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Appeal Nos: CA-2025-002134
Case Nos: AC-2024-LON-000883

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Dame Victoria Sharp P and Mrs Justice Farbey
[2025] EWHC 2019 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2026

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE BEAN, VICE PRESIDENT OF THE COURT OF APPEAL (CIVIL
DIVISION)
and
LORD JUSTICE SINGH

Between:

THE KING
on the application of
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Claimant/Respondent

- and -

SPECIAL IMMIGRATION APPEALS
COMMISSION

Defendant

-and-

FGF

First Interested Party

H7

H15

Second and Third Interested Parties/Appellants

Nick Armstrong KC and Emma Daykin (instructed by **Deighton Peirce Glynn Solicitors**) for the **Second and Third Interested Parties/Appellants** (H7 and H15)

Lisa Giovannetti KC and Richard Evans (instructed by **Government Legal Department**) for the **Claimant/Respondent** (the Home Secretary)

The Defendant did not appear and was not represented (SIAC)

The First Interested Party did not appear and was not represented (FGF)

Hearing date: 21 July 2026

JUDGMENT

This judgment was handed down remotely at 10:00am on 31 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives

SIR GEOFFREY VOS, MASTER OF THE ROLLS:

Introduction

1. This case raises questions as to the power of the Special Immigration Appeals Commission (SIAC) to award costs. The issues have focused on the proper construction of sections 2D(3) and section 2D(4) respectively of the Special Immigration Appeals Commission Act 1997 (the 1997 Act), which provide as follows:
 - (3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.
 - (4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings.
2. In essence, H7 and H15 submit that sections 2D(3) and (4) together or separately give SIAC the power to make an order for costs, not only where it decides that a naturalisation or citizenship decision should be set aside, but more generally when SIAC reviews such decisions. SIAC had decided in FGF's case that it did have such a power, which it exercised to award costs in FGF's favour when the Home Secretary withdrew the adverse naturalisation decision that she had made in FGF's case (SIAC's FGF Decision). The Home Secretary then brought a judicial review claim against SIAC to quash SIAC's FGF Decision. FGF did not appear at that hearing, but the Divisional Court agreed to hear submissions from H7 and H15 on the application, even though H7 and H15 were not the subject of any SIAC decision as to costs and were not directly affected by SIAC's FGF Decision.
3. The Divisional Court (Dame Victoria Sharp PKBD and Mrs Justice Farbey) quashed SIAC's FGF Decision and held that SIAC had no power to award costs in review cases. It declared as follows:
 3. (i) [SIAC] does not have the power to award costs in cases where an applicant has applied for a review, pursuant to sections 2C-2F of the [1997 Act]; and in any event
 - (ii) [SIAC] does not have jurisdiction to award costs where an application for review is withdrawn or treated as withdrawn pursuant to Rule 11A of the Special Immigration Appeals Commission Procedure Rules 2003 [rule 11A].
4. H7 and H15 now appeal the Divisional Court's order. FGF did not appear before either this court or the Divisional Court due to a lack of funding. Instead, H7 and H15 made submissions here and below without objection from the Home Secretary. In the light of that stance, we agreed to deal with the important legal issues raised by H7's and H15's appeal, notwithstanding their lack of formal standing.
5. H7 and H15 raised essentially three grounds of appeal as follows.
6. First, as a matter of statutory construction (the Construction Ground), sections 2D(3) and/or (4) allowed **any** costs orders to be made by SIAC just as the Administrative Court could make any costs orders in judicial review proceedings. The amendments to the 1997 Act made by the Justice and Security Act 2013 (the 2013 Act) had moved

certain judicial review proceedings from the Administrative Court into SIAC, but had not been intended by the legislature to affect the costs regime applicable to such cases. The first words of section 2D(4) (namely “[i]f the Commission decides that the decision should be set aside”) did not limit the costs orders that could be made, amongst other reasons because of the principle of legality. That principle provided that fundamental rights could not be overridden by general or ambiguous words; important rights could only be defeated if that consequence was expressly provided for in primary legislation - see *R v. Secretary of State for the Home Department, Ex parte Simms* [2000] 2 AC 115 (*Ex parte Simms*).

7. Secondly and in any event, section 3 of the Human Rights Act 1998 (HRA 1998) required the court to read and give effect to the 1997 Act in a way that was compatible with an applicant’s right not to be discriminated against under article 14 (article 14) of the European Convention on Human Rights (the Convention). I shall refer to this as the “Article 14 Ground”. That required the 1997 Act to be read as if there were a costs regime just as there was where an applicant’s rights could be vindicated by judicial review in the Administrative Court. The applicant’s relevant Convention rights for the purposes of the application of article 14 were those under article 8 (right to respect for private and family life) and article 1 of the first protocol (A1P1) to the Convention (protection of property).
8. Thirdly, any costs jurisdiction of SIAC under sections 2D(3) and/or (4) did not, as the Divisional Court thought, fall away where the Home Secretary withdrew her decision under rule 11A (the Rule 11A Ground).
9. The Home Secretary supported the Divisional Court’s decision.
10. She argued on the Construction Ground that the proper construction of sections 2D(3) and (4) had to be derived from pointers elsewhere in the 1997 Act and its legislative history. First, sections 5(1)(b) and (c) and 5(2A) of the 1997 Act (section 5) allowed the Lord Chancellor to make rules (including anything “which may be done by Tribunal Procedure Rules”) “for prescribing the practice and procedure to be followed on or in connection with appeals [to SIAC]” and “for other matters preliminary or incidental to or arising out of such appeals”. Such rules applied to reviews under section 2D, as well as appeals, because of the express extension provision in section 6A of the 1997 Act (section 6A). The Lord Chancellor had never made any such rules. Secondly, whilst sections 2D(3) and (4) might have been rather broadly worded, it was obvious that the legislature was only referring in those sections to principles which might be applied and relief and orders that might be made or given substantively rather than procedurally on an application for review of a decision by the Home Secretary. Procedural rules, including rules as to costs, were only covered by section 5, and without rules being made as to costs under that section, no such costs regime could exist.
11. On the Article 14 Ground, the Home Secretary argued that the power granted to the Lord Chancellor to make rules about costs under section 5 made the 1997 Act compatible with an applicant’s Convention rights. H7 and H15 had never said **how** section 2D should be read down to provide for the costs regime they seek, when the 1997 Act already provides for such a regime to be introduced at the behest of the Lord Chancellor. In any event, a “no costs” regime had some advantages for applicants over a costs regime. Moreover, costs were not a possession within A1P1 and the different costs regimes (as between judicial review proceedings and a SIAC review) did not bring

an applicant within the ambit of article 14. In any event, there was clear justification for such differences.

12. I have decided (on the Construction Ground) that the Divisional Court was right as to the proper construction of sections 2D(3) and (4). SIAC has no power to order costs in review proceedings under section 2D in the absence of a costs regime being established by rules made by the Lord Chancellor under section 5. On the Article 14 Ground, whilst article 14 might be engaged by an applicant's rights under A1P1 (but not article 8), section 3 of the HRA 1998 cannot assist H7 and H15 when the 1997 Act already provides for a costs regime to be introduced by the Lord Chancellor. The position of an applicant for judicial review to the Administrative Court is neither analogous nor relevantly similar to that of an applicant under section 2D to SIAC for a review of the Home Secretary's decisions on national security grounds. Any possible discrimination was anyway justified. Accordingly, the Rule 11A Ground did not arise. The appeal should, therefore, be dismissed.
13. I shall explain my reasons quite briefly under the following headings: (i) additional factual background, (ii) the relevant legislation, (iii) SIAC's decision, (iv) the Divisional Court's decision, (v) the Construction Ground, (vi) the Article 14 Ground, (vii) the Rule 11A Ground, and (viii) my conclusions.

Additional factual background

14. This section is largely based on passages taken from the Divisional Court's judgment.
15. FGF applied for naturalisation as a British citizen on 27 January 2020. On 16 February 2022, the Home Secretary refused FGF's application on the grounds that he did not meet the requirement of good character under section 6(1) of, and paragraph 1 of Schedule 1 to, the British Nationality Act 1981. The Home Secretary certified that her decision had been made wholly or partly in reliance on information which should not be made public (under section 2D(1)(b)). As a result, the Home Secretary's decision could only be challenged by a review in SIAC under section 2D. FGF applied to SIAC for a review on 23 February 2022.
16. On 2 August 2022, the Home Secretary withdrew her decision in order to consider FGF's evidence. On 11 August 2022, SIAC served a notice recording that, as a result, FGF's application was to be treated as having been withdrawn pursuant to rule 11A. On 2 August 2023, the Home Secretary remade her refusal decision. On 30 September 2024, SIAC granted FGF's review application and quashed the Home Secretary's decision.
17. Meanwhile, on 12 June 2023, FGF had applied to SIAC for his costs of the first review proceedings. The costs application was heard on 15 February 2024. On 23 February 2024, SIAC (Jay J, UTJ O'Callaghan and Mr Golland) decided in SIAC's FGF Decision both that it had jurisdiction to award costs, and that it would award costs to FGF. SIAC transferred the detailed assessment of those costs to the High Court.
18. On 14 March 2024, the Home Secretary issued these judicial review proceedings against SIAC, citing FGF as an interested party. As I have said, FGF played no part in the judicial review proceedings. On 25 July 2024, Foster J acceded to H7 and H15's application to be joined as further interested parties. Each of H7 and H15 has applied

for their costs in their own SIAC proceedings, but the determination of their costs applications has been stayed by SIAC pending these proceedings. The Divisional Court declined to set out the facts of H7's and H15's cases as they were not before SIAC and were not relevant to SIAC's decision.

19. Despite an (unresolved) argument raised before the Divisional Court about whether or not the Home Secretary could have appealed SIAC's costs order in favour of FGF directly to the Court of Appeal under section 7(1A) of the 1997 Act, the Home Secretary's application for judicial review proceeded on the pragmatic basis that the parties agreed that the court should deal with it.

The relevant legislation

The Special Immigration Appeals Commission Act 1997 (the 1997 Act)

20. When the 1997 Act was enacted, it concerned only appeals. It made no mention of reviews. It is the amendments to the 1997 Act made by the 2013 Act that are most relevant to what we have to decide.
21. Section 2C of the 1997 Act (added by the 2013 Act and later amended) concerns reviews of directions about the exclusion of non-EEA nationals from the UK.
22. Section 2D (added by the 2013 Act and further amended by the Counter-Terrorism and Security Act 2015) provides as follows under the heading: "Jurisdiction: review of certain naturalisation and citizenship decisions"
 - (1) Subsection (2) applies in relation to any decision of the Secretary of State which —
 - (a) is either — (i) a refusal to issue a certificate of naturalisation under [section 6 or 18 of the British Nationality Act 1981] to an applicant under that section, or (ii) a refusal to grant an application of the kind mentioned in section 41A of that Act (applications to register an adult or young person as a British citizen etc.), and
 - (b) is certified by the Secretary of State as a decision that was made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public — (i) in the interests of national security, (ii) in the interests of the relationship between the United Kingdom and another country, or (iii) otherwise in the public interest.
 - (2) The applicant to whom the decision relates may apply to the Special Immigration Appeals Commission to set aside the decision.
 - (3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.
 - (4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings.
23. Section 2E (added by the 2013 Act and later amended) concerns reviews of certain deportation decisions. Section 2F (added by the Nationality and Borders Act 2022)

concerned reviews of certain other immigration decisions. Each of sections 2C, 2E and 2F include provisions in similar terms to section 2D(3) and (4). Whilst we heard no detailed argument on sections 2C, 2E and 2F, we have assumed that our decision will most likely apply as much to them as it does to section 2D.

24. Section 1 of the 1997 Act (as amended) provides for the establishment of SIAC “for the purpose of exercising the jurisdiction conferred by [the 1997 Act]”, and that SIAC should be “a superior court of record”. Section 2 and 2B of the 1997 Act (as amended) make provision for the appeals to be heard by SIAC.
25. Section 5 of the 1997 Act (as amended) provides as follows under the heading “Procedure in relation to jurisdiction under sections 2 and 3”:
 - (1) The Lord Chancellor may make rules —
 - (a) for regulating the exercise of the rights of appeal conferred by [section 2 or 2B]
 - (b) for prescribing the practice and procedure to be followed on or in connection with appeals under that section, including the mode and burden of proof and admissibility of evidence on such appeals, and
 - (c) for other matters preliminary or incidental to or arising out of such appeals, including proof of the decisions of the Special Immigration Appeals Commission.
...
 - (2A) Rules under this section may, in particular, do anything which may be done by Tribunal Procedure Rules.
 - (3) Rules under this section may, in particular—
 - (a) make provision enabling proceedings before the Commission to take place without the appellant being given full particulars of the reasons for the decision which is the subject of the appeal, ...
 - (4) Rules under this section may also include provision — ...
 - (b) conferring on the Commission such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions. ...
 - (6) In making rules under this section, the Lord Chancellor shall have regard, in particular, to — (a) the need to secure that decisions which are the subject of appeals are properly reviewed, and (b) the need to secure that information is not disclosed contrary to the public interest.
 - (8) The power to make rules under this section shall be exercisable by statutory instrument.
 - (9) No rules shall be made under this section unless a draft of them has been laid before and approved by resolution of each House of Parliament.
26. It may be noted at once that section 5 makes no express mention of costs.

27. Section 6A of the 1997 Act (inserted by the 2013 Act and as amended) provides as follows under the heading: “Procedure in relation to jurisdiction under sections 2C to 2F”:

(1) Sections 5 and 6 apply in relation to reviews under section 2C, 2D, 2E or 2F as they apply in relation to appeals under section 2 or 2B.

(2) Accordingly — (a) references to appeals are to be read as references to reviews (and references to appeals under section 2 or 2B are to be read as references to reviews under section 2C, 2D, 2E or 2F, and (b) references to an appellant are to be read as references to an applicant under section 2C(2), 2D(2), 2E(2) or (as the case may be) 2F(2).

Human Rights Act 1998

28. Section 3 of the HRA 1998 provides as follows under the heading “Interpretation of legislation”:

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section —

(a) applies to primary legislation and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

Senior Courts Act 1981

29. Section 31 of the Senior Courts Act 1981 provides for the orders that may be made in judicial review proceedings under the heading: “Application for judicial review”.

(1) An application to the High Court for one or more of the following forms of relief, namely — (a) a mandatory, prohibiting or quashing order; (b) a declaration or injunction under subsection (2); or (c) an injunction under section 30 restraining a person not entitled to do so from acting in an office to which that section applies, shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.

(5) If, on an application for judicial review, the High Court makes a quashing order in respect of the decision to which the application relates, it may in addition — (a) remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or (b) substitute its own decision for the decision in question.

30. Section 51 of the Senior Courts Act 1981 provides as follows under the heading: “Costs in civil division of Court of Appeal, High Court and county courts”:

(1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in — (a) the civil division of the Court of Appeal; (b) the High Court; (ba) the family court; and (c) the county court, shall be in the discretion of the court.

(2) Without prejudice to any general power to make rules of court, such rules may make provision for regulating matters relating to the costs of those proceedings ...

(3) The court shall have full power to determine by whom and to what extent the costs are to be paid.

Special Immigration Appeals Commission (Procedure) Rules 2003/1034

31. Rule 11A provides as follows under the heading: “Withdrawal of appeal or application for review”:

(1) An appellant may withdraw an appeal or application for review (a) orally, at a hearing; or (b) at any time, by filing written notice with the Commission.

(2) An appeal or application for review shall be treated as withdrawn if the Secretary of State notifies the Commission that the decision to which the appeal or application for review relates has been withdrawn.

(3) If an appeal or application for review is withdrawn or treated as withdrawn, the Commission must serve on the parties and on any special advocate a notice that the appeal or application for review has been recorded as having been withdrawn.

SIAC’s decision

32. This summary of SIAC’s decision is largely taken from the Divisional Court’s judgment.
33. SIAC first considered whether it had the power to award costs where the decision under review was set aside. SIAC held that section 5 was not the source of any such power because the Special Immigration Appeals Commission (Procedure) Rules 2003 were “silent about costs” [38]. Section 2D(3) did not contain any power to award costs because its function was to specify the principles to be applied to ascertaining the merits of the application for review, and it was not wide enough to cover the creation of a costs-conferring power [39].
34. SIAC then held at [39] that section 2D(4) was drafted in “extremely wide” terms. It permitted SIAC to make any order that the High Court might make in judicial review proceedings. SIAC had jurisdiction to grant declaratory relief and make a quashing order in the same way that the High Court might grant such relief under section 31 of the Senior Courts Act 1981 (see [29] above). Section 31 was “incorporated by reference” in section 2D(4), and there was no reason why a power to award costs was not incorporated by reference to section 51 of the Senior Courts Act 1981 (see [30] above). SIAC held that the natural and ordinary meaning of the words “make any such order” in section 2D(4) was wide enough to cover an order for costs. The new review jurisdictions in sections 2C-2F were intended to be based on the application of judicial review proceedings “from cradle to grave”. Parliament could not have overlooked that costs were payable in judicial review proceedings [42].

35. At [45], SIAC distinguished the Court of Appeal's decision that there was no power to award costs in appeals (as opposed to reviews) in *C7 v. Secretary of State for the Home Department* [2023] EWCA Civ 265; [2023] KB 317 (C7). SIAC said that the Court of Appeal had identified no express power covering an award of costs in a section 2B appeal in the 1997 Act. It followed that, unless section 5 was the *locus* of the power (which it was not, because no costs rules had been made under that section), C7's application for costs could not succeed.
36. SIAC held that the first words in section 2D(4): "[i]f [SIAC] decides that the decision should be set aside" were anomalous. The probable reason for those words was that Parliament thought that, in a procedure dependent on closed material, it would be unfair to subject an applicant to a further possible penalty [46]. There was "no reason of purpose and/or policy why SIAC should not possess all the powers of the High Court in these circumstances" [47], including the power to award costs to a successful applicant.
37. Having considered the case of a successful applicant, SIAC went on to consider whether it had a costs power in cases where the Home Secretary had, as in FGF's case, withdrawn her decision. SIAC held that it would be unappealing if costs could be awarded where an applicant succeeded, but could not be awarded if the Home Secretary withdrew a decision. It would lead to the anomaly that the Home Secretary could withdraw a decision part-way through a SIAC hearing when she knew that she would be likely to lose [50].
38. SIAC did not think that rule 11A barred its jurisdiction. Rule 11A(2) (see [31] above) required a review application to be treated as having been withdrawn if the Home Secretary notified SIAC of the withdrawal of her decision, and rule 11A(3) required SIAC to serve notice that the review application had been recorded as "having been withdrawn." SIAC held that it retained a costs jurisdiction even after an application had been withdrawn.

The Divisional Court's decision

The Divisional Court on construction

39. The Divisional Court held at [61] that it should apply a purposive approach to the construction of the 1997 Act. Sections 2D(3) and (4) should be read together [62]. There was no reference either to the powers of the High Court outside judicial review or to the more general jurisdiction of the High Court to make ancillary orders, such as to costs. The words in section 2D(3): "the principles which would be applied in judicial review proceedings" meant the principles for determining a claim substantively.
40. The words "make any such order" that might be made in judicial review proceedings in section 2D(4) had to be read in the context of a section concerning SIAC's powers when deciding to set aside a decision. Other related orders (such as remittal) could then be made. The purpose of section 2D(4) was to allow SIAC to do so. There was no reason to suppose that Parliament intended to confer costs powers by the section dealing with orders for the substantive disposal of the review application [64]. The **procedure** for reviews was governed by section 5. The award of costs was an ancillary power within section 5(4)(b), or a rule of procedure for matters "incidental to or arising out of" SIAC reviews within section 5(1)(c) (see [25] above) [65]. SIAC had misdirected

itself in law in rejecting section 5 as the source of a costs power because the Special Immigration Appeals Commission (Procedure) Rules 2003 were silent about costs. There was a difference between the source of a statutory power and (the Lord Chancellor's) decision as to the exercise of that power [66]. Elisabeth Laing LJ had been right to say at [74] in *C7* that the language of section 5 showed that a power to award costs in appeals could only be conferred on SIAC by the Lord Chancellor making rules. Her reasoning applied with equal force to reviews (see section 6A at [27] above).

41. The Divisional Court held, in relation to access to justice, that many legal systems operated without costs powers. There was no warrant for the suggestion that, absent an additional power to award costs, SIAC would be unable to do justice between the parties [72]-[73]. Moreover, nothing suggested that Parliament intended to introduce an unusual one-way costs power as the words "[i]f the Commission decides that the decision should be set aside" would imply [74] and [76].
42. At [77], the Divisional Court endorsed the Investigatory Powers Tribunal's decision in *McCaffrey v. Chief Constable of the Police Service of Northern Ireland* [2025] UKIP Trib 2 at [74]-[76]; [2026] 1 All ER 1181 to the effect that it would be "unconducive to the interests of legal certainty" for SIAC to have broad unfettered discretions as to costs without the framework of specific rules [77]-[78].

The Divisional Court on Article 14

43. In relation to article 14, the Divisional Court at [81] derived the principles from Lord Reed at [37] and [39] in *R (SC) v. Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223 (SC) to the effect that: (i) only differences in treatment based on an identifiable characteristic or status were capable of amounting to discrimination within the meaning of article 14, (ii) there must be a difference in the treatment of persons in analogous, or relevantly similar, situations, (iii) such a difference of treatment was discriminatory if it had no objective and reasonable justification; in other words, if it did not pursue a legitimate aim or if there were not a reasonable relationship of proportionality between the means employed and the aim sought to be realised, and (iv) the contracting state enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment; the scope of this margin will vary according to the circumstances, the subject matter and the background. The alleged discrimination had to relate to a matter which fell within the ambit of one of the substantive articles [81].
44. The Divisional Court "struggled" to understand how it [was] said that the inability to recover costs [fell] within the ambit of either article 8 or A1P1 [82], but set aside that difficulty to consider Lord Reed's second principle (at [43] above) namely how it could be said that an inability to recover costs in SIAC was capable of giving rise to "a difference in the treatment of persons in analogous, or relevantly similar, situations" [82]. The Divisional Court held at [84] that article 14 was not engaged at all. SIAC applicants received no different treatment to analogous persons who appeared in other jurisdictions where costs were not available or where they did not qualify for legal aid. At [87], the Divisional Court held that it had been presented with no coherent framework for reading section 2D(4) differently in order to preserve its compatibility with article 14. SIAC had no jurisdiction to award FGF his costs, until the Lord Chancellor exercised his section 5 rule-making powers.

The Divisional Court on Rule 11A

45. On rule 11A, the Divisional Court concluded at [93] that SIAC had made an error of law. Rule 11A provided that proceedings falling within it were to be brought to an end automatically without SIAC taking any decision. SIAC impermissibly elided a judicial determination that a decision should be set aside under section 2D(4) with a record of withdrawal under rule 11A where there was no judicial determination. If the Home Secretary withdrew a challenged decision, SIAC has no discretion to do anything other than serve a notice on the parties that the review application had been recorded as having been withdrawn. Rule 11A deems the review application withdrawn. Serving the notice was neither a judicial decision nor did it flow from a judicial decision. It flowed from the Home Secretary's administrative action which had the legal effect provided for in rule 11A [92].

The Construction Ground

46. It is worth repeating (for the third time) the central provisions of section 2D that need to be construed as follows:
- (3) In determining whether the decision should be set aside, the Commission must apply the principles which would be applied in judicial review proceedings.
- (4) If the Commission decides that the decision should be set aside, it may make any such order, or give any such relief, as may be made or given in judicial review proceedings.
47. SIAC took a literalist approach to the construction of the latter part of section 2D(4), giving the words "it may make any such order ... as may be made ... in judicial review proceedings" their naturally broad meaning. It then found it possible somehow to disregard the clear introductory words that provide for such orders only to be made "if [SIAC] decides that the [Home Secretary's] decision should be set aside". In my judgment, it fell into error in both parts of the construction exercise.
48. The 1997 Act has to be construed as a whole against the background of its legislative history. The court's objective must be to divine the legislature's intentions looking at the legislation as a whole on that basis.
49. When the 1997 Act was introduced, it concerned only appeals and not reviews. Costs were not mentioned, but sections 5(1)(b) and (c) allowed, even then, the Lord Chancellor to make rules "for prescribing the practice and procedure to be followed on or in connection with appeals" and "for other matters preliminary or incidental to or arising out of such appeals", and section 5(4)(b) gave the Lord Chancellor ancillary powers, each of which must be taken to have included the power to lay down, by statutory instrument, a costs regime for the appeals then covered by the 1997 Act (see Elisabeth Laing LJ at [74]-[83] in C7).
50. The introduction of reviews into the statutory landscape in 2013 seems unlikely to have changed that position in and of itself for three reasons. First, section 6A provided expressly that section 5 was to "apply in relation to reviews under sections 2C, 2D, 2E or 2F" (see [27] above), and that "references to appeals [were] to be read as references to reviews". Secondly, Parliament is to be taken in legislating in 2013 to have known

that no costs regime had been established by the Lord Chancellor. Thirdly, neither section 2D(3) nor section 2D(4), properly understood in their context, seem to be addressing procedural matters.

51. On that third point, section 2D is headed “Jurisdiction: review of certain naturalisation and citizenship decisions”. It was introducing a new jurisdiction to SIAC, just as sections 2C, 2E and (later) 2F, were doing. Sections 2D(1) and (2) define the new jurisdiction that is being allocated to SIAC. Notably, section 2D(2) provides that “[t]he applicant to whom the decision relates may apply to [SIAC] **to set aside the decision**” (emphasis added).
52. Sections 2D(3) and (4) then elaborate on that set aside decision. Section 2D(3) provides that “[i]n determining whether the decision should be set aside, [SIAC] must apply the principles which would be applied in judicial review proceedings”. That is plainly directed only at the decision that SIAC would make as to whether or not to set aside the Home Secretary’s decision. Section 2D(4) then follows by providing for what should happen “[i]f [SIAC] decides that the decision should be set aside”. In that event, section 2D(4) says that SIAC “may make any such order, or give any such relief, as may be made or given in judicial review proceedings”. Whilst I accept that, in many contexts, those words would obviously be wide enough to include an order for costs, context is crucial. The context here is that the whole section is directed at SIAC’s new jurisdiction to set aside naturalisation and citizenship decisions. It is not directed at the procedural or ancillary rules or provisions that might be made to facilitate, or as a consequence of, that decision. That is the province of section 5. In terms of jurisdiction, it is obvious that section 31 of the Senior Courts Act 1981 (see [29] above) contains “the principles which would be applied in judicial review proceedings” referred to in section 2D(3). Section 31 explains (as the legislature is taken to have known) that, in judicial review proceedings, the High Court (and now SIAC) might make mandatory, prohibiting or quashing orders and declaration and injunctions. Under section 31(5), the High Court (and now SIAC) is given jurisdiction, on making a quashing order, to remit the matter to the authority which made the decision or to substitute its own decision for the decision in question. In my judgment, the words in section 2D(4) “may make any such order, or give any such relief, as may be made or given in judicial review proceedings” are to be taken to be referring to the jurisdictional powers in section 31 (including the relief capable of being granted under section 31(5)), rather than to any more general and wide-ranging procedural or costs powers such as those contained in section 51 of the Senior Courts Act 1981 (see [30] above) or elsewhere.
53. It follows that I do not agree with SIAC that the first words in section 2D(4): “[i]f [SIAC] decides that the decision should be set aside” are anomalous (see [36] above). They go with the grain of the jurisdictional provisions in the entirety of section 2D (and the other review provisions). I also do not agree with the conclusion of the Divisional Court (Ouseley and Irwin JJ) at [38] in *R (Ignaoua) v. SSHD* [2014] EWHC 1382 (Admin). Instead, I broadly endorse the reasoning of the Divisional Court in this case at [61]-[78], which I have summarised above at [39]-[42] above.
54. I do not accept the arguments advanced by H7 and H15 to the effect that there was no legislative intention in 2013 to affect the judicial review costs regime when naturalisation and citizenship decisions were moved from the Administrative Court into SIAC. For the reasons I have explained, the proper construction of sections 2D, 5 and 6A of the 1997 Act (post 2013) is clear when the context is properly understood. The

Lord Chancellor has and has always had the power to make rules about procedure and costs in SIAC in respect of both appeals and reviews. That was part of the context when the 2013 amendments were made. Section 2D relates to jurisdictional matters, not to procedural or costs matters. It does not allow for a costs regime, which is, as I have said several times now, the province of section 5. The principle of legality enunciated in *ex parte Simms* has no application here because Parliament must be taken to have understood that the regime under the 1997 Act was different from the regime applicable in the Administrative Court. In the Administrative Court, a costs regime already existed, whilst in SIAC the Lord Chancellor had the power in the future to introduce a costs regime. Moreover, the considerations as to the advantages and disadvantages of a “costs” or “no costs” regime in SIAC were and are different to the considerations in the Administrative Court. Applicants in SIAC may know less about their prospects of success at the outset in SIAC because of the closed material procedure. Applicants have the benefit of special advocates which adds another dynamic. It could be argued that a “no costs” regime is more advantageous to applicants in such situations, since the applicants are not at risk of adverse costs orders. Either way, there is no proper basis for submitting that the legislature was unable to change the applicable procedures and costs regime by primary legislation as H7’s and H15’s submissions suggest.

55. Accordingly, I would uphold the Divisional Court’s decision as to the proper construction of section 2D and dismiss H7 and H15’s appeal on the Construction Ground.

The Article 14 Ground

56. H7 and H15 argue that applicants that are required to apply for their review to SIAC rather than the Administrative Court are discriminated against impermissibly contrary to article 14. In essence the comparison that they seek to draw is between: (i) applicants in respect of whom a certification is made as to the information relied upon needing not to be made public, and (ii) applicants in respect of whom no such certification is made. Those in the first category are forced into SIAC where there is no costs regime, whilst those in the second category may apply to the Administrative Court, where they may be awarded their costs if they are successful or if the Home Secretary withdraws her decision.
57. In *SC* at [71], Lord Reed explained why cases where the European Court of Human Rights (ECtHR) had found the “status” requirement of article 14 not to be satisfied were few and far between. In cases which are not concerned with so-called “suspect” grounds, the ECtHR often makes no reference to status, but proceeds directly to a consideration of whether the persons in question are in relevantly similar situations, and whether the difference in treatment is justified.
58. In this case, it seems to me that it is not profitable to dwell either: (i) on the applicability of the first “status” principle explained by Lord Reed at [37] in *SC* (only differences in treatment based on an identifiable characteristic or status are capable of amounting to article 14 discrimination – see [44] above), nor (ii) on whether a potential claim for costs could, in theory, fall within the ambit of A1P1. I am prepared to assume, for the sake of argument only, that both those propositions are at least arguable.
59. In my judgment, however there are three points made by the Home Secretary that are not arguable in H7’s and H15’s favour. First, H7 and H15 have never explained how

section 2D(4) is to be read down (under section 3 of the HRA 1998) to allow costs orders to be made when section 5 already allows the Lord Chancellor to introduce a costs regime. Secondly, it is not arguable that applicants in respect of whom a certification is made by the Home Secretary on the grounds of national security are in an analogous or relevantly similar position to those in respect of whom no such certification is made. Thirdly, there are obvious and compelling reasons which explain and justify why there might reasonably be quite different costs regimes in respect of these two groups. I can take each of these points quite briefly.

60. The first point was described by the Home Secretary as a knock-out point. H7 and H15 have never sought a certificate of incompatibility and have never said **how** section 2D should be read down to provide for the costs regime they seek, when the 1997 Act already provides for such a regime to be introduced at the behest of the Lord Chancellor. In short, there is and can be no incompatibility between the proper meaning of the 1997 Act and the introduction of a costs regime similar to that in the Administrative Court. The limiting factor is not the 1997 Act, but the discretion of the Lord Chancellor. Accordingly, even if there were an argument that those required to apply to SIAC were being treated relevantly differently from those who were not, section 3 of the HRA 1998 does not assist H7 and H15. The statute already allows for the power they want exercised.
61. The second point is that it is not reasonably arguable that applicants required to apply to SIAC for a review of the Home Secretary's decision are in an analogous or relevantly similar position to those in respect of whom no such certification is made. National security cases are handled under a completely different regime, which affects what might or might not be appropriate in relation to costs. It is unnecessary to deal with every aspect of that regime, but I have already mentioned some of the differences at [54] above. SIAC is a specialised tribunal with special expertise to deal with national security issues. Such tribunals often have more specific dedicated costs regimes. An applicant in SIAC does not need permission to apply, but an applicant in the Administrative Court does require permission. The procedures are different because the closed material is not available to the applicant and there are special procedures to handle it, including the provision (without charge to the applicant) of the services of special advocates. These differences put applicants in SIAC in a completely different position as to knowledge, representation and funding from those in the Administrative Court. Accordingly, it would be expected that the costs regimes might reasonably and justly differ. A "no costs" regime might often be said to be more advantageous to an applicant than facing the risk of an adverse costs order. It is true that a "no costs" regime may affect the ability to secure a conditional fee arrangement, but the abrogation of the possibility of an adverse costs order is a countervailing advantage. Put simply, the two situations are neither analogous, nor properly comparable.
62. The points that I have just made are equally applicable to the question of justification. They explain why there might reasonably be, and in fact should be, different procedural and costs regimes between SIAC and the Administrative Court. The position of an applicant for judicial review to the Administrative Court is in no way similar to that of an applicant under section 2D to SIAC for a review of the Home Secretary's decisions made on national security or other public interest grounds. That fundamental difference justifies the distinctions made in both procedure and as to costs.

63. In the light of what I have held in relation to the proper construction of section 2D, the Rule 11A Ground does not arise. It would only arise if section 2D(4) provided for costs to be awarded, but that jurisdiction was limited by the first words: “[i]f the Commission decides that the decision should be set aside”. In such a case, H7 and H15 argued that rule 11A should not be construed as allowing the costs power to fall away where the Home Secretary withdrew her decision.
64. In the event, I have held that there is no jurisdiction in SIAC to award costs in review cases at all unless and until the Lord Chancellor introduces such a costs regime by statutory instrument under section 5. The “no costs” regime currently in force in SIAC is unaffected by the procedure in rule 11A allowing for withdrawal of an application for review, treating an application as withdrawn where the Home Secretary withdraws her decision, and providing for SIAC to serve a notice in such a case to the effect that the application for review has been recorded as having been withdrawn.

My conclusions

65. For the reasons I have tried briefly to explain, the Divisional Court was right as to the proper construction of section 2D. Section 2D does not give SIAC the power to award costs on an application for review of the Home Secretary’s decisions as to naturalisation and citizenship. The same applies to the proper construction of sections 2C, 2E and 2F. Article 14 is not engaged in this case.
66. Accordingly, the appeal brought by H7 and H15 should be dismissed. I would uphold the Divisional Court’s declarations set out at [3] above.
67. I should say in closing that I also agree with the judgment of Singh LJ.

Lord Justice Bean:

68. I agree with both judgments.

Lord Justice Singh:

69. I agree that this appeal should be dismissed for the reasons given by the Master of the Rolls. I add a few words of my own about two issues: first, standing and, secondly, the relevance of the fact that the costs regime in SIAC is one in which people in the position of H7 and H15 are not at risk of an adverse costs order.
70. The Divisional Court doubted whether H7 and H15 had standing in the judicial review proceedings brought by FGF, since they were not “directly affected” by the costs order made by SIAC in FGF’s case and so could not be an “interested party” within the meaning of CPR 54.1(2)(f). I have sympathy for that view: while it could be said that H7 and H15 were “indirectly” affected by SIAC’s decision in FGF’s case, it is difficult to see how they were “directly” affected. That has long been the definition of “interested party” in the context of judicial review proceedings and the Civil Procedure Rules have simply carried over what had been the position in the Rules of the Supreme Court, Order 53: under that regime the courts had stressed the difference between being “directly” and “indirectly” affected by a decision under challenge. It may be, as the skeleton argument for the Home Secretary before us suggested, that it would have been

better if Foster J had granted permission to H7 and H15 to become “interveners” rather than “interested parties”.

71. That said, as the Home Secretary’s skeleton argument before us fairly acknowledged, things have moved on since then. Importantly, the Divisional Court made orders against H7 and H15, not only a declaration but a costs order against them. Before this Court, therefore, the issue is whether they have standing to bring this appeal in order to have those orders set aside. The Home Secretary does not take any point objecting to their standing to pursue this appeal and, in my view, they clearly do have such standing.
72. CPR 52.1(3)(d) defines “appellant” to mean “a person who brings or seeks to bring an appeal”. The 2026 edition of the White Book states, in the notes at 52.1.3, that this phrase is “wide enough to embrace a person who was not party to the proceedings below, but who is adversely affected by the outcome”. As it happens, H7 and H15 were made parties to the proceedings below but, in any event, they are adversely affected by the outcome in the Divisional Court, not least because they have a costs order against them. They must be able to appeal to this Court if the orders against them should not have been made by the Divisional Court.
73. The other matter which I would like to address briefly is the fact that the regime in SIAC is currently a no costs regime. In his submissions before us, Mr Armstrong suggested that this was of little, if any significance, but, in my view, this point cannot be swept aside so lightly. At the heart of many of Mr Armstrong’s submissions was the argument that, when Parliament amended the 1997 Act in 2013, it was simply transferring proceedings which could previously be brought in the Administrative Court to SIAC. He submitted that the costs regime that must have been intended to apply in SIAC would simply “mirror” that in the Administrative Court. But in fact the effect of his submissions would be that there would not be an exact “mirror” of the costs regime in the Administrative Court but rather there would be costs protection for a person in the position of these appellants but the Home Secretary would never be able to recover her costs, even if, for example, another party had acted unreasonably and costs had been thrown away as a result, perhaps because an adjournment that should have been unnecessary had to be granted.
74. Furthermore, the fact that there can be no adverse costs order can be of real benefit to litigants. This is why, in many tribunals, there is either no costs regime or only a limited one, for example costs do not follow the event but may be awarded if one party has acted unreasonably. It is also one of the real practical benefits of having a legal aid order and it is why, in the last three decades, the concept of a “protective costs order” was developed by the courts and has now been given statutory effect in the form of a “costs capping order”. The risk of an adverse costs order, and the uncertainty of how much will have to be paid if a litigant loses a case, are widely thought to be deterrents to effective access to justice. The arguments are not all one way, as Mr Armstrong seemed to suggest, when he complained that people in the position of his clients would not be able to get legal representation if they cannot have access to a costs regime.
75. This leads to my final point. These are the sorts of considerations that the Lord Chancellor can take into account when deciding whether to exercise the power that section 5 of the 1997 Act has conferred on him and to create a costs regime. In making such rules, the Lord Chancellor can weigh up the pros and cons of having (i) a no costs regime, (ii) a limited costs regime, where costs can only be awarded if a party has acted

unreasonably, or (iii) a full costs regime, such as under CPR Part 44, where costs normally follow the event. The Lord Chancellor can also consider whether any costs regime should be one way only, so that only the Home Secretary could ever be at risk of an adverse costs order (which is the practical effect of Mr Armstrong's submissions). There may be good arguments to be made in favour of that sort of regime but there may be countervailing arguments. If that decision is one that Parliament has given to the Lord Chancellor, as in my view it is, he has access to institutional mechanisms such as publishing draft legislation and holding a public consultation about it. It was for that reason that the Investigatory Powers Tribunal (of which I was then President) said in *McCaffrey v. Chief Constable of the Police Service of Northern Ireland* [2025] UKIP Trib 2; [2026] 1 All ER 1181, at [76] that a court or tribunal is not "institutionally well-equipped" to make such decisions: it cannot, for example, hold a consultation exercise, as a government department can.