 21st July - only a fortnight later - the Claimant had in that period been trying to

enrol and had now paid his tuition fees in full. I found it arguable the Defendant acted irrationally by failing on or after 21st July even to attempt to withdraw its notification of cancellation to the Home Office. I pointed out it was permitted to do so notwithstanding the sponsor regime; entitled to do so under its own policies, which cannot fetter its discretion; and arguably it did not undermine administration.

The Grounds of Challenge

30. I need not go into Ground 1, which has not been renewed. Whilst Ground 2 is renewed, it remains flawed for the reasons I gave when refusing permission for it. Ground 2 is not a challenge under public law: it contends the enrolment period ended on a particular date, which is really a question of interpretation of the contract between the Claimant and the Defendant. Even if I did approach it as a public law challenge to the Defendant's own interpretation of its policies which are a matter for the Court to interpret objectively, it is plain the enrolment period itself ended on 7 July, even if the deadline for payment was 15 July. Therefore, the Home Office Guidance paragraph 7.5(c) which tells sponsors they must report a student's non-enrolment within 10 working days of the enrolment period ending, here on 7 July, so a report had to be made by Friday 18 July, as the Defendant did. In any event, even if the enrolment period technically ended on 15 July, as Mr Hirschmann says, it was perfectly rational for the Defendant to consider that it should report the Claimant's non-enrolment to the Home Office within that 10-day period in any event. As it was reported after 15 July, so Ground 2 is not arguable.

31. This leads directly on to Ground 3, which contends that if the enrolment period ended on 15 July, was it irrationally premature either to notify the Home Office, or to withdraw the sponsorship, on 18th July when the Defendant was aware that a

proportion of the fee was in the pipeline. In my view it cannot possibly be said to be irrational for the Defendant university to have reported the Claimant's non-enrolment by 18 July given the obligation to report within 10 days I have just discussed. However, withdrawal of sponsorship is different. When granting permission, I referred to the Home Office Guidance at paragraph 7.5(g) which says:

> "If a student to whom you have issued a CAS intends to request administrative review of a decision to refuse their visa application, and you will continue to sponsor them if the refusal is overturned, do not withdraw sponsorship until the review has been concluded. Report such students as non-enrolments in accordance with row c. of this table unless, you are withdrawing sponsorship for other reasons."

That makes it clear there is a difference between reporting and withdrawing. However, also relevant is Case Study 2 in the same UKVI Guidance:

> **"**Q. We have issued a CAS to a potential student to use in an application. The student hasn't arrived for enrolment and we don't know whether their application was successful. As a result of contacting them/failing to get in touch with the student, we have excluded them from the course….
>
> A. You need to access your SMS account and select the activity type 'sponsor has stopped sponsoring the migrant' and then 'sponsorship withdrawn; student has not enrolled. You can then use the notes field to add more detail such as the outcome of the application is unknown."

32. Moreover, I was not aware when granting permission that 18 months earlier in December 2023, the Home Office had told the Defendant in audit guidance this:

> "If the student is still being sponsored for their re-sits, then sponsorship should not be withdrawn, and a new CAS is not required for the student to continue their studies. If they then fail to enrol on the next stage of their course, for example on either year two or three, a notification to withdraw your sponsorship should be made to reflect that the student has stopped studying; you should select 'Sponsorship withdraw; sponsor has stopped sponsoring the student'. You should not select any option that states they have failed to enrol as the student did enrol on their course at year one."

The meaning of Guidance issued by a public body is a matter for the Court's interpretation of the language in context: *Mandalia v SSHD* [2015] 1 4546 (SC), though read sensibly, as Haddon-Cave LJ said in *St Andrews College*. My own

interpretation of the Home Office Guidance is that it requires withdrawal of sponsorship for unexplained non-enrolment as in Case Study 2 as elaborated in the audit guidance, as opposed to attempted enrolment which fails for some administrative reason as in this case, or a re-sit as specifically contemplated. Neither pose any risk to immigration control, by contrast to a student who has simply failed to enrol without explanation, who has effectively 'disappeared'.

33. However, I agree with Mr Hirschmann that the Home Office audit guidance was open to being read as saying that if a sponsored student simply was not enrolled on their next year for any reason, the sponsorship should be withdrawn. Whilst interpretation is not an issue of irrationality (*Mandalia*), it was not irrational for the Defendant to err on the side of caution and withdraw sponsorship as the consequences of getting it wrong could have been catastrophic. The authorities are full of references to the Home Office being entitled to operate a 'light trigger' for sponsorship which is a 'fragile gift'. If the Home Office considered the Defendant had been wrong, it could have imperilled its licence and the sponsorship of numerous other students. Whilst the Claimant's treatment was hard, the Defendant was rationally entitled to avoid risking the Home Office finding it had not been compliant with its sponsorship obligations. It was required under the Home Office Guidance to report the Claimant's apparent non-enrolment, but I accept also rationally entitled to withdraw his sponsorship. Neither was irrational and I dismiss Ground 3.

34. Ground 5 suffers the same fate for similar reasons. I am prepared to accept for the sake of argument that whilst the decision to report did not interfere with the Claimant's private life under Art.8 ECHR, the decision to withdraw his

sponsorship in my judgment plainly did. Whilst the Claimant had only been in the UK for a relatively short period of time, *Ahsan v SSHD* [2017] EWCA Civ 2009 shows that 'a student's involvement with their course and their college can itself be an important aspect of their private life'. The Claimant was desperate to sort out the problem and continue his studies to which he was obviously committed; and indeed he was desperate to avoid the problem of having to leave the UK to apply to return from abroad for a fresh CAS.

35. A similar requirement engaged Art.8 in *Chikwamba v SSHD* [2008] WLR 1420 (HL). More recently, in *Hallam v SSHD* [2023] 4 WLR 17 the Court of Appeal held *Chikwamba* remains authority that Art.8 is engaged where an application for leave to remain is refused on the ground that the applicant should leave the United Kingdom to make an application for re-entry. Whilst this is not a challenge to a refusal of leave, the Defendant's withdrawal of the Claimant's sponsorship imperilled his ability to stay in the UK and led to the curtailment of his leave to remain which unless varied requires him to go back to Pakistan and make an application there, which clearly interferes with his Article 8 private life.

36. However, the issue then arises as to whether the interference with private life is justified in the circumstances under Art.8(2) ECHR. In my judgment, there is plainly a legitimate aim for the Defendant's decision-making which was not simply immigration control in the broader sense, but as I have explained the Defendant's interest in complying with its sponsorship obligations as seen by the Home Office / UKVI. Applying the approach in *Bank Mellat v HM Treasury (No. 2)* [2014] AC 774 (SC), those objectives were sufficiently important to limit a protected right by withdrawing sponsorship. That was also rationally connected to those objectives, as

discussed in Ground 3, even though the Claimant posed no risk to immigration control. Whilst Professor Shah argued a less intrusive measure could have been used without compromising the achievement of the Defendant's need to comply with sponsor duties by only reporting not withdrawing sponsorship, as explained with Ground 3, that could have risked the Defendant being seen to fail to comply with its sponsor duties by the Home Office given the audit guidance. Therefore, withdrawal of sponsorship on 18 July struck a fair balance between the Claimant and the Defendant and other sponsored students whose visas may be at risk. Accordingly, I dismiss Ground 5. It can be rational and consistent with Art.8 ECHR for a sponsor to 'err on the side of cautious compliance' and withdraw sponsorship from a student if in doubt whether obliged to do so. But not only Art.8 but common law rationality may sometimes require a readiness to rescind that decision if the original grounds turn out to be misplaced or the position materially changes.

37. That leads onto Ground 4. It is not a challenge under Art.8 ECHR. It contends that even if withdrawal of sponsorship on 18 July were justified, it was irrational and wrong at common law for the Defendant not to rescind that (or even enquire with the Home Office whether it would be appropriate) after it received the Claimant's payment on 21 July. It is framed as an ongoing failure for two months between 21 July and Home Office curtailment of leave on 15 September, by when the claim had been issued.

38. Originally pleaded as an irrationality challenge, in granting permission for Ground 4, I said it also raised fettering of discretion. In *R(AB) v SSHD* [2018] EWCA Civ 383, that principle was summarised by Leggatt LJ (as he then was) at [44] and [48]:

> "44. A public authority which has a discretionary power may adopt a policy or rule to regulate the exercise of the power and indeed, if it fails to act consistently with its rule or policy, its decision may be open to public law challenge by a person adversely affected. At the same time the principle against fettering discretion requires decision-makers not to shut their ears to claims falling outside the policies they have adopted: see *Ali (Iraq) v SSHD* [2016] 1 WLR 4799, para 15. The leading authority is *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610. In that case the Board of Trade had a discretionary power to make grants for capital expenditure, but it adopted a policy not to make a grant for any item costing less than £25. British Oxygen had purchased a very large number of gas cylinders which cost over £4 million in total but only about £20 each. In accordance with its policy, the Board declined to make a grant. Lord Reid identified the general rule as being that "anyone who has to exercise a statutory discretion must not 'shut his ears to an application'" and "refuse to listen at all" but must be 'always willing to listen to anyone with something new to say'. As the Board had "carefully considered" all that British Oxygen had said and had done nothing to suggest that it would not continue to do so, it acted lawfully…
>
> 48. The principle against fettering discretion requires a decision-maker to be willing to listen to and consider arguments for not acting in accordance with a rule or other established policy. But it does not require the decision-maker to cast around for possible reasons to do so. That is clear from the nature of the principle which, as the *British Oxygen* case shows, is a requirement founded in procedural fairness that the decision-maker must not "shut his ears" to an application or refuse to "listen to anyone with something new to say". It is also confirmed by *R (Behary and Ullah) v SSHD* [2016] EWCA Civ 702, para 39, where the Court of Appeal held that there was no obligation on the Home Office to consider whether to grant leave to remain outside the Immigration Rules in the absence of an express request to do so or, possibly, of facts which were so striking that it would be irrational not to consider the grant of leave outside the Rules even in the absence of any request. In my view, the same applies to the grant of refugee status."

Therefore, the 'no fettering discretion' principle is engaged either by a request to exercise a discretion, or if it would be irrational not to exercise that discretion. However, as Lord Leggatt (as he now is) acknowledged at [44], this principle must be reconciled with the requirement to act consistently with a policy, unless there is good reason: c.f. *Mandalia* and *Lee-Hirons v SSJ* [2017] 3 WLR 590 (SC) at [17].

39. Mr Hirschmann's first argument was there was no request from the Claimant to rescind withdrawal of sponsorship. Likewise, Ms Madden said this in her second statement:

> "Had [the Claimant] submitted a clear and timely written request indicating his intention to defer his studies until September, under paragraph 7.5(f) Guidance the University would have been in a position to seek clarification from UKVI as to whether such an arrangement was permissible. *In the absence of such communication, the University was unable to explore alternative options or advocate on his behalf within the bounds of UKVI guidance."* (my italics)

However, as I have explained, the Claimant specifically wrote on 30 July:

> "I kindly request the university to reconsider my case and allow me to continue my studies either through a reinstatement *or by confirming my eligibility for the next available intake*. I remain committed to fulfilling all my academic and compliance obligations." (my italics)

Moreover, in the Claimant's solicitor's pre-action letter on 16 August, they said:

> "[W]e request the university restore the sponsorship and notify the Home Office his sponsorship has been restored to prevent visa curtailment and that Mr Khan can continue his classes in September 2025."

40. Therefore, firstly, even assuming Ms Madden is right to say there had to be a request to 'defer', whilst neither the Claimant nor his solicitors used the word 'defer', that was what both requests plainly meant: for the Defendant to enable the Claimant to resume his studies in the September teaching block. That 'deferral' would have been less than the 60 day-limit in para.7.5(f) of the Home Office Sponsor Guidance, so there would have been no need for 'exceptional circumstances' (as there were anyway, as addressed below). Indeed, the Claimants' solicitors letter also requested the Defendant to rescind its withdrawal of sponsorship to the Home Office. These were requests of the kind which Ms Madden described in her statement. Yet despite those earlier requests and what Ms Madden said in her first statement, there is no evidence the Defendant ever considered deferral and/or rescinding withdrawal of sponsorship before the pre-

action protocol response; and even that response simply refused to contact the Home Office without considering the issues later raised by Ms Madden; and refused deferral before the deadline for enrolment in September had even expired, but not because of lost teaching time – as Ms Madden later admitted, the Defendant never considered that at the time. It simply ruled out the possibility of rescinding its withdrawal of sponsorship on grounds of agreed deferral – or even enquiring about it – in response to the Claimant or to his solicitor – even though the latter was nearly a month before the Home Office decision to curtail. As I floated when granting permission, the Defendant fettered its discretion *R(AB)* (or frankly never considered whether it had one in the first place).

41. Secondly, even if the Defendant did exercise its discretion, it was irrational for it not to rescind its withdrawal of sponsorship once it was clear (i) the Claimant had paid his full tuition fees (ii) his delay in payment was down to minor administrative error; and (iii) he still wished to enrol, had only missed at most three weeks' of teaching and there was enough time for him to enrol for the September 2025 teaching block and still finish his course on time before his visa expired. Instead, on 14 August the Defendant rejected the Claimant's request on 30 July to resume studies in September because it was 'too late', but Ms Madden admits enrolment was open until mid-September. The same applies to the Claiamnt's solicitors' request on 16 August, which also asked for the Home Office to be contacted.

42. No reason was given by the Defendant in the response of 2 September for not doing so – the 'reasons' referred to were no more than the Claimant missing the enrolment deadline and that being his responsibility. That justified reporting him to the Home Office and withdrawing sponsorship when he missed the enrolment

deadline. It does not justify failing to rescind that harsh outcome once the minor error was corrected. Whilst Ms Madden said in her first statement the Claimant had missed too much study to be re-enrolled in September, as she later admitted that was not a factor in decision-making at the time. So, it goes at most to whether the Defendant could resist relief under s.31(2A) Senior Courts Act 1981 discussed below. In any event, even if that factor had been considered at the time, the two 'justifications' in Ms Madden's statements differ. Her first statement (in mid-September) says that by then too much teaching time had been lost, but it does not follow too much teaching time had been lost by the date of payment on 21 July two months earlier and Ms Madden did not say that the same did apply then. Indeed, she admits at that time the Claimant could still have enrolled in September and finished the course on time – just as para 7.5(f) of the Guidance envisaged. By contrast, Ms Madden's second statement says the Claimant never asked to 'defer', but as discussed, both he and his solicitors plainly did in plenty of time for him to enrol for September teaching.

43. As Professor Shah says, in mid-August, all the factors rationally pointed towards restoration of sponsorship: the Claimant was a genuine student and no risk to immigration control, or of abuse of sponsorship; he was academically sound and had completed his first year successfully and in the July teaching block he had tried to continue his studies until the Defendant rejected his enrolment on 18 July; he had missed at most 3 weeks' teaching in July and was well in time to enrol for September; and had he done so, he could have completed his degree in time before his CAS expired. Whilst the Defendant was rationally justified in erring on the side of caution in reporting and withdrawing his sponsorship on 18 July when he had not fully-paid or enrolled, it was not rationally justified in stubbornly refusing to

reverse that decision days later when the problem was cured and when there was plenty of time for the Claimant to resume his studies and catch up the very limited time he had lost. That was not just 'harsh but fair', given the dramatic consequences for the Claimant - in effect requiring him to leave the UK and re-apply from abroad as the Defendant itself told him – the Defendant significantly risked the Claimant's ability to complete his studies for no good purpose whatsoever and indeed in a way which was irrational. In my judgment, if the Defendant did consider its discretion to rescind its withdrawal of sponsorship but chose to refuse to exercise it (which I do not accept), that was irrational.

44. Thirdly, even if I am wrong about that and the Defendant did exercise its discretion rationally in not deferring the Claimant within para 7.5(f) of the Home Office Guidance; its failure even to make enquiries with the Home Office about whether sponsorship could be restored on some other basis was irrational. Case Studies 5 and 8 of the Guidance said:

> "5. Q. We have a prospective student who is unexpectedly delayed. They have provided a new date of arrival which we are happy to agree and set a revised enrolment date. How do we tell you this? A. You need to access your SMS account and select the category 'student is delayed' and then 'student enrolment is delayed and a new date provided' entering the new date in the free text field….
>
> 8. Administrative error in student reporting. Q. We have reported that one of our students has failed to turn up to enrol on their course. However, we now realise that an administrative error had been made and the student actually did enrol. How do we correct this? A. You need to access your SMS account and select the option 'previous notification withdrawn' providing all relevant details in the free text field. If the report is submitted in time curtailment of the student's leave will be cancelled."

So, if the sponsor had made an administrative error, it could have corrected it easily. Whilst the Defendant had not made any administrative error, from its perspective either the Claimant (as it in fact was) or Convera had done so, yet the Defendant did not even enquire with the Home Office whether it could be corrected

by analogy with Case Study 8, or by agreeing a revised enrolment date under Study 5. Even if the reasons I have given do not justify a conclusion that the Defendant fettered its discretion or exercised it irrationally in failing to rescind its withdrawal of sponsorship, it certainly was irrational in failing even to enquire about he possibility of rescission with the Home Office. I fully bear in mind - as I have already borne in mind in dismissing the challenges in Grounds 3 and 5 - the Defendant's 'light trigger' and 'fragile gift' points: i.e. the risk to the Defendant of being seen by the Home Office not to comply. But surely there was no realistic risk in simply asking the Home Office whether it was permissible and appropriate to rescind withdrawal of sponsorship, e.g. by analogy to Case Study 8. It failed to take into account relevant considerations: i.e. its ability to make that request at least before the Home Office curtailed leave, acknowledged by Ms Madden.

45. Therefore, the Defendant either fettered its discretion, exercised it irrationally in failing to rescind, or exercised it irrationally in failing even to enquire about that with the Home Office. On any one of these three bases, I am driven to the conclusion that – even making full allowances as I have done for the importance to the Defendant and other sponsored students of compliance with Home Office guidance, in the unusual circumstances of this case the Defendant's conduct either fettered its discretion or was irrational and so I uphold Ground 4.

46. The Defendant's failure is not saved by Ms Madden's evidence both on its merits for the reasons I have already given, but also because in my judgment it introduces retrospective justifications which are not evidenced in the decision-making at the time which cannot render irrational conduct rational. In any event, as I have said, even if s.31(2A) SCA is applied, it cannot be said that it is highly likely the

outcome for the Claimant would have been not substantially different if the conduct complained of had not occurred and the Defendant had sought to rescind its withdrawal of sponsorship, or even to enquire with the Home Office about doing so. As recent authorities have discussed, s.31(2A) SCA requires a proper evidential basis from the Defendant. As I have said, Ms Madden says two different things in two different statements. In her first she says the Claimant had missed too much study time in July to rescind the withdrawal. However, she says in the second statement that if the Claimant had made a clear request (which did not acknowledge that he had in fact done) then an enquiry could have been made with the UKVI. I have in fact already addressed both. Those are not alternatives, they are contradictions and for the reasons I have given, they cannot possibly satisfy me it was highly likely the outcome would have been the same had the conduct complained of not occurred.

47. However, Mr Hirschmann skilfully raised three points which merit proper judicial response, but the overarching point is that none of those points were considered by the Defendant at the time, nor even in Ms Madden's evidence. The first is that the Defendant had to follow its own policies unless there is a good reason not to do so (*Lee-Hirons)*. However, not only can policies be departed from with good reason (*Mandalia*), a decision-maker should not fetter their discretion (*R(AB)*) which is precisely what the Defendant did, as I have said. In any event, the Claimant's request in July to resume studies in September would have been consistent with the Defendant's enrolment policy and the Home Office's Guidance, not a departure from either. Mr Hirschmann's second point is that it would have been futile to ask the Home Office, because its Guidance in the audit letter was clear that if a student had failed to enrol then sponsorship would have been withdrawn. But Ms Madden

actually accepts the Defendant could have made enquiries with the Home Office had the Claimant requested to defer, but the problem is, as I have said, that is what he effectively did. In any event, Mr Hirschmann's second point cannot be squared with Case Study 8, which envisages rescission of withdrawal of sponsorship if there has been administrative mistake. Finally, Mr Hirschmann's third point was that the Defendant could only defer the Claimant's enrolment consistently with para 7.5(f) of the Home Office Guidance if there were 'exceptional circumstances'. But 'deferral' in this case would only have been from July to September – less than 60 days – and in any event, there were exceptional circumstances in this case given the minor delay and administrative error and willingness to resume studies, but yet again the Defendant failed to consider that properly. Therefore, Mr Hirschmann's skilful arguments cannot rescue the Defendant from its basic failure to consider exercising its simple and obvious discretion. I therefore uphold Ground 4 and reject any reliance on s.31(2A) SCA. That only leaves two other points resisting relief raised by Mr Hirschmann.

48. Mr Hirschmann contended that the claim is academic in the public law sense discussed in *L v Devon CC* [2021] EWCA Civ 358: i.e. that the outcome does indeed directly affect the rights and obligations of the parties, because after this much time, the Claimant could not now demonstrate that he had made academic progression as required by the Immigration Rules. I accept the Rules create bright lines and to stay in the UK and the Claimant must show he falls within Appendix Student ST 14.1-14.5. However, they provide an exception to academic progression if a student is applying to repeat modules and to complete the course. Even now, after the Claimant has missed part of the July teaching block and all the September-October teaching block, that is still arguably met here. In any event, it

was the Defendant's decision to ignore or at best refuse without proper reasons the Claimant's request to continue his studies in September. It cannot rely on its own unlawful act to say that a claim has become academic. Furthermore, if the Defendant's failure to rescind withdrawal of sponsorship is quashed, that may well be relevant to the Claimant's immigration position with the Home Office; and so, it is far from academic in the public law sense. Therefore, I reject that argument.

49. However, secondly, I do agree with Mr Hirschmann that the Claimant is not certain to meet the academic progression requirements, which militates against the granting of mandatory relief to re-grant the Claimant a CAS. That is something which the Home Office will have to consider in any application by the Claimant to extend leave by the deadline of next Friday. Indeed, it is quite possible that the Home Office will refuse to extend the Claimant's visa because they may take the view that too much academic progress has been lost, even if that is down to the Defendant, not the Claimant. If so, the fact that I have found that the Defendant made an unlawful decision will, or at least may, at that stage become academic, because the Home Office has essentially already found that the Claimant's leave cannot continue; and he would then be an overstayer. In those circumstances, I refuse the Claimant's application for mandatory relief against the Defendant to regrant him his CAS, but I will declare the Defendant's decision to fail to rescind its withdrawal as unlawful.

50. As the Claimant's fate is now in the hands of the Home Office and his leave runs out in less than a week, I sat late at the hearing to give an extempore judgment. So, the Claimant knows immediately I am declaring the Defendant's failure to rescind its withdrawal of sponsorship was unlawful, but it may not necessarily make a

great deal of difference in the end: but ultimately that is not up to myself, but up to the Home Office. Nevertheless, I hope that the Defendant and other sponsor universities faced with similar issues in the future behave more rationally and flexibly – and perhaps simply with more pastoral understanding. At the end of the day, whilst they are also immigration sponsors under strict duties, our universities remain centres of learning which will continue to educate the best and brightest students from this country and around the world.

(This Judgment has been approved by the Judge.)

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