IN THE COURT OF APPEAL
CIVIL APPEAL DIVISION
On appeal from the High Court (KDB)
Tipples J – AC-2024-LON-002414

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPEAL TO THE COURT OF APPEAL

Between:

THE KING
on the application of
GRACEGUARD SERVICE LIMITED
(trading as SEASONED HANDS CARE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

APPELLANT'S UPDATED
SKELETON ARGUMENT
for the hearing on 18 November 2026

Introduction

1. This skeleton argument is updated following Lord Justice Lewis' grant of permission to appeal on 11 March 2026 **[CB/Tab 6, page 53]**. In doing so, the Appellant comments on the three additional authorities identified by his Lordship and adds page numbers that cross-reference to the final core bundle **[CB/Tab xx, page xx]**, supplemental bundle **[SB/Tab xx, page xx]** and authorities bundle **[AB/Tab xx, page xx]**. Other minor points are also added and identifying by underlining.

2. The focus of this appeal is Mrs Justice Tipples DBE's order made on 26 February 2025 **[CB/Tab 9, page 60]** wherein she stayed the Appellant's application to judicially review the Secretary of State for the Home Department's decision revoking its sponsor licence, thereby removing it from the list of licenced employers. That decision was taken on 1 May 2024 **[CB/Tab 18, pages 219-225]**. The Court granted the stay upon accepting the Respondent's argument that England is *forum non conveniens,* as Scotland is clearly or

distinctly the more appropriate jurisdiction to hear this claim. The Court's order was sealed on 28 February 2025. A transcript of the Court's reasoning has been obtained **[CB/Tab 11, pages 102-119].**

3. For completeness, the skeleton also updates the Court on a subsequent event that has rendered this appeal academic: the Appellant has been granted a new sponsor licence following a separate application. The Parties agreed that there is a public interest in the Court hearing this appeal despite its academic status.

Chronology

22 October 2014	The Appellant company was incorporated with its registered office being 5-7 Clovenstone Park, Edinburgh, Scotland, EH14 3BG.[1]
14 June 2018	The Appellant registered with the Care Quality Commission.
26 October 2022	The Appellant was granted a sponsor licence allowing it to sponsor migrant workers.
19 January 2024	The Respondent wrote to the Appellant stating its licence had been suspended with 5 concerns being listed as the reasons for doing so ('the Suspension Letter') **[CB/Tab 18, pages 226-228]**. The suspension letter came from: Sponsor Compliance Assurance Work Route, Visa, Status and Information Services, Customer Services Group, UK Visas & Immigration, Home Office, PO Box 3468, Sheffield, S3 8WA.
26 January 2024	The Appellant responded to the Respondent's concerns.
31 January 2024	The Appellant sent a further response to the Respondent's concerns.
23 April 2024	The Appellant sent a further response to the Respondent's concerns.

[1] Companies House, Certificate of Incorporation, last accessed on 3 February 2025 at 09:06.

1 May 2024	The Respondent revoked the Appellant's licence thereby stopping the Appellant from sponsoring migrant workers ('the Revocation Decision') **[CB/Tab 18, pages 219-225]**. The Respondent concluded that the Appellant posed a serious threat to immigration control given (1) it was deemed to be assigned Certificates of Sponsorship for non-genuine vacancies and (2) it had failed to provide various documents/information requested on 19 January 2024. The Revocation Decision came from the same address as the Suspension Letter, namely the PO Box address in Sheffield.
17 May 2024	The Revocation Decision was challenged with a letter before action which was sent by email **[SB/Tab 3, pages 16-25]**.
31 May 2024	The Respondent replied and maintained the decision. Importantly, the response to the letter before action gave the GLD's London address as the address for service of proceedings, not the equivalent in Scotland **[SB/Tab 3, pages 10-15]**.
16 July 2024	The Appellant initiated judicial review proceedings using solicitors and Counsel based in London and the claim form was filed at the Royal Courts of Justice **[CB/Tab 18, pages 188-218]**.
14 August 2024	The Respondent filed her summary grounds of defence ('SGD') **[CB/Tab 17, pages 168-187]**. Part of the argument raised by the Respondent pursuant to section 49 of the Civil Jurisdiction and Judgments Act 1982 was that the claim should be struck out as *forum non conveniens* as the Appellant is located at and operates from an address in Edinburgh making the appropriate venue the Court of Session in Scotland. It was said that England does not have jurisdiction. These summary grounds were drafted by London Counsel.
20 August 2024	The Appellant's solicitors responded to the summary grounds of defence by continuing to invite that permission be granted **[CB/Tab 16, pages 162-167]**. Paragraphs [2]-[12] contained detailed submissions on jurisdiction which, in summary, were:

	(1) The English courts have exclusive jurisdiction. (2) The Respondent can be sued where the Respondent is based: England. (3) The decision to grant, suspend, and revoke were all made in Sheffield. (4) The Respondent's register of sponsors lies in England. (5) Section 11(c) of Schedule 4 of the Civil Jurisdiction and Judgements Act 1982 provides that the courts shall have jurisdiction regardless of domicile in proceedings where the object is the validity of the entries in public registers and the court is of the part of the United Kingdom where the register is kept. (6) England is the most convenient forum.
11 September 2024	Lavender J ordered that the question of jurisdiction would be determined by a hearing to consider the questions of whether the Court (a) has jurisdiction to hear the claim; and (b) whether it should exercise, or decline to exercise, any such jurisdiction **[CB/Tab 15, pages 160-161]**. Lavender J gave the following reasons: "*I see force in the submission that this is a Scottish case and should be heard in Scotland. The jurisdictional rules which apply in civil cases are not necessarily applicable to public law cases. However, the position in public law cases is not entirely clear: see paragraphs 3-108 to 3-111 of De Smith's Judicial Review, 9th Edn*."
12 October 2024	The Appellant's solicitors wrote to the Court, in effect, maintaining that England is the correct jurisdiction **[CB/Tab 14, pages 146-159]**.
16 October 2024	The Appellant's solicitors wrote to the GLD seeking information as to where the sponsor register is kept or, in the alternative, where the Respondent's sponsorship team sits **[SB/Tab 2, page 9]**. This was chased on 4 November 2024 and 12 November 2024.
11 December 2024	The Respondent filed an early skeleton argument in which she confirmed that the position was no longer as set out in the SGD. The Secretary of State now accepted that there is jurisdiction in principle but that the jurisdiction is not exclusive **[CB/Tab 12, pages 120-134]**.

26 February 2025	Tipples J heard and granted the Respondent's application for a stay **[CB/Tabs 9-11, pages 60-119]**.
5 March 2025	The Appellant sought permission from the High Court to appeal to this Court **[CB/Tab 8, pages 57-59]**.
23 October 2025	Tipples J refused permission to appeal **[CB/Tab 7, pages 55-56]**.
24 October 2025	Tipples J's order was sealed and sent to the Parties.
27 October 2025	Tipples J re-issues order under slip rule, which was served by the Court on the parties **[CB/Tab 7, pages 55-56]**
21 November 2025	The Appellant filed an N161 notice seeking permission to appeal **[CB/Tabs 1-3, pages 3-29]**.
9 December 2025-19 February 2026	The Respondent opposed the Appellant's application for permission to appeal **[SB/Tab 1, pages 2-6]**
11 March 2026	Lord Justice Lewis granted permission to appeal **[CB/Tab 6, pages 53-54]**.
25 March 2026	The Respondent filed a respondent's notice **[CB/Tab 5, pages 30-43]**.
23 September 2026	The Appellant was granted a new sponsor licence.

Relevant law

4. The natural starting in this appeal is Lord Goff's speech in *Spiliada Maritime Corp v Consulex Ltd (The Spiliada)* [1987] AC 460 **[AB/Tab 13/ pages 124-152]**. The burden on the Respondent was cast as follows [477, D-F] **[AB/Tab 13, page 141]**

> *"In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial,* ***but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum****. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right (see MacShannon's case [1978] A.C. 795, per Lord Salmon); and there is the further advantage that, on a subject where comity is of importance, it appears that there will be a broad consensus among major common law jurisdictions. I may add that if, in any case, the connection of the defendant with the English forum is a fragile one (for example, if he is served with proceedings during a short visit to this country), it should be all the easier for him to prove that there is another clearly more appropriate forum for the trial overseas."*

(Emphasis supplied)

5. In an earlier case – *MacShannon's case* [1978] AC 795 **[AB/Tab 10, pages 74-112]**– Lord Diplock categorised the factors the Court will look for in determining whether some other forum is clearly more appropriate for the trial of the action as those which indicate that justice can be done at *"substantially less inconvenience or expense"*.

6. The *Spiliada* principles were summarised in *R (Girgis) v Joint Committee on Intercollegiate Examinations* [2021] EWHC 2256 as follows at [71] **[AB/Tab 23, pages 261-300, at pags 290-291]**:

> *""First, in general the legal burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay, although the evidential burden will rest on a party who seeks to establish the existence of matters which will assist him in persuading the court to exercise its discretion in his favour."*
>
> *"Secondly, if the court is satisfied by the defendant that there is another available forum which is clearly a more appropriate forum for the trial of the action, the burden will shift to the claimant to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in England."*
>
> *"Thirdly, the burden on the defendant is not just to show that England is not the natural or appropriate forum, but to establish that there is another forum which is clearly or distinctly more appropriate than the English forum; accordingly, where (as in some commercial disputes) there is no particular forum which can be described as the natural forum, there will be no reason to grant a stay."*
>
> *"Fourthly, the court will look to see what factors there are which point in the direction of another forum as being the "natural forum", i.e. that with which the action has the most real and substantial connection. These will include factors affecting convenience or expense (such as availability of witnesses) and such other factors as the law governing the transaction and the places where the parties reside or carry on business, and also whether the claim is part of a larger overall dispute which would be damaged by being fragmented."*
>
> *"Fifthly, if the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, the court will ordinarily refuse a stay."*
>
> *"Sixthly, if, however, the court concludes that there is some other available forum which prima facie is clearly more appropriate, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should not be granted. In that enquiry, the court will consider all the circumstances of the case, including*

circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions."

"Seventhly, a stay will not be refused simply because the claimant will thereby be deprived of "a legitimate personal or juridical advantage", provided that the court is satisfied that substantial justice will be done in the available appropriate forum."'

7. In *R (Karanja) v The University of West Scotland* [2022] EWHC 1520, Michael Ford KC applied these principles to reach the following conclusion **[AB/Tab 25, pages 307-321 at pages 319-320]**:

52. "In applying those principles, Ms Thelen drew attention to the facts that the Defendant is a charity registered in Scotland, the offer to the Claimant was made from Scotland, she signed an exclusive jurisdiction clause, the decision she challenged was taken by members of the Senate Appeals Committee based in Scotland and the Claimant had and has a potential complaint to the Scottish Public Service Ombudsman, only put on hold because of legal proceedings. Mr Persey submitted that the Court of Session is not clearly the most appropriate forum. He pointed out that the Claimant was based in England and studied at the England campus; it may now be too late to issue proceedings in Scotland; and the Claimant can only access the court by using the pro bono assistance of her solicitor, who is not qualified in Scotland.

*53. I have found **Girgis** to be of assistance in resolving this question, which involved a not dissimilar factual background. There, in applying the **Spiliada** factors, HHJ Simon held that the English courts had jurisdiction to hear a claim challenging a decision of the Joint Committee on Intercollegiate Examinations, a body based in Scotland. While the marking of exams and the appeal took place in Scotland, he placed weight on the effect on the claimant, who lived and worked in England. He also noted that the defendant there operated outside Scotland and would have refused a stay because it was far from certain the Court of Session would allow a claim to be brought out of time.*

*54. Conclusion (1): Forum non conveniens. I consider an application of the **Spiliada** factors produces, or would produce, the same result here as in **Girgis**. I accept, of course, that the Defendant is a registered Scottish charity and its main campus is in Paisley. But it also has a campus in London, at 235 Southwark Bridge Road, and that campus was given as the principal place of study on "Confirmation of Acceptance for Studies Details" form completed on behalf of the Claimant. In fact the Claimant resided (and still resides) in England and all her classes and tutorials took place, I understand, at the English campus, where her tutors were also based.*

*55. It is not suggested that there will be any difficulties in the Defendant's witness statements being prepared from Scotland and their attendance is rarely required in a judicial review in any event. While the exclusive jurisdiction clause is a relevant factor to consider in the **Spiliada**exercise, I do not consider it has sufficient weight for the Defendant to meet the burden of showing that the Scottish courts are the natural forum in accordance with the **Spiliada** principles, particularly in a judicial review claim which does not turn on the interpretation of a contract.*

*56. If necessary, and even if I am wrong in my assessment that the Scottish courts were not the appropriate forum, I would have refused a stay for the reasons of practical justice to which Lord Goff referred at 483G-484A in **Spiliada**, on the basis that the*

*Claimant acted reasonably in commencing proceedings in England, did not act unreasonably in failing to commence proceedings in Scotland and would now (it seems) be outside the primary limitation period for bringing proceedings in Scotland (see **Girgis** at §79).*

8. *Tehrani v Secretary of State for the Home Department* [2007] 1 AC 521; [2007] UKHL 47 is helpful but nonetheless different. In that case, there was no plea of forum non-conveniens. An asylum seeker who arrived in London was dispersed to accommodation in Glasgow. His appeal against the refusal of his asylum claim was heard in Durham for the convenience of his representative. Leave to appeal was refused by the Immigration Appeal Tribunal sitting in London. A petition to the Scottish Outer House was met with a plea by the Home Secretary that it lacked jurisdiction to hear the appeal. That plea succeeded before the Outer and Inner Houses. On appeal to the House of Lords, their Lordships allowed Mr Tehrani's appeal, observing that matters of immigration were UK-wide and both England and Scotland had jurisdiction. Accordingly, matters should have proceeded in Scotland in the absence of a plea of *forum non conveniens.* In the present case, in line with their Lordships if *Tehrani*, the Respondent accepts that there is concurrent jurisdiction.

Submissions

9. The Court is respectfully invited to allow this appeal on the following submissions.

Submission (1) – Irrational conclusion that Scotland is the more appropriate jurisdiction

10. Firstly, the Appellant submits that the Court ~~arguably~~ irrationally concluded that Scotland is the more appropriate forum and/or found special circumstances did not exist despite the Respondent's pre-action correspondence electing the Government Legal Department ('GLD') in London as the address for service of any proceedings.

11. It was noteworthy that the Respondent had not elected for service to be affected upon the GLD's equivalent in Scotland – this being the Sheriff's Office or Advocate General's Office. The material part of the pre-action reply read **[SB/Tab 3, page 15]**:

    *"**Address for service of court documents***
    Government Legal Department, 102 Petty France, London SW1H 9GL."

12. Part of the Court's reasons for rejecting this argument included **[AB/Tab 11, page 116]**:

"48. I accept that the decision to revoke the licence was made in England, but, as the claimant recognises, that is not determinative. I also accept that in its pre-action correspondence the claimant identified the Government Legal Department in London as its address for service. However, again, that is not determinative."

13. The Court's observation that the Parties were not engulfed in discussions about where proceedings would be filed was, with respect, incorrect. The Respondent must have been (or should have been) aware from before that stage – and led no evidence to the contrary at the hearing on her own application – that this case involved a number of Scottish factors, including that the Appellant's registered office is in Scotland and that its employees and contracts were in contract.

14. In *R v Director General of Electricity Supply, ex parte Scottish Power plc* [1997] (unreported, 3 February 2026) **[AB/Tab 15, page 160]**, this Court considered an appeal from the High Court in relation to a claim for judicial review brought by Scottish Power concerning licence conditions for supply price controls of electricity in Scotland under the Electricity Act 1989 (a Scottish statute). Despite being a Scottish company whose customers were in Scotland, and the claim relating to Scottish statute, proceedings were issued in England and Wales. When asked why, the court was told that this was because the Director was based in Birmingham, The Court noted that the Director, who was represented by the Treasury Solicitor, had taken no point with reference to the conduct of proceedings in the High Court of England and Wales. Accordingly, the conduct of the parties does appear to bear relevance.

15. By contrast, *R v Commissioner for the Special Purposes of Income Tax Acts, ex parte RW Forsyth Ltd* [1987] 1 All ER 1035 **[AB/Tab 12, 118]** was different. There, a company incorporated, trading, and registered in Scotland, challenged two assessments of corporation tax. All proceedings were conducted in Scotland, save for a single postponement hearing which was heard by a Special Commissioner Sitting in London. Judicial review proceedings were issued in London. Meanwhile, the Scottish Court of Session, having found that the English Court had no jurisdiction in the matter, pronounced a decree in favour of the Revenue for the recovery of tax not postponed. An application was then made to strike out or stay the London claim. The Court refused to strike it out by finding that the English Court *did* have jurisdiction as matters of tax and the Special Commissioner's jurisdiction extended throughout the United Kingdom. However, the claim

was stayed because, as a matter of convenience, common sense, and judicial comity, Scotland was the appropriate Tribunal. The differences between that claim and the present are profound:

15.1. There were no separate proceedings in Scotland to which concerns as to judicial comity and/or conflicting decisions might arise.

15.2. There have never been concurrent proceedings in progress in Scotland on the subject matter pertaining to the revocation decision in this claim (see *Forsyth,* 1039B-G **[AB/Tab 12, page 122]** where the issue *could be* tried (*Macshannon v Rockware Glass Ltd* [1978] AC 795 at 811H-812H **[AB/Tab 10, pages 74-112, at pages 90-91).** At the time that the Respondent filed her initial acknowledgement of service on 14 August 2024, her argument was labelled as one of *forum non conveniens* but, in substance, amounted to one that England and Wales lacked jurisdiction **[CB/Tab 17, page 178, paragraph 2]**. It was not until much later, when she filed her skeleton argument (drafted by different counsel) on 11 December 2024, that it was accepted that there was concurrent jurisdiction between England and Wales and Scotland **[CB/Tab 12, pages 120-121, paragraphs 2-5]**. By the time either of those two submissions were made (14 August 2024 or 11 December 2024), the time for the Appellant to apply for a petition against the 1 May 2024 removal decision had passed (*Tehrani,* at 531[C]-[F] **[AB/Tab 18, page 198]**). An indication by the Respondent that a limitation point would not have been taken does not change this.

15.3. All decisions in the present case were taken in Sheffield, England.

15.4. In *substance*, no matters of "convenience" arose.

16. The Court has ~~arguably~~ failed to give adequate reasons as to why the Respondent's invitation to serve the GLD in England was not a determinative or weighty factor.

Submission (2) – Compelling reasons: estoppel?

17. Secondly, or in the alternative, the above reasons identify a compelling question/issue for the Court of Appeal to consider as to whether a Party who has seemingly acceded to/elected

a particular forum at the pre-action stage should be *estopped* from seeking a stay on jurisdiction grounds once proceedings have been issued.

18. On the one hand, the Secretary of State elected the GLD in London as the party representing the Secretary of State and yet, on the other hand, once proceedings were issued, defended and applied for a stay on the basis that the proceedings should have been filed in Scotland. As above, if that was the case, the pre-action response should have identified the Advocate General's Office/Sheriff's Office as the relevant recipient.

19. The question, as above, is whether the position taken in the pre-action correspondence (identifying the GLD in London) should have estopped/barred the Secretary of State from applying for a stay on jurisdictional grounds, given that the pre-action response could at least arguably have been treated as an effective waiver of the jurisdictional argument that followed.

20. To draw an admittedly imperfect analogy from the law of contract, the Courts have held that "*very strong reasons indeed"* would be required to secure a stay application on grounds of *forum non-conveniens* where a contractual agreement includes an exclusive jurisdiction clause. This was succinctly summarised by Burton J, when, more generally, considering *forum non conveniens* waiver clauses in *Deutsche Bank AG v Sebastian Holdings Inc* [2010] 1 All ER (Comm) 808; [2009] EWHC 3069 at [18-22]:

> *"18. The ordinary rules at common law, where there is a straightforward clash of jurisdictions with no relevant jurisdiction clause affecting the issues, are found in the seminal decision of the House of Lords in* ***Spiliada Maritime Corp v Cansulex Ltd*** *[1987] AC 460. On an application for a stay based upon forum non conveniens, the first and major test is, the burden being upon the defendant seeking the stay, to show that there is a clearly more appropriate forum. It is, however, clear that that position is fundamentally affected where there are jurisdiction clauses. It was perhaps in question prior to* ***Donohue*** *whether a stay application on grounds of forum non conveniens was ever appropriate by way of challenge to the jurisdiction of the English court, where that jurisdiction was based upon an exclusive jurisdiction clause, with the court enforcing that exclusive jurisdiction clause effectively as a matter of contract between the parties. The decision in* ***Donohue*** *however made it clear that there could be a stay in the interests of justice, and thus, in a given set of facts, no enforcement of the contractual obligation; but only where there were "strong reasons for not giving effect to the exclusive jurisdiction clause" (paragraphs 24, 36 of Lord Bingham's speech at 433, 436): in that case Lord Scott found "very strong reasons indeed" (paragraph 75). The examples that are given by Lord Bingham, at paragraph 27, are "where the interests of parties other than the parties bound by the exclusive jurisdiction clause are involved,*

*or grounds of claim not the subject of the clause are part of the relevant dispute so that there is a risk of parallel proceedings and inconsistent decisions". See also the examples of 'strong cause', which include what might be termed (within **Spiliada**) juridical disadvantages, given by Brandon LJ in **The El Amria** at 123-124.*

*19. If even an exclusive jurisdiction clause will not trump a stay application, then at least a similar approach must follow in respect of a stay application brought on forum non conveniens grounds in breach of an FNC waiver clause. Lord Collins of Mapesbury in **UBS AG v HSH Nordbank AG** [2009] 2 Lloyd's Rep 272 at paragraph 101 set out a brief history in this regard. He pointed out that:*

> *"In **National Westminster Bank plc v Utrecht-America Finance Co** [[2001] 3 AER 733] at paragraph 23, Clarke LJ thought [an FNC waiver clause] was "fatal" to any forum non conveniens case, whereas in **Sabah Shipyard (Pakistan) Ltd v Islamic Republic of Pakistan** [[2003] 2 Lloyd's Rep 571] at para 36 Waller LJ did not treat such an agreement as decisive, but thought that it underlined the point that the jurisdiction agreement would be overridden only in exceptional circumstances."*

*20. In **Bank of New York Mellon v GV Films** [2009] EWHC 2338 (Comm) Field J, dealing with an exclusive jurisdiction clause coupled with an FNC waiver clause, concluded that "especially strong reasons will be required before the exclusive jurisdiction clause can be departed from on grounds founded upon convenience".*

*21. It is obvious therefore that if stays can be granted even where there is an exclusive jurisdiction or an FNC waiver clause, then an application for a stay can be considered in a non-exclusive jurisdiction case, where there is no FNC waiver clause. The significant factor is that there is no breach of contract involved in the party seeking to persuade the chosen court to decline jurisdiction. However in two recent and regularly quoted judgments in the Commercial Court conclusions have been reached, severally by Gross J in **Import Export** (supra) and by Gloster J in **Antec International Ltd v Biosafety USA Inc** [2006] EWHC 427 (Comm) that, by reference to cited authority, the test is or ought to be the same, and in effect equally difficult and exceptional, in relation to a stay sought where there is a non-exclusive jurisdiction clause. Gross J so concludes at paragraph 14(ii) of his judgment at 410, as does Gloster J, by reference to a number of earlier first instance judgments, in paragraph 7(ii) of her judgment."*

22. It is plain that weight must be given to the fact that the parties have chosen and/or not objected to the jurisdiction at the time of entering into the contract. Gloster J, at paragraph 7, having recited that "the general rule is that the parties will be held to their contractual choice of English jurisdiction unless there are overwhelming, or at least very strong, reasons for departing from this rule" (even in the case of a non-exclusive jurisdiction clause), continued:

> *"Such overwhelming or very strong reasons do not include factors of convenience that were foreseeable at the time that the contract was entered into (save in exceptional circumstances involving the interests of justice); and it is not appropriate to embark upon a standard **Spiliada** balancing exercise. The defendant has to point to some factor which it could not have foreseen at the time*

the contract was concluded. Even if there is an unforeseeable factor, or a party can point to some other reason, which, in the interests of justice, points to another forum, this does not automatically lead to the conclusion that the court should exercise its discretion to release a party from its contractual bargain".

This emphasis that the matters relied upon by way of inconvenience must not have been foreseeable derives most obviously from the often quoted words of Waller J in ***British Aerospace plc v Dee Howard Co*** *[1993] 1 Lloyd's Rep 368 at 376:*

"... they must point to some factor which they could not have foreseen on which they can rely for displacing the bargain which they made, i.e. that they would not object to the jurisdiction of the English court.

[...]

24. Mr Lord QC submits that, if a party is over the hump, or through the eye of the needle, or past the gateway of "interests of justice" or "a matter of justice", then ordinary ***Spiliada*** *principles apply. I do not accept this, and respectfully agree with Gloster J in the passage quoted above. It seems to me plain that, if there is to be an exceptional case, where forum non conveniens arguments are to prevail, a fortiori in an exclusive jurisdiction or FNC waiver case, but even in the case of non-exclusive jurisdiction, the burden on the applicant to establish such a case must be a heavier, perhaps, in exclusive jurisdiction cases, a much heavier, one than if there were no jurisdiction clause at all. If the matters were unforeseeable at the time of the contract, then the burden may be the more easily satisfied. If however the matters were foreseeable, for example if, as here, the parties entered into a series of interlinked agreements with different jurisdiction clauses, then it would not be possible to suggest – nor is it suggested here – that it was not foreseeable that a clash or contest of jurisdictions might not arise. In the absence of unforeseeability, and in this case in the absence of any impact on the parties, or on the issue of jurisdiction, of any <u>third</u> parties (such as featured considerably in* ***Donohue****), then the strong or very strong or exceptional grounds, said to engage the interests of justice and satisfy the necessary burden, must be all the more compelling."*

21. The present appeal did not involve exclusive jurisdiction or *forum non conveniens* waiver clauses. It did, however, involve the Respondent electing an English body based in London (the GLD) to receive proceedings, which it cannot do for Scottish claims. The Respondent only parted from this in her SGD and subsequent application for a stay. The position that weight must be given to the fact that parties have chosen or not objected to the jurisdiction at the time of entering into a contract can, at least arguably, apply with similar force to what happened in the present case at the pre-action stage.

22. It is the Appellant's case that ~~it is at least arguable that~~ the Judge erred in giving the Respondent's actions little weight. Unlike the clauses Burton J was considering, which

would have been in place from when the contracts were negotiated, there was no clause in the present case, but there was very recent correspondence from the Respondent (at the pre-action stage, and thus when litigation was being contemplated) which strongly suggested that she too considered England to clearly be the more appropriate forum or in the alternative, did not consider England to not be an appropriate forum.

23. Respectfully, the Appellant submits that this gives rise to an important question upon which the Court's guidance would assist. It is disputed that this point was not taken before Tipples J given that it, in *substance*, is the other side of the ground (1) coin.

Submission (3) – Irrational focus/conclusion on the closer connection

24. Thirdly, the Appellant submits that the Court irrationally/unlawfully focused on the closer connection test.

25. Whilst the Appellant operates in Scotland, is registered and regulated there, and its employees and contracts are in that country, the Respondent did not identify factors which rendered it *clearly or distinctly* the more appropriate forum. To do so required the Respondent to consider – and the Court to accept – that something about England rendered it comparatively less appropriate as a jurisdiction.

26. As the Appellant argued, whilst its business had employees and contracts in Scotland, neither of these was of any real relevance where no oral evidence was to be led in the judicial review application, the Court was not to be invited to closely consider the contracts, if at all, and the fact the effects of revocation would be felt in Scotland was also irrelevant. None of these factors led to Scotland being the more convenient forum.

27. Additionally, the Respondent's entire decision-making team and all the decisions were from England, not Scotland.

28. In other instances, the venue of the decision maker has been given considerable weight. This is reflected in Lord Nicholls' speech in *Tehrani* at 531[A]-[C] **[AB/Tab18, page 198]** where, in the context of that statutory scheme, the place where the adjudicator made its decision was to be determinative of the *Spiliada "*appropriateness" test, save in exceptional

circumstances. In the spirit of candour, Lord Hope did opine that this may not be the appropriate test in every case (at 542[A]-[C]) **[AB/Tab18, page 209]**.

Submission (4) – Irrational focus on the grounds of review

29. Fourthly, the Court ~~arguably~~ irrationally granted the Respondent's application on account of the content and substance of the grounds of review.

30. Paragraph [46] of the Court's judgment read **[AB/Tab 11, page 116]**:

> *"46. The defendant's decision to revoke the claimant's sponsor licence has a direct impact of that business and the grounds of challenge are directed at the way in which that business is operating and complaints about the way in which the defendant has approached information provided to it by the complainant. This, it seems to me, is highly relevant, given that this is a judicial review claim where what is in issue is the defendant's decision dated 1 May 2024 and whether there are public law grounds on which that decision should be set aside, the consequence of that decision and whether or not it can be set aside or take effect in Scotland."*

31. With this being a judicial review claim in which the Parties appeared to agree that the law and principles are the same, the substance of the grounds could not rationally inform on the question of which of the two jurisdictions was clearly or distinctly more appropriate, particularly in a case where no live evidence was proposed by either party.

Conclusion

32. In light of the above submissions, the Court is respectfully to allow this appeal and to set aside Tipples J's order.

Jay Gajjar
Imperium Chambers
231-232 Strand
London
WC2R 1DA

jay.gajjar@imperiumchambers.co.uk

2 November 2025.

Ahmad Badar
10 King's Bench Walk

Temple
London
EC4Y 7EB

Updated 2 November 2026