Neutral Citation Number: [2023] EWHC 3190 (Admin)

Case No: CO/3791/2021

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2023

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

REX (UPON THE APPLICATION OF LEHRAM CAPITAL INVESTMENTS LIMITED)	**Claimant**
- and –	
SOUTHWARK CROWN COURT	**Defendant**
-and-	
CYRITH HOLDINGS LIMITED	**Interested Party**

- -
- -

Christopher Jacobs (instructed by the **Bar Public Access Service**) for the **Claimant**
Jonathan Ashley-Norman KC (instructed by **Edmonds Marshall McMahon**) for the **Interested Party**
The Defendant did not appear and was not represented

Hearing dates: 26 April 2023

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Approved Judgment

This judgment was handed down remotely at 14:00 on 21 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Julian Knowles:

Introduction

1. This is an unusual case with a deceptively complex factual background. The Claimant, Lehram Capital Investments Limited, brings an application for judicial review of the dismissal by the Defendant, Southwark Crown Court, on 17 August 2021 of its appeal against conviction and sentence in the City of London Magistrates' Court in March and October 2020. Broadly speaking, the grounds of challenge raise issues about the fairness of the appeal proceedings, including the Defendant's refusal to adjourn the appeal.

2. In the usual way, the Defendant Crown Court has not taken an part active in these proceedings.

3. The Interested Party, Cyrith Holdings Limited, was the private prosecutor in the magistrates' court and the Crown Court, where the Claimant was the defendant and then the appellant.

4. For clarity, in this judgment I will refer to 'the Claimant' and 'the Interested Party.'

5. The Claimant is represented by Mr Jacobs and the Interested Party by Mr Ashley-Norman KC. I am grateful to both of them for their written and oral submissions. As well as my detailed notes, I have consulted the recording of the hearing whilst writing this judgment.

6. The Claimant is an English registered company and the Interested Party is a Cypriot company.

7. Bennathan J refused permission on the papers on 26 January 2022:

> "1. The Claimant was convicted of 3 offences at Westminster Magistrates Court and appealed to Southwark Crown Court, and the application for permission essentially criticises aspects of the way the latter Court dismissed the appeal. The specific bases for the attack on the decision of the Crown Court are a refusal to adjourn and a refusal to allow the possibilities of submissions to be made by video link.
>
> 2. The history and background to the appeal hearing on 17 August 2021 is significant: the Claimant company alternated between not engaging with the court process and bombarding the court with lengthy multiple skeleton arguments. At times before the Magistrates Court and in making applications to this Court the Claimant clearly had [and has] very able lawyers acting at their behest, and the terms of many of the skeletons also give the appearance of being professionally created; yet at other times before both the lower courts the Claimant suddenly claimed to be

> unable to afford any legal representation at all. At one stage a long list of proposed defence witnesses was sent to the Crown Court, which list included the Director of Public Prosecutions, that totally lacked any attempt to justify the need, purpose or significance of any of them. Typically, it was late in the afternoon before the appeal hearing that the Claimant sent communications to the Crown Court. Most of the various communications sent to the courts, or referred to in documents submitted to the courts, were from unnamed individuals supposedly acting for the company, usually without any address or even general location given. The explanation given for the absence of any director from the appeal hearing ['they are in red list or amber list [COVID] countries'] was typical in lacking any credible detail.
>
> 3. Against that background the decisions of the Judge at the hearing on 17 August were not only entirely justifiable but well-nigh inevitable. The Court was right to reject the application to adjourn a hearing that had been fixed for many weeks, or even months, on the basis of a small number of new pages of documents having been received late. The Court was similarly entirely justified in refusing video link facilities given the lack of any clarity or properly-established safe basis to do so. Once the appeal was not being advanced the Court was bound to find for the Respondent, the Interested Party.
>
> 4. A further ground for refusing permission is section 31(2A) of the Senior Courts Act 1981, that it appears to me 'to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred'. The offences of which the Claimant was convicted are of declaring the company dormant; they did so at a time when the company was conducting high value transactions, instructing lawyers, and litigating against other corporations. I have seen no hint in any of the voluminous papers submitted in this application of any defence to those allegations."

8. Linden J granted permission following an oral hearing on 13 May 2022. He said it was arguable that:

> "…. the judge should have given you an opportunity, by Livelink, to address the question of your authorization to appear before the court for the purposes of the appeal, and/or the consequences of what appears to me, although I make no final decision on it, your failure to comply with direction (vi) made by His Honour Judge Griffith on 27 July 2020. If the judge was then satisfied that the issue was

> satisfactorily addressed and that there was before the court, at least by Livelink, somebody who was authorised by the company, duly authorised by the company to represent it, then the judge would have moved on to consider the question of whether … or not there should have been an adjournment and again I say the judge's decision on that issue was in my view unsurprising. The concern that I am holding is arguable is a concern that you should have been able to have permitted to address the court before conclusion was reached on the matter as well."

9. I gave case management directions for this judicial review following a CMC in December 2022 (see [2022] EWHC 3203 (Admin)), and I gave further directions in March 2023. (I should make clear Mr Jacobs said there was no objection to my hearing the full application).

10. In this judgment, 'SFG' stands for the Claimant's Statement of Facts and Grounds, and 'SGD' stands for the Interested Party's Summary Grounds of Defence. Unless otherwise noted, all dates are from 2021.

Chronology and factual background

11. The background to the dispute between the Claimant and the Interested Party is set out in the SFG and SGD. At [3] of the SFG the Claimant was described as follows:

> "3. The Claimant is a private limited company incorporated on 8 November 2011. It is registered with Companies House under Company number: 07839142. The directors of the company are Igor Rudyk, Segundo Vargas, Hasbrone Overseas Limited. The company secretary is Pablo Saavedra. The Claimant is stated in Companies House records to be a non-trading company."

12. A woman named Maria Sokolova appears in the story at several points. In her witness statement for this judicial review dated 29 October she described herself as an 'anticorruption campaigner' and a 'polyglot translator' who has in the past acted 'as a legal tax specialist in an overseas jurisdiction and later as a commodity trading contracts/ corporate governance/M&A specialist in an overseas jurisdiction, for a non-English company.' She said she is not legally qualified in this jurisdiction. I give leave to rely on this statement and to additional material in the Supplementary Bundle.

13. The SFG goes on to narrate how the Interested Party and the Claimant became involved in a dispute in Russia about the transfer of shares in a mine in Siberia to a sister company of the Interested Party. This led to litigation in Russia, and then eventually to the private prosecution at Westminster Magistrates Court.

14. The three charges eventually faced by the Claimant are described in the SFG at [8] as follows:

a. Charge 1: the Claimant dishonestly made false representations to Companies House between 15 October 2014 and 15 August 2018, namely that it was a dormant company, contrary to ss 1 and 2 of the Fraud Act 2006.

b. Charge 2: the Claimant on 15 October 2014 delivered company accounts for the year ending 30 November 2013, asserting that the company was dormant, and that the accounts were false, misleading or deceptive, contrary to s 1112 of the Companies Act 2006.

c. Charge 3: the Claimant on 30 August 2015 delivered company accounts for the year ending 30 November 2014 asserting that the company was dormant and that the accounts were misleading, false or deceptive, contrary to s 1112 of the Companies Act 2006.

15. The Interested Party's Opening for the appeal explained it was the prosecution's case that the Claimant was used as a 'flag of convenience', allowing those 'really running [the Claimant] to distance themselves from the company'. At [32] it said:

> "32. In summary, Lehram gained for itself the financial advantage of avoiding costs, and risked causing loss to HMRC and other regulatory bodies which might otherwise have an interest in it, and those behind the company must have appreciated this to be so."

16. A prominent theme of the filings on behalf of the Claimant has been that its directors are at risk. The SFG contained allegations that 'associates' of the owners of the Interested Party have threatened to 'kill, kidnap or incarcerate' the Claimant's current and former officers, and that:

> "11. … The Claimant maintains that its directors and former directors remain subject to such threats and as such the officers of the Claimant have expressed reluctance to disclose their whereabouts in these proceedings in the United Kingdom. The Claimant avers that it has notified the courts of this position on more than one occasion."

17. I am not in a position to make any findings about these alleged threats.

18. The Claimant was convicted at Westminster Magistrates' Court on all charges on 6 March 2020. On 20 October 2020 it was sentenced by Deputy District Judge King to a fine of £60,000 and ordered to pay costs in the sum of £200,000 in addition to the victim surcharge.

19. The Claimant filed a notice of appeal on or around 5 November 2020, and its appeal was listed for a four-day hearing at Southwark Crown Court beginning on 17 August of the following year**.**

20. The relevant Chronology taken from the documents in the bundle before me is as follows. (Timings are generally given 24-hour clock form, and where they relate to emails, they are the time shown on the email, which may or may not be London time.

That is because it is not clear whether these are the sent or received times, and also unclear where in the world those sending emails on behalf of the Claimant were located, although it would appear for the most part they were in a time zone some hours behind London time):

8/11/11	Claimant incorporated and registered with Companies House.
December 2016	Claimant and the Interested Party become involved in a dispute concerning a share transfer at Gramoteinskaya Mine in Siberia.
May 2018	Interested Party applies to strike the Claimant off the Register of Companies.
13/5/19	Interested Party applies for summonses at Westminster Magistrates' Court.
16/7/19	Matter set down for summary trial before Westminster Magistrates' Court.
3/3/20	CPS declines to take over the prosecution following a request by the Claimant.
6/3/20	Claimant convicted i*n absentia* by Westminster Magistrates after its solicitors (MK Law) withdraw.
20/10/20	Claimant sentenced to a fine of £20,000 and ordered to pay costs of £200,000. The Claimant is represented by counsel instructed by MK Law at the sentencing hearing.
5/11/20	Notice of Appeal received by Southwark Crown Court.
10/5/21	Abuse of process application made by the Claimant and refused by HHJ Griffith. The Claimant is represented by counsel, instructed by MK Law.
June 2021	Claimant files a number of Skeleton Arguments. These are said to be filed 'on behalf of the officers of Lehram Capital Investments'. One of them seeks to re-open the failed abuse of process application. At some point counsel and solicitors cease to act for the Claimant.
2/7/2021	Case management hearing before HHJ Griffith at Southwark Crown Court. The Interested Party appears by leading counsel. The Claimant is 'represented' by Ms Sokolova, via video link. The Interested Party does not take a point on her appearing for the Claimant, despite the lack of evidence of her appointment as a representative pursuant to Crim PR r 46.1. Directions are given for the Court to act as a 'buffer' (ie, a conduit) for the supply of documents from the Interested Party

to the Claimant on the grounds of the alleged threats to the Claimant's directors. It does not want the Interested Party to know its email address.

The Court's order requires:

a. the Claimant to file any evidence in support of its Skeleton Arguments listed in [2(i)-(iv)] of the order by 4pm on 23 July; and

b. the Interested Party to respond by 4pm on 6 August.

Paragraph 4 provides that in the event that the Claimant wishes to attend the hearing remotely, or for witnesses to give evidence remotely, it needs to make arrangements with the Court office by 4pm on 11 August to make arrangements.

Paragraphs (A)-(D) provide warnings to the parties. Paragraph (A) warns that a failure by a party to be represented will harm the party's position. (B) says that the appeal will be not be adjourned without good reason. It goes on to say that if a party chooses not to attend on 17 August or avail itself for remote attendance by its representative or witnesses then the Court may proceed to hear the appeal in its absence. Paragraph (C) says 'If a party does not appear or is not represented at the hearing on 17 August, not only should it not assume that the hearing will be adjourned and should understand that such absence may adversely affect its position.' Paragraph (D) states:

> "D. It is the Appellant's duty to remain in contact with the Court; in the circumstances the inability of the Court and or the Respondent effectively to communicate with the Appellant may be unlikely to lead to the adjournment of the appeal and may itself adversely affect the Appellant's position."

The question of the Claimant's representation at the appeal is expressly left open.

The hearing on 2 July began:

> "JUDGE GRIFFITH: Now have you seen a letter, or do you know if Lehram Capital have seen a letter from Cyrith Holdings Limited concerning their submissions for today's hearing ?
>
> MS SOKOLOVA: No, I have not, because the company is dormant, it is entitled to receive, at registered address to receive only letters from the court, from some Government entities but not from private companies

because a registered address is needed because the company doesn't make any business, doesn't conduct activities. That's why, because it's dormant, that's why no correspondence was received. Registered address just does not receive letters from private companies, and due to security. In terms of submissions, it was mentioned that [inaudible] give our emails because I am also the person who suffered death threats and other threats from the… [Inaudible] was attorney of [inaudible] and I was threatened many years ago.

JUDGE GRIFFITH: All right, all right. Yes. I am not here today really to talk about death threats that may or may not have been made …"

The judge later states (emphasis added):

"*The court is not happy to adjourn this case at this stage because it seems to me that whatever is going on between Lehram and any English representatives, you will have to sort it out and they will have to make sure that either they are represented, or they will have to be in a position to deal with this appeal on their own, whether that is you acting on their behalf or somebody else, if you have been appointed by them to do so.* I do not suppose you know very much about it, about the law in this country

…

JUDGE GRIFFITH: Yes. Right, the various documents that have been served by Lehram say that the accountant, Mr Alexander and Fanny Gamon[?] are two witnesses they require and they are still required for the appeal on, which I say at the moment is on Tuesday 17 August. So those are the people who will be turning up. They will be giving evidence to the court, and they will be cross-examined by whoever represents Lehram, whether it's an English lawyer or you or whoever else they appoint. There have been a number of, well they are called 'skeleton arguments but they are not very skeletal. There have been a number of documents which have been served, I think one of them was 54 pages long and another one was 45 or so. They raise some issues. A lot of it goes back over what was heard by me in May and upon which I have, I gave my ruling on that occasion. You cannot reopen things like that, but you can if you want to advance the argument about the time that had passed before these prosecutions took place and whether or not they are time-barred, because that has not been canvassed in front of me until now.

…

Later he says:

> "JUDGE GRIFFITH … Well the position is Maria that this case is going to be heard in August.
>
> MS SOKOLOVA: I understand.
>
> JUDGE GRIFFITH: And so these directions I am going to be giving are to try and ensure that we do not turn up in August and somebody from your side says 'Well we have not seen this document' or somebody from this side says 'We have not seen that document' because we are now arranging for documents to be sent as between the two sides without your email address being disclosed to Cyrith. It is purely a means of allowing things to proceed and to go further. I am not deciding anything about anything that has happened in the past. We are just talking here about how we can let your side see whatever documents there are and their side see whatever documents you have got."

There was also this exchange:

> "JUDGE GRIFFITH: Yes. Well that is a matter that we raise and can be raised by you in the appeal if you say that there is no fraud. They say there is and you say there is not. So that is a matter for the appeal. I am talking now about what is going to happen between now and when the appeal takes place. You I am afraid, Lehram Capital have got to sort out representation in this country if they want to be represented because that is the appeal date, and I am afraid they will have to work to that in order to be represented if they want to do so. Otherwise, it may be you, if they ask you to come along and do it, and you and they will have to decide at some point what evidence they are going to put before the court about whatever it is that you are talking about.
>
> MS SOKOLOVA: I understand, Your Honour. I think that the problem-
>
> MR ASHLEY-NORMAN: I wonder if I might assist, Your Honour?
>
> JUDGE GRIFFITH: Yes.

MR ASHLEY-NORMAN: There is an open question as to the capacity in which Ms Sokolova appears before Your Honour today.

JUDGE GRIFFITH: Yes.

MR ASHLEY-NORMAN: Nonetheless, the prosecution does not take a point on that-

JUDGE GRIFFITH: No.

MR ASHLEY-NORMAN: -and is content to follow Your Honour's lead and to hear from Ms Sokolova. It is plain that Ms Sokolova is anxious that arguments that she has been asked to advance should be advanced. However, Ms Sokalova may not appreciate that the purpose of today's hearing was merely a directions hearing, not to actually hear any argument.

JUDGE GRIFFITH: Yes.

MR ASHLEY-NORMAN: And the draft directions that the prosecution have prepared for Your Honour's consideration and expecting that nobody would appear today on behalf of Lehram, the draft directions provide that any fresh arguments, not arguments Your Honour has already heard, but any fresh arguments can be dealt with on 17 August at the beginning of the trial.

JUDGE GRIFFITH: Yes.

MR ASHLEY-NORMAN: And so what I might respectfully suggest, that if Ms Sokolova were to hear read now the draft directions which will require slight amendment in the light of her appearance, then she will appreciate that she is not being closed out from making new arguments and Lehram is able to make those arguments. It will be necessary for documents to be prepared in preparation for those arguments, but they can be heard on 17 August.

JUDGE GRIFFITH: Yes. He put it more succinctly than I was. Right, these are the directions that Mr Ashley-Norman has drawn up, and I agree with them, so perhaps you will read them out and will have the amendment."

At the end there was this exchange, again about the Claimant's forthcoming representation:

"JUDGE GRIFFITH: Thank you very much. Right, thank you Ms Sokalova for the assistance you have given me this morning.

MS SOKOLOVA: Thank you very much, Your Honour.

JUDGE GRIFFITH: And either you or somebody will be appearing on 17 August for the appeal.

MS SOKOLOVA: I think because due to the circumstances I'm not sure that we'll be able to legal aid because the company doesn't have money-

JUDGE GRIFFITH: No.

MS SOKOLOVA: And this is a problem.

JUDGE GRIFFITH: Yes, okay. Well I am sorry, I cannot do much about that problem. That is just the problem. Right.

MS SOKOLOVA: I just [inaudible], Your Honour, thank you very much.

JUDGE GRIFFITH: But we are able to handle cases in which people are not represented by lawyers. We try to help.

MS SOKOLOVA: I hope I can do"

23/7/21 Claimant requests an adjournment pending application to set aside the magistrates' court judgment.

26/7/21 The Interested Party sends submissions to the Court opposing the adjournment application and raising the question of the Claimant's representation. After noting that the Interested Party had not objected to Ms Sokolova appearing for the Claimant on 2 July, or communicating with the Court, it said:

"22. Since then and pursuant to the Order made on that date, the Court has received and forwarded to the Respondent a number of emails. The emails and their attachments have purported to be 'on behalf of the directors of Lehram.' The emails are signed off 'Maria'. No objection is raised during these interlocutory stages to the informal and unorthodox mode of communication with the Appellant.

> 23. However, it is respectfully submitted that it will be necessary to ensure compliance with the formal requirements for the purposes of the appeal itself.
>
> …
>
> 25. If Ms Sokolova is to represent the Appellant in the forthcoming appeal, she is required to be 'duly appointed' by Lehram Capital Investments Limited for the purposes of doing anything which she is authorised by the company to do. She (or any other representative) need not be appointed under the seal of the corporation. A statement in writing that Ms Sokolova has been appointed as the representative of the Appellant for the purposes of Section 33 of the Criminal Justice Act 1925 would suffice. The statement would have to be, or purport to be, signed by the managing director of the Appellant, or by any person having or being one of the persons having the management of the affairs of the company."

These submissions were not sent to the Claimant.

27/7/21 HHJ Griffith refuses the adjournment application on the papers.

He gives further directions including: the Interested Party is to file an appeal bundle with Southwark Crown Court by 4pm on 6 August.

By [(v)] of the order, provision is made for the compilation by the Interested Party of a consolidated appeal bundle to include all key documents, and the response by the Interested Party to the Claimant's arguments:

> "(v) The Respondent is to file and serve an Appeal File comprising the key documents, and a proposed timetable for the hearing of the appeal by 4pm on Friday 6 August 2021. The Appeal File is to be served electronically upon the Court, whereupon the Court will forward the same electronically to the Appellant. The Respondent is to file four hard copies of the Appeal File with the Court by the same date and time."

By [(vi)] the Claimant is ordered to file a written statement appointing a representative by 4pm on 13 August, pursuant to s 33 of the Criminal Justice Act 1925:

> "The Appellant is to file and serve a written statement duly appointing Maria Sokolova (or such other representative as may be selected by the Appellant) to appear as a representative of the Appellant pursuant to

Section 33 of the Criminal Justice Act 1925 by 4pm on Friday 13 August 2021."

Late July 2021	The Claimant files some twenty applications for witness summons seeking the attendance of 26 witnesses, and further Skeleton Arguments. Claimant also applies to the Attorney General for a *nolle prosequi*, and in parallel files an application in the magistrates court to reopen proceedings there under s 142 of the Magistrates' Court Act 1980 (which was the basis of the late July adjournment application referred to above).
29/7/21	Claimant writes to the Court to dispute the application of s 33.
30/7/21	Claimant sends submissions to the Court regarding s 33, among other things.
4/8/21	Solicitors for the Interested Party emails the Court a request for an extension to 9/8/21 to file the appeal bundle, in order to prepare responses to numerous applications made by the Claimant. The Court is asked to forward the email to the Claimant (Mr Jacobs said it was common ground this email was never forwarded).
9/8/21	Appeal bundle filed with Court. The bundle is not forwarded (then) to the Claimant. It is not forwarded until 16/8/21 (see below).
10/8/21	By an email timed at 7.24, the Claimant writes to the Court and applies for a video link. No mention is made about it not having received the appeal bundle.
12/8/21-13/8/21	Someone purporting to be writing on behalf of the Claimant's Company Secretary sends the Court an email timed at 11:27pm on 12/8/21 stating that the Claimant is seeking to engage a translator to read out prepared submissions at the appeal and to read questionnaires to cross-examine the witnesses the Claimant wanted summonsed. A video link is requested.

Part of the email reads (*sic*):

> "The appellant cannot afford any representative as it is a dormant company with no assets, no revenues and not even a bank account, a pro-bono translator-activist, hopefully a native English speaker (American) will appear on 17th August 2021, or on its defect any other pro bono translator/activist willing to assist in this matter on a pro bono basis will appear. If a native English speaker translator is not procured, a non-native English speaker translator will be procured, but the Court is assured that someone will appear through the video link to read the

statement and/or submissions filed by the appellant and its position.

…

It is kindly hoped the Court will understand that the appellant does not have a 'representative' as defined by s 33 of the Criminal Justice Act 1925, a section which is understood applies to stages before or at, plea and mode of trial hearings. "

The email states that the Interested Party's bundle had not been received 'as of 5.30am London time o[n] the 13th August 2021'. Therefore whoever sent this email was in a time zone some hours behind London time.

The email states in terms that the officers of Lehram 'and the possible translator' are six to seven hours behind London time.

12/8/21 HHJ Griffith sends an email to Court staff at 9.27 in the following terms:

"Just before you send the email that I set out last night please amend it as follows:-

1. I will grant the video link for their representation.

2. There is a reference to the translator reading out statements. Evidence must be given by the person who made the statement unless it is agreed by Cyrith. If there is a video link the witnesses can appear over it to tell the court what they want to say. If Lehram want to introduce evidence by statements being read they must comply with the provisions of Sections 114-118 of the Criminal Justice Act 2003 and the Criminal Procedure Rules part 20.

3. They have also served some voice recordings said to be of identifiable people speaking in Russian. Do they have a transcript of the words and a translation of the transcript?

4. Is the video link going East or West. If they are East of us (which I had assumed) a 1000 listing here will be late afternoon there. Only if they are West of us would a 1400 listing here be 0700 there. Can we check before we list it one way or the other."

As to (1), Mr Jacobs made clear his client did not know this at the time. This email was disclosed by the Interested Party in these judicial review proceedings.

As to (2), it is now said on behalf of the Claimant that it was *not* its position that Ms Sokolova would read out witness statements effectively giving hearsay evidence (see SFG at [80]). It says (a) its directors and its Company Secretary intended to give oral evidence at the appeal; (b) the Claimant's two directors and the Company Secretary were to be present at the appeal with Ms Sokolova; (c) Ms Sokolova had prepared legal arguments/submissions and cross-examination of the Interested Party's witnesses with the assistance of the Claimant's directors in readiness for the appeal.

16/8/21 An email timed at 5.06 'From: LCI Office' is sent to the Court. It says that (sic):

> "As of the date of this letter, the appellant has not been able to secure any representative, a contingent/pro bono UK qualified attorney nor UK barrister, to assist in this matter, therefore it appears the appellant will have to rely on the pro bono assistance of Maria Sokolova's non-native translation skills to read the statement of the appellant and to read the submissions presented on behalf of the Claimant."

This long email covers a number of topics including: that the Claimant had not received any documents; that it had requested a video link from the Court; the existence of legal proceedings against Baker & McKenzie LLP in the US for 'malpractice'; threats against a former director of the Claimant called Daniel Rodriguez; that the private prosecution is a 'materialisation of unwanted menaces'; that Baker & McKenzie is behind the private prosecution and is using it to try and 'kill' potential legal action against it; Mr Rodriguez had suffered health problems as the result of the threats; a London based reporter was going to write about the private prosecution; the reporter had been asked to read out statements but had refused.

The email concludes: 'Respectfully submitted on 16th August 2021 on behalf of: The officers of Lehram Capital Investments.'

16/8/21 By an email timed at 9.57 HHJ Baumgartner refuses an adjournment application from the Claimant on the basis that the issues raised had already been 'considered and determined by HHJ Griffith'. (It is not clear which request this was in response to; it may have been the request timed at 15:29: see below, with the time zone of receipt behind London time being shown).

16/8/21 At 15.15 the Court sends the Interested Party's appeal bundle to the Claimant.

16/8/21	In an email timed at 15.29 someone purporting to be writing on behalf of the Claimant's Company Secretary emails the Court and requests an adjournment due to the late service of papers.
16/8/21	At 3.55pm HHJ Baumgartner asks for the location of where the Claimant seeks to video link the following day and says the law does not permit them to link outside of England and Wales.
16/8/21	In an email timed at 16:06, 'LCI Office' again requests an adjournment.
16/8/21	In an email timed at 16.08, 'Maria' writes to the Court as follows: "Dear Robert Thank you for your email. HHJ Griffith was aware that the officers of Lehram are in fear, none of them are in England, they are in red/amber covid listed countries therefore forbidden to enter England. Maria Sokolova is a translator assisting them as the officers do not speak English. Lehram is dormant, with no revenues and no assets, it cannot afford representation. HHJ Griffith's order from 2nd July 2021 stated that videolink will be provided. HHJ Griffith's order from 27th July ordered that by 6th August the respondent would respond to the appellants' submissions, and the Court will forward electronically all the appeal file to the appellant. Thank you Maria"
16/8/21	In an email timed at 16:37, 'LCI Office' sends an email about video links, quoting the CPS's guidance.
17/8/21	Hearing of appeal at Southwark Crown Court. The Court refuses to adjourn and refuses to admit the Claimant by video link. Appeal dismissed. (Mr Jacobs said Ms Sokolova and Mr Rudyk were waiting to be sent the relevant link to enable them to be connected into the hearing).

18/10/21	Pre-action letter
20/10/21	Letter of authority from Mr Rudyk in untranslated English, asserting that 'since at least May 2021', Maria Sokolova 'is and has been authorised to assist Lehram Capital, and to appear on behalf of Lehram Capital, whenever needed, before any courts in England and Wales'.
20/10/21	Letter of Authority in Spanish and English translation from Segundo Vargas (a director of the Claimant), to the same effect.
1/11/21	Claim Form issued.
26/1/22	Permission refused on the papers by Bennathan J.
4/5/22	Oral renewal hearing. Permission granted by Linden J. Claimant acting as a litigant in person with Ms Sokolova speaking for it.

The decision challenged of 17 August

21. The appeal came before HHJ Baumgartner and a justice of the peace. After hearing submissions from the Interested Party's counsel, HHJ Baumgartner gave a ruling on behalf of the Court dismissing the appeal**.** I need to quote this in full:

> "RULING
>
> JUDGE BAUMGARTNER: This is our ruling. We are a bench of two with only one justice of the peace. I am told by the list office that, despite a request for two justices at the London bench support team at Westminster, no other justice is available to hear this four-day appeal. No indication has been given as to when an additional justice might become available. Section 74 of the Senior Courts Act 1981 provides that on the hearing by the Crown Court of any appeal, the Court shall consist of a circuit judge and at least two, but not more than four, justices of the peace, although rules of Court may provide differently. That Section is mirrored in the Criminal Procedure Rules at rule 34.11(1)(a), as the general rule that rule 34.11(2)(a)(i) provides that despite the general rule, the Court may include only one justice of the peace if the presiding judge decides that otherwise the start of the appeal hearing will be delayed unreasonably.
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> This is, as I said, listed as a four-day appeal and given the current demands upon this Court to accommodate work, and in the absence of any indication as to when another justice might become available, in my judgment failing to

start this appeal today will lead to it being delayed unreasonably, and so we will proceed as we are presently constituted.

This is an appeal against conviction and sentence in the Magistrates' Court, by Lehram Capital Investments Limited, following a suit by the Queen upon the prosecution of Cyrith Holdings Limited.

The appeal follows the appellants conviction upon one offence contrary to the Fraud Act 2006, and two offences contrary the Companies Act 2006: 1. That between 15 October 2014 and 15 August 2018 at Companies House, Cardiff, the appellant dishonestly made a false representation, namely that it was a dormant company within the meaning within the terms of the Companies Act 2006, knowing that this [is not?] true; intending to cause loss to Her Majesty's Revenue and Customs, and any other revenue collection or regulatory body, or to expose that person to a risk of loss, contrary to Sections 1 and 2 of the Fraud Act 2006; 2. that on 15 October 2014 the appellant delivered or caused to be delivered to the registrar of companies, for the purposes of satisfying the requirements of the Companies Acts, a document, namely company accounts for the year ending November 2013, asserting that the said company was dormant in the said period, knowing the said accounts to be thereby misleading, false, or deceptive, in material, in particular the appellant not being a dormant company within the terms of the Companies Act 2006 in the period specified. Or being reckless as to whether the said document was so misleading, false or deceptive contrary to Section 1112 of the Companies Act 2006; and 3. that on 30 August 2015, the appellant delivered or caused to be delivered to the registrar of companies, for the purposes of satisfying the requirements of the Companies Act, a document, namely company accounts for the year ending November 2014, asserting that the said company was dormant in this said period, knowing the said accounts to be thereby misleading, false or deceptive in their material, in particular the appellant not being a dormant company within the terms of the Companies Act 2006 in the period specified, or being reckless as to whether the said document was so misleading, false, or deceptive contrary to Section 1112 of the Companies Act 2006.

Notice of the appeal was received on 5 November 2020 following sentence on 20 October 2020. A number of case management orders were made by this Court, and in the event the appeal was sent down for hearing today.

We turn first to consider the appellant's application for an adjournment for at least 14 days 'to review, translate, and prepare a response in response to the appeal file which contains over 600 pages, which was received just hours before the trial hearing', made in an email timed at 16.06 yesterday. This is a renewed application following an earlier application to adjourn yesterday, which I refused.

This application was made yesterday by email on the basis that the appellants had only received the electronic appeal file yesterday. It developed the earlier application to adjourn made in a previous email, which said, in part, 'how is the defendant (non-English speakers) able to translate 600 pages, prepare a defence, prepare statements for translator Maria Sokolova to read orally, the statement of the appellant, and be ready for the appeal trial hearing scheduled for tomorrow at 10.30am?'

Contrary, however, to the appellant's assertion, we are told by the respondent that there is not 600 pages of new material. The only significant new material is contained in tab five which is the respondent's consolidated reply; pages 51 to 71. The majority of the remainder of the bundle, over 450 pages, is material served by the appellant at tab six.

We are told by the respondent that the consolidated reply deals in a comprehensive but succinct way with the arguments advanced by the appellant. We further note that in an email sent to the Court office last Friday, the appellant said this: 'Lehram Capital is a dormant company with no assets, no revenues, and not even a bank account. Lehram cannot afford representation and legal aid is not afforded to [legal persons?]'.

While that may be so, and as we will shortly mention, we note the appellant has for the most been represented by solicitors, and at sentence by experienced counsel. Those solicitors appeared at trial in the Magistrates' Court, and there they also sought an adjournment which was refused. Having failed to obtain an adjournment, they withdrew.

The appellant also appears to have legal representation in proceedings being conducted in the United States, though we do not know what the basis of that retainer is.

Someone has been drafting very detailed and [inaudible] legal documents for the appellant in this hearing, whom we do not know. The appellant's former solicitors have

disavowed any responsibility for most of them. No doubt in light of the various serious allegations they contain.

Someone it seems is prepared to pay for the appellant's representation as and when it suits. We suspect that the appellant retains lawyers when it suits its purpose and dispenses with them when it does not. However, we make no finding about that, and we do not let it influence the careful judgment that we now make.

We refuse the application for an adjournment, applying the principles in Criminal Practice Direction 6.24C which draws upon the well-known authority of the *Crown Prosecution Service v Picton* [2006] EWHC 1108. Criminal Practice Direction 6.24C.9 sets out the relevant principles relating to trial adjournment. We have followed them, and we make the following conclusions:

A) The Court's duty is to deal justly with the case, which includes doing justice between the parties. We take this as a paramount concern, and in particular in doing justice between the parties.t

B) the Court must have regard to the need for expedition. We do so. These proceedings have been afoot for some years now. The appellant as we note elected a summary trial, and as such should be simple and speedy.

C) We have rigorously scrutinised the appellant's application, and having reviewed the history of the case, and for the reasons we have already given, we see no clear reasons for adjourning.

D) We bear in mind the serious nature of the charges, but the underlying facts are, in our view, relatively straightforward, and not complex. There is, in our view, no reason why the parties should not now be trial ready. The matter is listed for four days. The need to deal with any new matter arising, should it do so, can be amply accommodated within the four-day trial window.

E) The matter has been subject to very careful case management by this Court in the lead up to today, and the previous application for an adjournment sought by the appellant on 23 July 2021, was refused by His Honour Judge Griffith on 27 July 2021.

F) Any adjournment of today's appeal hearing is likely to result in further delay, as in all reality it is unlikely a hearing can be accommodated for some months and cause

delay to the hearing of other cases. The re-listing of one case almost inevitably delays or displaces the hearing of others.

We turn next to consider the appellant's failure to appear before us today. The appeal was called on before us for hearing at 10.30 this morning, although we sat slightly later than that.

Mr Jonathan Ashley-Norman QC, instructed by Edmonds Marshall McMahon, appears for the respondent. The appellant did not appear and is not represented. In such cases, the law is clear.

Where a party does not appear or is not represented, the proper course is to dismiss the appeal. See *Croydon Crown Court, ex parte Clare* [1986] 1 WLR 746. The decision of the Divisional Court, Queen's Bench Division. We shall accordingly dismiss the appeal, but before we do so, while the law is clear, the circumstances leading to the appellant's non-appearance today are less so, and so, it is useful for us to set out the background to the appeal before we provide our reasons for dismissing the appeal.

We take the following facts and matters from the numerous papers filed by the parties in the appeal, all of which we take to be uncontroversial. We have also seen an email from 'the officers of Lehram Capital' sent to the Court office this morning, timed at 04.33, but nothing in it adds to the submissions we have already received.

The appellant elected a summary trial on 16 July 2019. On 6 March 2020, the appellant was convicted before Deputy District Judge King sitting at the City of Westminster Magistrates' Court, after it had failed to appear, then the Court proceeded to try the appellant in his absence, as we shall explain.

Part of the respondent's case before the Deputy District Judge was that the appellant demonstrably undertook significant accounting transactions in the acquisition of mining assets in Siberia; the disputed sale of one of the mines acquired; and protracted litigation in Russia arising from the disputed sale.

Charge one alleged fraud by false representation across the period in which a series of false accounts were filed; and charges two and three alleged false statement offences under the Companies Act 2006, each relating to a particular set of accounts.

The private prosecution was brought by the respondent as a subsequent owner of the disputed assets and opposing [inaudible] in the Russian proceedings. The appellant invited the Crown Prosecution to take over and discontinue the prosecution, but it declined to do so. As we mentioned the trial took place in the absence of both the appellant company and its solicitors of the record, MK Law. One of MK Law's solicitors appeared with the appellant on the morning of the trial but withdrew following the refusal of his application to adjourn the trial.

We do not know the reasons why the appellant sought an adjournment of the trial then, but as we will note, such applications have become a feature of the case management of this appeal.

In the event, the appellant was convicted in the Magistrates' Court. Sentence was adjourned until 20 October 2020, when Deputy District Judge King sitting at the City of London Magistrates' Court fined the appellant £60,000, and ordered it to pay costs of £200,000, in addition to the victim surcharge. At sentence the appellant was represented by Mr Tom Wainwright of counsel, instructed by MK Law.

The matter was first listed for direction before His Honour Judge Griffith on 20 November 2020 at which lengthy and detailed directions were given for the conduct of the case up to and including the hearing of the appeal which was listed for today.

Amongst those directions, was a direction that the appeal be listed on 4 February 2021 for further directions before the presiding judge assigned to the appeal, who would consider 'appeal readiness; [video link?] application; abuse of process application; and any other matters arising'. The time estimate given was half a day. MK Law remained instructed by the appellant throughout until in or about June 2021 when MK Law ceased acting for the appellant.

Thereafter, a number of documents running to a great many number of pages were filed 'on behalf of the officers of Lehram Capital Investments', and we note the officers of Lehram Capital Investments are not there identified or, 'for and by Pablo Saavedra, Lehram Capital Investments'.

It is evident to us that those documents have been produced either by, or with the assistance of a lawyer

though perhaps not one practicing in this jurisdiction. They included a 'skeleton argument in support of the abuse of process' dated 11 June 2021, running to 54 pages; and 'skeleton argument in support that this private prosecution violates Sections 5.4 and 7.2 [sic] of the Criminal Procedure Rules 2015' dated 11 June 2021, running to 14 pages; and 'skeleton argument, the rebuttal to Mr David Alexander's report', dated 11 June 2021, running to 45 pages; and 'application for disclosure' dated 5 July 2021, running to 37 pages; and 'application to stay proceedings as there is no case to answer', dated 6 July 2021, running to 32 pages; and 'application to set aside the conviction – Magistrates did not have jurisdiction to convict Lehram', dated 15 July 2021, running to nine pages; and various, and sometimes repeated, applications which we shall shortly run through.

His Honour Judge Griffith gave further directions on 2 July 2021, and subsequently on 27 July 2021 following case management hearings on the papers. He reserved to the outset of the appeal such arguments as the appellant wished to advance so far as the 'skeleton' and 'application' documents to which we have referred are concerned. On 27 July the learned judge directed any evidence in support of those arguments be filed and served by 30 July 2021. The appellant has failed to comply with that order.

Importantly, for our purposes, the Court gave the following direction, on 2 July:

'4. In the event the appellant wishes to attend the appeal remotely and/or wishes witnesses to give evidence remotely, the appellant is to contact the Court case progression officer no later than 4pm on Wednesday 11 August 2021 in order that appropriate arrangements might be made'.

So far as we are aware, at that stage, no indication had been given as to the whereabouts of those said to be acting 'for and on behalf' of the appellant. The directions went on to note as follows:

'Further, the Court brings to the appellant's attention, the following:

a) the appellant is not obliged to attend the appeal listed on 17 August 2021. However, in common with every defendant or appellant appearing before the Court, the

appellant is required to be notified that the failure by the appellant to attend, or to be represented at a hearing, particularly the substantive hearing of an appeal, is likely to harm that party's position.

b) the Court will not adjourn any fixed hearing without good reason. In particular, should the appellant choose not to attend on 17 August 2021, nor to avail itself of available facilities for remote attendance by its representatives or witnesses, then the Court may proceed to hear the appeal in the absence of the appellant and/or in the absence of the legal or other representatives of the appellant.

c) therefore, if a party does not appear, or is not represented at the hearing on 17 August 2021, not only should it not assume the hearing would be adjourned and should understand that such absence may adversely affect its position. Further, the appellant is neither present nor represented on 17 August 2021, it will be unable to challenge any evidence called by the respondent or call any evidence on its own behalf. These eventualities may also adversely affect the appellant's position.

d) it is the appellant's duty to remain in contact with the Court. In the circumstances, the inability of the Court or the respondent effectively to communicate with the appellant may be unlikely to lead to the adjournment of the appeal and may itself adversely affect the appellant's position'.

The appellant is a company registered in England and Wales having been incorporated on 8 November 2011. At all time material to the charges, the appellant was registered with Companies House as a 'non-trading' or dormant company.

It remains listed at Companies House as an active company, with a registered address of 85 Great Portland Street, First Floor, London W1W 7LT. Companies House records show that the individuals who are the directing minds of the view of the appellant, are nationals of Spain, Columbia, Latvia, Russia, and Kazakhstan. None of them were before the Magistrates' Court on 6 March 2020, which we note was before this country went into its first Covid lockdown on 16 March last year.

The Criminal Procedure rules make specific provision regarding a party's representatives. Criminal Procedure Rule 46.1 relevantly provides that anything a party may or

must do, may be done a) by a legal representative on that party's behalf; or b) by a person with the corporation's written authority, where that corporation is a defendant.

In addition, Section 33(3) of the Criminal Justice Act 1925 provides that, 'on arraignment of a corporation, the corporation may enter in writing by its representative, a plea of guilty, or not guilty; and if either the corporation does not appear by a representative, or, though it does so appear, fails to enter as a quarter[?] in plea, the Court shall order a plea of not guilty plea entered and the trial shall proceed as though the corporation had duly entered [inaudible]'.

Section 33(6) goes on to provide that, 'In this Section, the expression "representative" in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of the corporation is, by this Section, authorised to do; but a person so appointed, shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any Court for that purpose.

A representative for the purposes of this Section, need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation; or by any person by whatever name called, having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Section, shall be admissible without further proof as prima facie evidence that that person has been so appointed'.

No such written authority has been provided to the Court, whether under rule 46.1 or by Section 33(4). Of course, arraignment has long since passed, and at that stage the appellant was represented by solicitors. However, we think the general approach laid out in Section 33 and rule 46 ought to follow now, insofar as the appellant's representation is concerned, after MK Law ceased to act for it. It is, after all, an English company, subject to English law, in the English Courts, and in our judgment, proceedings such as these, are apposite in the circumstances.

The Companies House register shows that as of today, Pablo Saavedra also known as Juan[?] Saavedra is the

appellant company's secretary; and its directors are Igor Rudyk; Segundo Vargas; and Hasbrone Overseas Limited, a company registered in the British Virgin Islands.

Mr Rudyk's nationality is given as Kazakh, and Mr Vargas's as Columbian.

To our knowledge, none of the named directors put their names to any of the communications sent to the Court, apart from the generic description as the officers of Lehram. Communications since June appear to have come from a number of different generic email addresses, from a well-known domain name and email service provider, sometimes signed off by a 'Miss Maria Sokolova' and at other times signed off by Mr Saavedra.

Miss Sokolova appears to act as a translator for others. Just whom, she does not identify and at whose direction we do not know. There is no evidence before is that Miss Sokolova has authority to act for and on behalf of the appellant as its representative. This is despite the very clear direction given by His Honour Judge Griffith in further directions given by the Court on 27 July 2021 at paragraph six of those directions, that 'the appellant needs to file and serve a written statement, duly appointing Maria Sokolova or such other representatives as may be selected by the appellant, to appear as a representative of the appellant, pursuant to Section 33 of the Criminal Justice Act 1925, by 4pm, Friday 13 August 2021'.

Nor do we have any such evidence that Mr Saavedra, who is, as we had already noted, the appellant's company secretary, and not a director of the company, or anyone else for that matter, is so authorised.

The default position of common law is that, without more[?], a company secretary or even a director alone without the agreement of the company's board cannot file the company in the way in which Mr Saavedra seeks to make submissions before us.

We have considered whether Mr Saavedra has the appellant's ostensible or implied authority, which we can infer from the appellant's conduct and from the circumstances of the case. Such as when the board of directors appoint one of their number to be managing director, and impliedly[?] authorise that director to do such things as fall within the usual service of that office.

On the material before us, we do not consider that the appellant has held out that Mr Saavedra as having such authority. In an email dated 13 August 2021, Mr Saavedra wrote to the Court in the following terms, 'By no means the appellant intends to disobey the Court's order dated 22 July 2021 [or appoint a representative in accordance with Section 33 of the Criminal Justice Act 1925]. The appellant cannot afford any representative as it is a dormant company with no assets, no revenues, not even a bank account. A pro bono translator/activist, hopefully a native English speaker, American, will appear on 17 August 2021, or [by its defect?], any other pro bono translator/activist willing to assist in this matter on a pro-bono basis will appear. If a native English speaker translator is not procured, a nominated English speaker translator will be procured, but the Court is assured someone will appear through the hearing to read the statement and/or submissions filed by the appellant and its position'.

In our view this reply misunderstands the very clear words in contention behind Section 33.

We do not consider the wording of that section so difficult to comprehend, nor what His Honour Judge Griffith meant in his clear direction six of 27 July. The skeletons and applications demonstrate to us that the appellant, or at least those purporting to act on its behalf, chose to understand more complex legal argument when it suits them.

His Honour Judge Griffith's direction was not about legal representation. It was about the provision of a written statement appointing Miss Sokolova or someone else to appear as a representative of the appellant. The wording and intention behind the learned judge's direction could not have been clearer, and nor could the wording of Section 33, in particular.

In any event, His Honour Judge Griffith's clear direction six of 27 July, has not been complied with, and some caution must be exercised by this Court, in proceeding to deal with any party without the sort of representation envisaged by Section 33, and rule 46.1, and who does not appear in person before it, because the opportunity to abuse the Court's process in those circumstances is heightened.

There is all the more need for caution in the absence of any written authority under the hands of the directors, or at

least given in accordance with the company's governing documents. Given the risk of fraud, or at the very least the risk that someone who seeks to lawfully bind[?] the company, without any real authority would seek to do so, especially in a case with allegations such as these, and the convictions of the Court alone which are the subject of this appeal.

We hold little doubt that it is in part for those very reasons that the provisions of Section 33 and rule 46.1 exist; to ensure that whoever purports to appear as a representative of the company has the required standing. For the reasons we have outlined, we do not accept Miss Sokolova, or Mr Saavedra has the appellant's authority and thus standing to appear before us.

Before we consider the legal framework for dismissing an appeal where a party fails to appear, we turn to the video link direction given by His Honour Judge Griffith.

His Honour Judge Griffith's directions of 2 July gave leave to the appellant to apply to attend the hearing via video link. Putting to one side for the moment the fact that the appellant has failed to comply with his Honour Judge Griffith's direction six, the appellant has not identified who will attend, or precisely where they might attend from.

In an email to the Court 'on behalf of' Mr Saavedra, on 13 August 2021, the Court was told this, 'As of today, it is unknown the name of the translator who will appear on 17 August 2021. But it is assured to the Court that someone will appear in order to read in English a statement of the company and/or any submissions presented by the appellant, with all the evidence presented; and read the questionnaires to cross-examine [the 25?] witnesses that on July 29 the appellant kindly asked for the Court to be summoned'.

He continued, 'The officers of Lehram and/or the possible translator ([inaudible]), who would appear on 17 August 2021 are six to seven hours behind London time, therefore it is kindly asked to the Court for the trial to take place within normal business hours at the locations of the officers and/or translators of the appellants'.

A six-to-seven-hour time zone would put the 'officers and/or translators of the appellant' in either Central or North America; six hours for Central America and some parts of North America, and seven hours for North

America. The nationalities of Mr Rudyk, Kazakh; and Mr Vargas, Columbian; suggests that 'the officers and/or translators of the appellant' are not located in Kazakhstan or Columbia, or even the British Virgin Islands where Hasbrone Overseas Limited is registered.

From this it seems to us that the appellant was trying to hedge his bet, not committing one way or another as to just who would appear or from where. This was despite a direct request from me to Mr Saavedra yesterday through the list office to identify from where those seeking to represent the appellant would attend. All that was said in reply, the order is not a reply- email says it was sent 'on behalf of Mr Saavedra', was that 'the offices of the defendant are based in red/amber [sic] Covid listed countries. They are not allowed to enter England'.

That of course is not a correct statement of the position. People travelling from red or amber listed countries are permitted to come to England provided they followed the rules issued by Her Majesty's government. Unlike others, this country has reopened its borders, subject to those rules. The position as to where a party, representative, or indeed witness may attend via video link has direct implications as to the directions this Court can lawfully make.

Section 51(1) of the Criminal Justice Act 2003, as amended by the Coronavirus Act 2020, empowers the Court to give a direction for any participant in 'eligible criminal proceedings' to take part by live video link.

Section 51.2B of the Act defines eligible criminal proceedings to include a criminal appeal to the Crown Court, and any proceedings that are preliminary or incidental to such an appeal. Section 51 in its present form, will enable the appellant to appear remotely by a video link from outside England and Wales.

However, as we have said, the appellant has failed to comply with His Honour Judge Griffith's direction six, and has not identified who will attend, or precisely where they might attend from.

On 12 August 2021, his Honour Judge Griffith granted a video link for the appellant's representation. Although the appellant has applied to appear via video link, we are not prepared to grant permission for that to happen without the appellant complying with His Honour Judge Griffith's

direction six, so that the Court is aware of precisely who is to appear, and from where, and on what authority.

In email correspondence, the appellant has stated its intention that either Miss Sokolova or another person would read out the statements. In the directions which His Honour Judge Griffith gave, on 12 August, the learned judge said this, '2. There is reference to the translator reading out statements. Evidence must be given by the person who made the statement unless it is agreed by [the respondent]. If there is a video link, the witness can appear over it to tell the Court what they want to say. If [the appellant wants] to introduce evidence by statement being read, they must comply with the provisions of Sections 114 to 118 of the Criminal Justice Act 2003, and the Criminal Procedure Rules Part 20'.

So far as witnesses are concerned, yesterday I told the appellant, via the list office, that unless any person to give evidence for the appellant is in England and Wales, the law does not permit remote attendance outside the jurisdiction. That was a simple statement of position, but more particularly, unless formalities specific to the place from where the witness is to give evidence are complied with, in addition to Criminal Procedure rule 18.24, the law does not permit remote attendance.

Despite a request, we have not been told where any of the people whose evidence the appellant wishes to rely upon are present and so none of the usual formalities, such as seeking mutual legal assistance, often through a formal international letter of request, have to our knowledge, been addressed, or indeed have any of the matters set out in rule 18.24. So, for those reasons, and in light of the appellants failure to comply with His Honour Judge Griffith's direction six, we refuse the delay[?] requested by the appellant.

We recognise this is robust case management, and in reaching that decision we have taken into account all the circumstances, including the nature of these proceedings and the appellant's conduct to date.

We turn now to consider the legal framework where an appellant fails to appear and is not legally represented. An appeal against conviction and sentence from the Magistrates' Court to the Crown Court is hearing de novo, or by way of re-hearing.

Section 79(3) of the Senior Courts Act 1981, which deals with appeals from Magistrates' Courts to the Crown Court read as follows, 'The customary practice and procedure with respect to appeals to the Crown Court, and in particular any practice has to the extent to which an appeal is by way of re-hearing of the case, shall continue to be observed'.

Section 9(6) of the Courts Act 1971 provides that, 'Subject to any provision contained in or having effect under this Act, the transfer of appellant jurisdiction to the Crown Court from the Quarter Sessions, shall not affect the customary practice or procedure of any such appeal, and in particular shall not affect the extent to which the appeal is by way of re-hearing of the case'.

In *ex parte Clare*, Green-Johnson LJ, with whom Mann LJ agreed, cited the approval at page 748, a passage from the last edition of Archbold's last Quarter Sessions, sixth edition, 1908 which said this, 'If the parties on appeal do not appear by themselves or by counsel when it is thus called on, the Court will order the appeal to be struck out of the list, and they will not usually allow it to be restored to it without the consent of the opposite party, or a very strong and satisfactory statement on the part of the appellant, supported by affidavit, or the oath of witnesses present accounting for his absence'.

Mr Ashley-Norman of Queen's Counsel drew our attention to the decision of Henriques J sitting in the Administrative Court, in the Queen's Bench Division of the High Court, in *R (Hayes) v Chelmsford Crown Court* [2003] EWHC 73 (Admin) in which the Court decided that was not open to dismiss an appeal where an appellant did not appear. However, as Mr Ashley-Norman rightly pointed out, that case is distinguishable from this one, because there the appellant was represented, whereas here, the appellant is not.

Ex parte Clare is clear authority that the [inaudible] of this case in the circumstances which are now presented to us. No appearance was made on behalf of the appellant in the Magistrates' Court or before us, nor did the appellant appear [by counsel or solicitor?]. Is there a strong and satisfactory reason for not doing so? Given what we have rehearsed, we do not think there is.

Even if Miss Sokolova or Mr Saavedra did report to appear before us today, or indeed any director of the appellant whether in person or by video link, we would

> refuse to go behind His Honour Judge Griffith's clear direction six of 27 July 2021.
>
> Since that direction has not been complied with still to date, and the appellant does not appear before us by anyone else with such written authority, or by legal representation, we find that the appellant has failed to appear today for the hearing of this appeal. Accordingly the appeal is dismissed.
>
> We will hear Mr Ashley-Norman QC's application for costs."

Submissions

22. On behalf of the Claimant, Mr Jacobs submitted that the dismissal of the Claimant's appeal against conviction and sentence was unlawful on the following grounds which can, as I have said, be broadly grouped under the heading of procedural unfairness.

23. Orally, he said that the issues were:

    a. Did the Court on 17 August act unlawfully and contrary to natural justice in refusing to admit the Claimant to the hearing, at the very least to resolve the issue as to the Claimant's authorisation and to pursue the adjournment application ?

    b. Did the Court deny the Claimant a fair hearing ?

    c. Did HHJ Baumgartner on 17 August act with bias or the appearance of bias such that a fair minded and informed observer would conclude justice had not seen to be done ?

    d. Is there any merit in the Interested Party's argument (s 31(2A), Senior Courts Act 1981) that it is highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred ?

24. In writing in the SFG, the issues were divided up as follows (these essentially cover the same ground).

25. *Ground 1* (SFG, [59]-[65]): 'the Panel (*sic*) erred and acted unreasonably in failing to adjourn the hearing of the appeal on 17 August 2021 upon being notified by those acting for the Claimant that they had only been sent (by the Court) the Respondent's trial bundle/appeal file at 15:15 hours on 16 August 2021.' The Claimant was substantially prejudiced by service of the Interested Party's bundle less than an hour before the court closed on the day before a four day hearing.

26. *Ground 2* (SFG, [66]-[74]): 'dismissal of appeal on basis that Claimant had failed to appear before the court'. The Court erred and acted unreasonably in dismissing the appeal on the basis that the Claimant failed to comply with paragraph (vi) of the order of HHJ Griffith dated 27 July. The Claimant did not understand the importance of direction (vi) and maintains that it would have taken urgent steps to comply with it had

it done so. HHJ Baumgartner was aware that the Claimant has been represented by Ms Sokolova on 2 July and that the Respondent had not objected.

27. *Ground 3* (SFG, [74]-[83]): 'dismissal of the appeal on the basis of failure to comply with direction (vi) in the order of HHJ Griffith dated 27 July 2021'). The Court erred and acted unreasonably in finding that the Claimant had deliberately failed to comply with paragraph (vi) of the directions of HHJ Griffith and in finding that in that those purporting to act for the Claimant had chosen to understand more complicated legal argument when it had suited them. The Court acted in breach of principles of natural justice in failing to admit those acting for the Claimant for the purpose of ascertaining the extent to which the Claimant had deliberately sought to disregard a direction of the court. The conduct of the court was unreasonable insofar as the allegation made against the Claimant was of a serious nature and the Claimant was not represented by a lawyer qualified in England and Wales and the Claimant had not been aware of the reasons for making the order requiring compliance with s 33 of the 1925 Act. The Court acted unreasonably in finding that neither Miss Sokolova and Mr Saavedra had authority to act as the Claimant's representative.

28. Mr Jacobs also submitted (in particular in his Skeleton Argument at [80]) that the way the Court had conducted the hearing on 17 August (and what it had communicated in the days leading up to it) gave the appearance of bias, in other words, justice had not been seen to be done: *Bubbles & Wine Ltd v Lusha* [2018] EWCA Civ 468, [17]-[18].

29. On behalf of the Interested Party, Mr Ashley-Norman submitted as follows.

30. Having regard to all the circumstances, the Court on 17 August had been entitled: (a) to refuse the application to adjourn; (b) to refuse to permit those purporting to act for the Claimant to appear before it; (c) to refuse those purporting to act for the Claimant access to the Court by video link; and so (d) to dismiss the appeals against conviction and sentence on the grounds of the non-appearance by the Claimant.

31. In short, the case management decision (a), (b) and (c) were right and not unlawful and led inevitably to the decision dismissing the appeal (ie, (d)).

32. First, in relation to the refusal to adjourn, the Interested Party adopts SGD, [56]-[62]. The Chronology shows that from 2 July the Claimant knew to expect the Interested Party's response to its Skeleton Arguments by 4pm on (Friday) 6 August. The Court's order expressly alerted the Claimant to its duty to remain in contact with the Court. The directions also specifically identified the danger of a failure of communication, and the likely consequences.

33. Following its unsuccessful application to adjourn in late July, the Claimant knew from the order of 27 July that its additional Skeleton Arguments were similarly to be the subject of a response from the Interested Party to be filed by 4pm on 6 August 2021.

34. On 4 August, the Interested Party requested a short extension to the deadline for the service of its appeal bundle because of the service of a number of applications by the Claimant which had to be responded to. The appeal bundle was filed on (Monday) 9 August.

35. The short point made by the Interested Party is that the Claimant waited a week before chasing the Court for the appeal bundle, which it knew had been due by 6 August (even if it did not know of the short extension to 9 August). On the evidence, the Claimant first raised the issue in an email timed at 11.27pm on 12 August (likely 5.27am on 13 August 2021 London time). Hence, says the Interested Party, 'The Claimant failed to discharge the duty identified to it in the Order of 2 July 2021. The Claimant's want of access to the Appeal Bundle was self-inflicted.' (Skeleton Argument, [67]). The Claimant should have been alert to this because it had been put on notice on 2 July of possible communication difficulties which might arise from the Court's unorthodox 'buffer' role.

36. It was therefore well within the ambit of the Court's case management discretion to refuse the adjournment. Added to that, the appeal bundle did not comprise 600 pages of new material, as was asserted on behalf of the Claimant in emails. Most of it was the Claimant's own documents. There was little new material that the Claimant had not seen, plus the Interested Party's written responses to the Claimant's many Skeleton Arguments). There was no unfairness.

37. Second, in relation to the Court's refusal to permit those purporting to act for the Claimant to appear before the Court, the Interested Party adopts [62] to [74] of its SGD. The Claimant could have been no doubt of the importance it being properly represented before the Court. This had been made clear in the order of 2 July and in exchanges with the Court. The Claimant then chose not to comply with [(vi)] of the order of HHJ Griffith of 27 July. Had the Claimant done so according to the timetable he set, then the matter would have been resolved before 17 August. Instead of complying with the order, the Claimant chose to file submissions disputing the Court's order. Also, the Claimant proposed to rely upon not a representative, but 'the pro bono assistance of Maria Sokolova's English translation skills to read the statement of the appellant and to read the submissions presented on behalf of the Appellant'.

38. Thirdly, in relation to the refusal to permit those purporting to act for the Claimant access to the Court by live video link, the Court was entitled to take the course it took and did not act unlawfully (SGD, [62]-[74].) The Claimant had not supplied the information which, on the authorities, the Court needed before deciding whether to grant the link. Further, no legitimate expectation arose that the Claimant's 'representatives' would be allowed to attend.

Discussion

Principles

39. The legal principles at play in this case are not especially controversial and the following sections have been mainly (but not entirely) adapted from the parties' Skeleton Arguments. I have also incorporated material from elsewhere.

40. A party to criminal proceedings is entitled to a fair hearing, which encompasses various requirements including: an unbiased tribunal (which means one that is not actually biased and one that does not have the appearance of bias); being made aware of the allegations s/he (or it) has to meet; and a fair opportunity to be heard in relation to them. There are many decision to such effect: the Claimant cited *Kanda v. Government*

of Malaya [1962] AC 322, 337; *Re Hamilton, re Forrest* [1981] AC 1038, 1045; *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531, 560; and *R (Talpada) v Secretary of State for the Home Department* [2018] EWCA Civ 841, [87]. Fairness means fairness to both sides.

41. What fairness requires is always fact and context specific. In *Lloyd v McMahon* [1987] AC 625, 702, Lord Bridge said:

> "The so- called rules of natural justice are not engraved on tablets of stone: to use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates."

42. In *Doody*, p560, Lord Mustill said*:*

> "What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

43. The Claimant rightly submitted where it is alleged that a lower tribunal has acted in breach of the rules of fairness or natural justice, the court's task is not to review the

reasoning of the tribunal on *Wednesbury* principles, but to make its own independent judgment of whether what was done was fair: *R (Mahfouz) v General Medical Council* [2004] EWCA Civ 223, [19]; *R (Osborn) v Parole Board* [2014] AC 1115, [65]. That is the overall question I have to answer in this case.

44. In doing that, I bear in mind that the first decision I am concerned with, namely the Court's decision not to adjourn, was a case management decision. Generally speaking, therefore, a generous approach to the decision of the lower court is required, and I cannot interfere merely because I would have reached a different decision. That is made clear in the cases on adjournments I will discuss later. For now, in *Broughton v Kop Football (Cayman) Ltd (Permission to Appeal)* [2012] EWCA 1743, [51], Underhill LJ said:

> "51. Case management decisions are discretionary decisions. They often involve an attempt to find the least worst solution where parties have diametrically opposed interests. The discretion involved is entrusted to the first instance judge. An appellate court does not exercise the discretion for itself. It can interfere with the exercise of the discretion by a first instance judge where he has misdirected himself in law, has failed to take relevant factors into account, has taken into account irrelevant factors or has come to a decision that is plainly wrong in the sense of being outside the generous ambit where reasonable decision makers may disagree. So the question is not whether we would have made the same decisions as the judge. The question is whether the judge's decision was wrong in the sense that I have explained."

45. This approach was approved by Lord Burnett of Maldon CJ in *R (Michael) v The Governor of HMP Whitemoor, The Director of High Security Prisons v The County Court at Oxford* [2020] 1 WLR 2524. [56]:

> "56. This court will interfere with a case management decision of a trial judge only in exceptional circumstances. It is well established that a case management decision will not be interfered with or reversed by appellate courts unless it was, as Lord Neuberger put it in *Global Torch Ltd v Apex Global Management Ltd (No 2)* [2014] UKSC 64 (approving of the test in *Broughton v Kop Football (Cayman) Ltd* [2012[EWCA Civ 1743, 'plainly wrong in the sense of being outside the generous ambit where reasonable decisions-makers may disagree'."

46. The potency of this principle– and the potential consequences of not complying with a court order - is illustrated by the *Global Torch* case. The Supreme Court upheld the decision of the Court of Appeal, which resulted in the defendant not being able to maintain a defence to a claim for $6 million solely because he had failed to comply with the court's order that he sign a document. Justifying this outcome, Lord Neuberger said at [23]:

> "23 … The importance of litigants obeying orders of court is self-evident. Once a court order is disobeyed, the imposition of a sanction is almost always inevitable if court orders are to continue to enjoy the respect which they ought to have. And, if persistence in the disobedience would lead to an unfair trial, it seems, at least in the absence of special circumstances, hard to quarrel with a sanction which prevents the party in breach from presenting (in the case of a claimant) or resisting (in the case of a defendant) the claim. And, if the disobedience continues notwithstanding the imposition of a sanction, the enforcement of the sanction is almost inevitable,

> essentially for the same reasons. Of course, in a particular case, the court may be persuaded by special factors to reconsider the original order, or the imposition or enforcement of the sanction."

47. It follows, and it is obvious in any event, that parties to litigation have duties. In criminal cases these are largely contained in the Criminal Procedure Rules (Crim PR), as well as in the common law, and the Claimant was subject to them. The fact that at times the Claimant was not legally represented did not lessen its obligations to comply with the rules and the Court's orders: *Barton v Wright Hassall LLP* [2018] 1 WLR 1119, [18]. In fact, as set out in the SGD at [6]-[28], the Claimant did have legal representation for parts of the appeal, and so had access to advice about its duties.

48. In furtherance of the overriding objective in Crim PR r 1.1 (to deal with cases justly), Crim PR r 1.2 provides (emphasis added):

> "The duty of the participants in a criminal case
>
> 1.2. (1) Each participant, in the conduct of each case, must-
>
> (a) prepare and conduct the case in accordance with the overriding objective;
>
> (b) comply with these Rules, practice directions and directions made by the court; and
>
> *(c) at once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.*
>
> (2) Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this rule."

49. In *R (Hassani) v West London Magistrates Court* [2017] 3 Costs LR 477, [11]-[12], in a judgment with which Garnham LJ agreed, Irwin LJ commented upon this aspect of the Crim PR:

> "11. Time wasting, extension of hearings and taking hopeless points in the hope of wearing down an opponent or the court are neither proper nor legitimate ways in which to conduct a case, for a party or for a party's lawyers. Courts must be aware of such behaviour and employ firm case management to prevent it.
>
> 12. Each participant in a case has the obligation set out in CPR 1.2(1)(c): 'At once inform the court and all parties of

> any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective.' That means, for example, that if defence lawyers consider that a document is missing or service of a document has not taken place, their obligation is to say so early. Not to say so early may hinder the overriding objective because it is likely to cause an adjournment which could be avoided, and thus prevent the case being decided 'efficiently and expeditiously". If the defence are going to suggest that some document or some piece of service is missing, they must do so early. If they do not, then it is open to the court to find that the point was raised late, and any direction then sought to produce a document or to apply for an adjournment may properly be refused."

50. He continued at [18]:

> "18. This judgment is an intentional reminder to criminal courts that active case management using the Criminal Procedure Rules is their duty. Increased rigour and firmness is needed. This judgment can be cited pursuant to the Practice Direction (Citation of Authorities) [2001] 1 WLR 1001."

51. Both passages were cited with approval by Sweeney J in *R (DPP) v Sunderland Magistrates' Court; R (Kharaghan)* v *City of London Magistrates' Court* [2018] 1 WLR 2195, [27], which concerned challenges to adjournments made by magistrates on a wrong factual basis. In relation to the second case, the problems in the magistrates' court arose in part from a failure of communication between the prosecutor and defence because the defence solicitors did not have a cjsm email address, which is required for service of relevant documents. The defence solicitors complained the prosecution had not served relevant documents as they had been ordered to do. At [89], Sweeney J said that

> "89. On behalf of the claimant Mr Dye realistically accepted that, although it is not yet compulsory for defence lawyers to provide cjsm e-mail addresses to the CPS, the lack of such provision by the defence in the instant case made an undoubted contribution to the problems. Mr Dye also accepted (as was, or should have been, apparent during the hearing on 3 May 2017) that the defence had been at fault in not alerting the magistrates' court at once to the prosecution's failure to serve and disclose by 20 March 2017; in not alerting the court as to the prosecution's apparent continuing failure thereafter to do so; and, finally, in not (as the date for the trial hearing approached) alerting the court to the fact that, in their

> view, the case was not ready for trial and why: see eg Crim PR r 1.2(1)(c) and 3.3(1), together with the Criminal Practice Directions 2015 Division I, "CPD I General matters 1A: The overriding objective", paragraph 1A.2, and the passages from the judgment of Irwin LJ in *R (Hassani) v West London Magistrates' Court [2017] 3 Costs LR 477* cited in para 27 above." Sweeney J continued at [112] that 'although it appeared at the time that the prosecution had not complied at all with the order to serve and disclose by 20 March 2017, the claimant and his advisers had clearly failed to comply with their duties to bring that to the attention of the court at an early stage, and thereafter to warn the court about their consequent lack of readiness for trial'.

52. On the approach to be taken to applications for adjournments, the leading cases are *Crown Prosecution Service v Picton* [2006] EWHC 1108 (Admin) and *Balogun v Director of Public Prosecutions* [2010] 1 WLR 1915. They require a 'rigorous' approach to the reasons advanced for the adjournment: *R (Director of Public Prosecutions) v Leeds Magistrates Court* [2020] EWHC 3686 (Admin), [13], and other cases.

53. In *Balogun*, [10]-[12], the Court said:

> "10. This area of the law has been well trodden over a number of years. In *R v Aberdare Justices ex p Director of Public Prosecutions* [1990] 155 JP 324, Bingham LJ (as he then was) emphasised two principles in these terms:
>
> > '10. First, a decision as to whether or not proceedings should be adjourned is, as counsel for the defendant rightly urged, a decision within the discretion of the trial court. It is pre-eminently a discretionary decision. It follows as a matter of undoubted law that it is a decision with which any appellate court would be very slow to interfere and accordingly would interfere only if very clear grounds were shown for doing so.
> >
> > Secondly I wish to make it plain that the justices in this case are in no way open to criticism for paying great attention to the need for expedition and the prosecution's criminal proceedings. It has been said time and time again that delays in the administration of justice are a scandal, and they are more scandalous when it is criminal proceedings with which the court is concerned.'

11. Those observations were followed by Lord Bingham CJ (as he became) in *R v Hereford Magistrates' Court ex p Rowlands* [1998] QB 110, at 127G:

> ‘It is not possible or desirable to identify hard and fast rules as to when adjournments should or should not be granted. The guiding principle must be that justices should fully examine the circumstances leading to applications to delay, the reasons for those applications, the consequences both for the prosecution and defence. Ultimately they must decide what is fair in the light of all those circumstances.
>
> The court will only interfere with the exercise of the justices' discretion whether to grant an adjournment in cases where it is plain that a refusal will cause substantial unfairness to one of the parties. Such unfairness may arise when the defendant is denied a full opportunity to present his case. But neither defendants nor their legal advisers should be permitted to frustrate the objective of a speedy trial without substantial grounds. Applications for adjournments must be subjected to rigorous scrutiny.’

12. Inefficiency is always to be challenged. In a pithy but entirely apposite observation in *R (Walden and Stern) v Highbury Corner Magistrates' Court* [2003] EWHC 708, Mitchell J observed (at paragraph 17):

> ‘Furthermore, these reasons were given in the absence of any 'rigorous scrutiny' of the application. The longer courts tolerate the sort of inefficiency which seems, in each of these cases, to be the explanation for the failure of the witnesses to attend court on the date fixed for the hearing, the longer it will continue. To tolerate it is to encourage it."

54. In *Picton*, the Court said at [8]-[9]:

> “8. The magistrates were referred to the relevant authorities. They concluded that the prosecution failure was unreasonable; that in accordance with *R (Walden and Stern) v Highbury Corner Magistrates' Court* [2003] EWHC 708 (Admin) the request for an adjournment should be subject to rigorous scrutiny; that in accordance with *Essen v Director of Public Prosecutions* [2005] EWHC 1077 (Admin) they should consider carefully whether it was right to rescue the prosecution from the

consequences of its own neglect; that in accordance with *Walden and Stern* to do so would encourage such failings; that the interests of the accused and his witnesses had to be considered as well as those of the victim; that on any basis if they granted an adjournment there was likely to be significant delay before the trial could be completed; and, finally, that given the unreasonable failure of the prosecution and balancing the interests of the victim and the accused and the likely delay, it was not in the interests of justice to grant an adjournment until later that day or to a new trial date.

9. In *Essen* this court considered the relevant law and it considered in particular the judgments of Lord Bingham in *R v Aberdare Justices ex parte Director of Public Prosecutions* (1990) 155 JP 324 (then as Bingham LJ) and in *R v Hereford Magistrates' Court ex parte Rowlands* [1998] QB 110 (then as Lord Bingham CJ). The following points emerge:

(a) A decision whether to adjourn is a decision within the discretion of the trial court. An appellate court will interfere only if very clear grounds for doing so are shown.

(b) Magistrates should pay great attention to the need for expedition in the prosecution of criminal proceedings; delays are scandalous; they bring the law into disrepute; summary justice should be speedy justice; an application for an adjournment should be rigorously scrutinised.

(c) Where an adjournment is sought by the prosecution, magistrates must consider both the interest of the defendant in getting the matter dealt with, and the interest of the public that criminal charges should be adjudicated upon, and the guilty convicted as well as the innocent acquitted. With a more serious charge the public interest that there be a trial will carry greater weight.

(d) Where an adjournment is sought by the accused, the magistrates must consider whether, if it is not granted, he will be able fully to present his defence and, if he will not be able to do so, the degree to which his ability to do so is compromised.

(e) In considering the competing interests of the parties the magistrates should examine the likely consequences of the proposed adjournment, in particular its likely length, and the need to decide the facts while recollections are fresh.

> (f) The reason that the adjournment is required should be examined and, if it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise if the party opposing the adjournment has been at fault, that will favour an adjournment.
>
> (g) The magistrates should take appropriate account of the history of the case, and whether there have been earlier adjournments and at whose request and why.
>
> (h) Lastly, of course the factors to be considered cannot be comprehensively stated but depend upon the particular circumstances of each case, and they will often overlap. The court's duty is to do justice between the parties in the circumstances as they have arisen."

55. I turn to the position of corporations in criminal proceedings. I am not concerned here with corporate criminal liability, but with the procedural question: How and by whom can a corporation be represented in criminal proceedings ?

56. The question arises because corporations are legal persons which have to act through natural persons. The position at common law was that a company had to be represented by counsel or solicitors or, by leave of the judge, some other person, usually a director: *Charles P Kinnell & Co Ltd v Harding Wace & Co* [1918] 1 KB 405, 413:

> "As from its nature a company cannot appear in person, not having as a legal entity any visible person, it must appear by counsel or solicitor, or by leave of the judge some other person may be allowed to appear instead of the company to address the Court, which includes the examination of the witnesses and generally conducting the case. There is no limit or restriction imposed on the judge as to the persons whom he may allow, or as to the nature of the cases in which he may allow some other person to address him instead of counsel or solicitor for the company. It is left to his discretion …"

57. The position now is dealt with under statute and the procedural rules. In criminal cases, Crim PR r 46.1 provides:

> "46.1. - (1) Under these Rules, anything that a party may or must do may be done -
>
> …

> (b) by a person with the corporation's written authority, where that corporation is a defendant;
>
> …
>
> unless other legislation (including a rule) otherwise requires."

58. This Rule does not in terms say how or in what form written authority is to be given, however the Notes state:

> "Section 33(6) of the Criminal Justice Act 1925, section 46 of the Magistrates' Courts Act 1980 and Schedule 3 to that Act provide for the representation of a corporation."

59. Section 46 provides:

> "The provisions of Schedule 3 to this Act shall have effect where a corporation is charged with an offence before a magistrates' court."

60. Paragraph 8 of Sch 3 provides:

> "Subsection (6) of section 33 of the Criminal Justice Act 1925 shall apply to a representative for the purposes of this Schedule as it applies to a representative for the purposes of that section."

61. Section 33(6) states:

> "In this section the expression 'representative' in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this section authorized to do, but a person so appointed shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.
>
> A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed".

62. Similar provision is made for civil cases in the Civil Procedure Rules. CPR r 39.6 provides:

> "Representation at trial of companies or other corporations
>
> 39.6 A company or other corporation may be represented at trial by an employee if –
>
> (a) the employee has been authorised by the company or corporation to appear at trial on its behalf; and
>
> (b) the court gives permission."

63. As to this, I said in my case management judgment in the present case ([2022] EWHC 3203 (Admin)), at [16]-[17]:

> "16. CPR Part 39 used to be accompanied by PD39A (since repealed), which provided at [5.2] and [5.3]:
>
> '5.2 Where a party is a company or other corporation and is to be represented at a hearing by an employee the written statement should contain the following additional information:
>
> (1) The full name of the company or corporation as stated in its certificate of registration.
>
> (2) The registered number of the company or corporation.
>
> (3) The position or office in the company or corporation held by the representative.
>
> (4) The date on which and manner in which the representative was authorised to act for the company or corporation, e.g. _____ 19____: written authority from managing director; or _____ 19____: Board resolution dated _____ 19____ .
>
> 5.3 Rule 39.6 is intended to enable a company or other corporation to represent itself as a litigant in person. Permission under rule 39.6(b) should therefore be given by the court unless there is some particular and sufficient reason why it should be withheld. In considering whether to grant permission the matters to be taken into account include the complexity of the issues and the experience and

> position in the company or corporation of the proposed representative.'
>
> 17. Although the Practice Direction has been repealed, [5.2] is still helpful as to the sort of evidence a court would typically expect to see where an application is made for a company representative to appear for it in litigation before the High Court …"

64. From these provisions, it seems to me that what is required in both criminal and civil cases is a clear and unequivocal statement from a named individual (X), who is authorised to act on behalf of the company, that another named person (Y) may represent the company. Details of the company, eg its registered office and company number should be given. The authority of X to give that authorisation must also be explicitly spelt out, eg, by producing the relevant board resolution or other appropriate evidence of authorisation.

65. A single director of a company with multiple directors does not necessarily have authorisation to act on behalf of the company (a point I made during the hearing). In *Lim v Ong* [2023] EWHC 321 (Ch), [55]-[63], Bacon J said (emphasis added):

> "55. That nevertheless left the question of whether Mr Ong could represent GCPL at trial for the purposes of making submissions on this point. Mr Bailey contended that Mr Ong did not have authority to represent GCPL. Mr Ong confirmed that he did not seek to call any evidence on behalf of GCPL, nor did he wish to cross-examine the claimants' witnesses on the GCPL claims. He nevertheless submitted that he should be permitted to make oral and written submissions to the court during the trial as to the substance of the GCPL claims.
>
> 56. It was agreed that I would not determine this point at the outset of the trial, but would leave this for closing submissions, and would therefore proceed to hear Mr Ong *de bene esse* during the trial as to any submissions that he wished to make on this issue, both on the procedural question of his entitlement to represent GCPL and the substantive issues raised by the GCPL claims.
>
> 57. Having considered the submissions of both parties on this point, it is in my judgment clear that Mr Ong cannot represent GCPL at this trial.
>
> 58. CPR r 39.6 provides that a company may be represented at trial by an employee, if the employee has been authorised by the company to appear at trial on its behalf *and* the court gives permission. As the Court of Appeal explained in *Watson v Bluemoor Properties* [2002] EWCA Civ 1875, §12, that rule deliberately introduced a

greater measure of flexibility into the ability of companies to choose their representative, allowing a company to authorise an employee to do so, whether or not that employee is a director. Nevertheless, the requirement remains that the relevant employee must be authorised by the company in question. *It is not open to the court to permit someone to represent the company who is not so authorised.*

59. In the present case, the two directors of GCPL are Mr Ong and (since January 2020) Mr Murphy. The GCPL shareholders' agreement provides, in clause 2.1:

> "The affairs of the Company will be managed by the board of directors unless changed by a unanimous Directors' Resolution … Two (2) directors shall constitute a quorum for the transaction of any business at any meeting of the board of directors. At all meetings of the board of directors, every motion to be carried must receive a majority of the votes cast, subject to the provisions of subclauses 2.5 and 2.6. Unless otherwise agreed, board meetings will be held at the head office of the Company."

60. Mr Ong confirmed on the first day of the hearing that he was not aware of any board resolution which authorised him to act for GCPL. Nor are the claimants aware of any means by which Mr Ong has been authorised to represent GCPL in these proceedings. That remained the position by the end of the trial: Mr Ong did not produce anything suggesting that he was authorised to represent GCPL. While he contended that, as a director, he should be entitled to represent the company, that is not enough where (as in the present case) the company has multiple directors, and where the provisions of the shareholders' agreement preclude a single director from acting unilaterally on behalf of the company.

61. Mr Ong also pointed to the fact that both Cardium Law and Ince & Co had previously represented GCPL without any objection from the claimants. I do not have any details of the basis on which GCPL's former legal representatives took their instructions. In any event, however, a solicitor gives an implied warranty of authorisation to act, which does not engage the requirements of r. 39.6.

62. For completeness, I note that there is a separate question as to the status of GCPL's pleaded case, in circumstances where a joint defence was filed by all six

> defendants, with the statement of truth signed by Mr Ong. Mr Bailey accepted that if he had now sought to strike out that defence in so far as it set out the position of GCPL, on the basis that it was produced without authorisation from the company, the question of whether such an application was barred by *laches* would arise. The claimants have not, however, brought any such application, so this question does not arise and the trial has proceeded on the basis (as set out above) that GCPL's defence is not struck out.
>
> 63.The formal position is, therefore, that while GCPL's defence stands, Mr Ong is not authorised to represent the company at the trial for the purposes of r. 39.6. Formally, therefore, GCPL was unrepresented at the trial. For the reasons given above, however, I permitted Mr Ong to make any submission that he wished to make in relation to GCPL. Having done so, my discussion of the GCPL claims below takes into account those submissions *de bene esse*. For the reasons set out below, those submissions do not make any difference to my conclusions on the GCPL claims."

66. I turn to the legal principles concerning video links.

67. Section 51 of the of the Criminal Justice Act 2003 (as amended by s 53 and Sch 23 of the Coronavirus Act 2020) was in force in August 2021 (a new s 51 was inserted by s 200 of the Police, Crime, Sentencing and Courts Act 2022 with effect from 28 June 2022).

68. Section 51 in its August 2021 form provided:

> "51 Live links in criminal proceedings
>
> (1) A person may, if the court so directs, take part in eligible criminal proceedings through -
>
> (a) … or
>
> (b) a live video link.
>
> (2) In this Part 'eligible criminal proceedings' means -
>
> (a) a summary trial,
>
> (b) a criminal appeal to the Crown Court and any proceedings that are preliminary or incidental to such an appeal …
>
> (3) A direction may be given under this section -
>
> (a) on an application by a party to the proceedings, or

(b) of the court's own motion.

(4) But the court may not give a direction for a person to take part in eligible criminal proceedings through a live audio link or a live video link unless -

(a) the court is satisfied that it is in the interests of justice for the person concerned to take part in the proceedings in accordance with the direction through the live audio link or through the live video link,

(b) the parties to the proceedings have been given the opportunity to make representations …

(4A) The power conferred by this section includes power to give -

…

(c) a direction for a person who is outside England and Wales (whether in the United Kingdom or elsewhere) to take part in eligible criminal proceedings through a live audio link or a live video link."

…

(4E) The court may rescind a live link direction under this section at any time before or during the eligible criminal proceedings to which it relates (but this does not affect the court's power to give a further live link direction in relation to the proceedings).

(4F) A live link direction under this section may not be rescinded unless—

(a) the court is satisfied that it is in the interests of justice for the direction to be rescinded,

(b) the parties to the proceedings have been given the opportunity to make representations,

(4G) A live link direction under this section may be varied or rescinded by the court of its own motion or on an application by a party; but such an application may not be made unless there has been a material change of circumstances since the direction was given.

(4H) If a hearing takes place in relation to the giving or rescinding of a live link direction under this section, the

court may require or permit a person to take part in that hearing through—

(a) …

(b) a live video link.

(6) In deciding whether to give or rescind a direction under this section the court must consider all the circumstances of the case.

(7) Those circumstances include in particular—

(a) in the case of a direction relating to a witness—

(i) the importance of the witness's evidence to the proceedings;

(ii) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence;

(b) in the case of a direction relating to any participant in the proceedings—

(i) the availability of the person;

(ii) the need for the person to attend in person;

(iii) the views of the person;

(iv) the suitability of the facilities at the place where the person would take part in the proceedings in accordance with the direction;

(v) whether the person will be able to take part in the proceedings effectively if he or she takes part in accordance with the direction.

(8) The court must state in open court its reasons for refusing an application for a direction under this section …"

69. This provision was considered in *R v Kadir* [2023] 1 WLR 532, to which the Interested Party in particular referred me. However, the overall position on live links, and the legislative changes over time, were more recently helpfully summarised by the Court of Appeal in *R v Pierini* [2023] EWCA Crim 1189, [40]-[48] (they are not controversial):

"7 December 2007 – 24 March 2020

40. Section 51 of the Criminal Justice Act 2003 came into force on 7 December 2007. It made provision for live links in criminal proceedings. As originally enacted, it stated:

[Omitted]

41. As originally enacted, section 51 did not permit a defendant to give evidence by live link That was explicitly excluded from the ambit of section 51(1) ('other than the defendant'). Aside from section 51 of the 2003 Act, there was (prior to March 2020) no other provision which would have enabled a court to permit the applicant to give evidence by live link …

25 March 2020 to 27 June 2022

42. The Coronavirus Act 2020 was a legislative response to the covid-19 pandemic. Its purpose was to enable the Government to respond to an emergency situation and manage the effects of a covid-19 pandemic: see paragraph 1 of the Explanatory Notes. It was passed, and (with certain exceptions) it came into force, on 25 March 2020. Sections 53-57 made provision for the use of video and audio technology in courts and tribunals. The policy reasons for these provisions were explained at paragraphs 92-93 of the Explanatory Notes:

> '92 The efficiency and timeliness of court and tribunal hearings will suffer during a covid-19 outbreak. Restrictions on travel will make it difficult for parties to attend court and without action a significant number of hearings and trials are likely to be adjourned. In criminal proceedings, the courts have a duty to deal with cases effectively and expeditiously and that includes making use of technology such as live video links telephone or email where this is lawful and appropriate. Video link technology is increasingly being used across the court estate enabling greater participation in proceedings from remote locations. The courts currently have various statutory and inherent powers which enable them to make use of technology.
>
> 93 The Bill amends existing legislation so as to enable the use of technology either in video/audio-enabled hearings in which one or more participants appear before the court using a live video or audio link, or by a wholly video/audio hearing where there is no physical courtroom and all participants take part in the hearing using telephone or video conferencing facilities.'

43. Section 53, read with schedule 23, made temporary modifications to the Criminal Justice Act 2003 ('the 2003 Act'), including section 51 of that Act.

44. Section 51 of the 2003 Act, as in force at the time of the judge's ruling on 8 February 2022, provided:

[Omitted: set out earlier]

28 June 2022 onwards

45. The provisions of the Coronavirus Act which temporarily modified section 51 of the 2003 Act were repealed with effect from 28 June 2022. From that date, the Police, Crime, Sentencing and Courts Act 2022 substituted a new version of section 51 of the 2003 Act. It introduced a requirement for a judge, when considering whether to make a live link direction, to take account of any guidance given by the Lord Chief Justice.

46. The Lord Chief Justice issued guidance shortly after the new provision came into force. This included the following:

> ‘Application of statutory criteria
>
> …
>
> 8. Defendants: It may be in the interests of justice to allow or require a defendant to attend hearings (particularly preliminary hearings) by live link so as to avoid delays and disruption ... Pre and post court conferences between advocate and defendant may not be able to take place effectively by live link where such conferences are desirable a live link is less likely to be in the interests of justice.
>
> …
> 15. Witnesses: A live link may be used as a special measure under section 24 of the Youth Justice and Criminal Evidence Act 1999. Even when not used as a special measure, the court may allow a witness to give evidence by live link where that is in the interests of justice (for example to save a witness from a long journey to court where all parties agree the evidence can be given remotely, or to allow a medical expert witness (or any other witness) to give evidence without having to take the entire day off work). Where a live link direction is given for a witness, the witness must give evidence by the live link unless the live link direction is revoked (section 52(2), (4)).
>
> **…**

> Live link to connect participant outside the United Kingdom
>
> 18. Where the participant is abroad, then (depending on the country concerned) the court will wish to consider whether a live link would risk damaging international relations so as to be contrary to the public interest. The factors to consider, and the checks that can be made, are set out in *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 00286 (IAC).
>
> Risks of live links
>
> 19. The court does not have the same level of control over those participating in court proceedings remotely that it does over those who are physically present in the courtroom. It follows that a live link potentially gives rise to risks that will need to be considered. This is not likely to be an issue for professional participants, but in some cases it may be an issue for others. Defendants or witnesses might misuse the remote access that is provided by a live link so as (for example) to record the proceedings or take screen shots that depict the jury or a witness. A witness giving evidence by live link from premises other than the court, might be subject to off-screen pressures that will not be evident to the court. If the participant is outside the jurisdiction then these risks may be greater. For the purpose of section 1 of the Perjury Act 1911, evidence from outside the United Kingdom by live link is treated as being made in the proceedings (section 52A(5)). It is unlikely that sanctions for contempt (eg putting screenshots on social media/breaching reporting restrictions) could in practice be imposed.'

47. In *R v Kadir* [2022] EWCA Crim 1244; [2023] 1 WLR 532 the trial judge refused the defendant's application for a live link for a witness to give evidence from Bangladesh. His appeal against conviction was dismissed. At [33] Holroyde LJ said:

> "In relation to an application for a live link for a witness who is in another country, it is necessary also to bear in mind the principle that one state should not seek to exercise the powers of its courts within the territory of another state without the permission (on an individual or a general basis) of

that other state. It cannot be presumed that all foreign governments are willing to allow their nationals, or others within their jurisdiction, to give evidence before a court in England and Wales via a live link. In some states, it may be necessary for the UK to be asked to issue an international letter of request ('ILOR') to the state concerned. The guidance recently issued by the Lord Chief Justice, at para 18, explains this important point…

The judgment in *Secretary of State for the Home Department v Agbabiaka* [2022] INLR 304 explains that a request can be made to the Taking of Evidence Unit at the Foreign and Commonwealth Office to enquire whether it is aware of any diplomatic or other objection from the country concerned to the providing of evidence by a live link.

34. Although that recent guidance had not been issued at the time of the trial, the judge specifically drew the attention of the parties to this issue and provided them with a copy of guidance issued by the Crown Prosecution Service ('CPS'). That guidance, whilst obviously directed to prosecutors, included the following passage which was also relevant to defence representatives:

> 'Some countries will allow requests to be arranged and conducted through informal channels, through a police to police basis, or even via direct contact with the witness from the UK. However, in many countries, a direct approach to a voluntary witness is not permitted and an ILOR will be required to establish a live link at trial.
>
> Many countries will rarely, if ever, make use of live link in criminal proceedings and will not have the necessary equipment. In these cases, it is vital that the prosecutor considers these issues at an early stage as it is probable that the request to set up a live link in such cases will take many months of planning. In some countries a live link will not be technically possible, although is possible that the requested state will allow the UK to supply the necessary equipment and expertise.'

…

> 36. In addition to the potential for diplomatic objections, it is necessary in this context to bear in mind both the administrative burden on court staff which is likely to arise if a witness is to give evidence from another country via a live link and the risks which may arise [as explained at paragraph 19 of the Lord Chief Justice's guidance].'

48. No steps had been taken to establish whether Bangladesh was willing to permit a live link of the kind sought. There had been no request or inquiry of any relevant authority in Bangladesh. This meant that the judge lacked vital information in deciding whether, in the light of the factors identified in the Lord Chief Justice's guidance, it was in the interests of justice for a live link direction to be made. As a result, the judge was right to refuse the application: see [45]-[49]:

> "45. These failures left the judge in a most difficult position. She was confronted in mid-trial with an issue of which no sufficient notice had been given, and for which no adequate or timely preparations had been made, and was asked to permit the giving of evidence from abroad via a medium which was not commonly used in criminal courts at the time.
>
> 46. As we have said, the judge did have the power to make a live link direction … even if she had been fully informed as to her power, she had no sufficient basis on which she could possibly exercise it in the defendant's favour … we [cannot] accept the submission that the judge was able to, and did, make a proper assessment of all the factors listed in section 51 of CJA 2003. She had no information about the attitude of the Bangladeshi authorities…
>
> 47. Finally, there was a dearth of information to enable the judge to assess the risks which might be involved in Samad giving evidence from Bangladesh, including any risk that he would be under any form of pressure from any other person. It does not appear there was even any clarity as to where precisely he would be when giving his evidence.
>
> 48. In those circumstances, the judge could not properly have concluded that the preconditions of a grant of leave under section 51(4) of CJA 2003 — that it would be in the interests of justice to make a live link direction, and that the Crown had had a

> sufficient opportunity to make representations—had been satisfied. Her decision to refuse the application for a live link was therefore correct. We accordingly reject the defendant's first submission.
>
> 49. Before leaving this first ground of appeal, we emphasise the need for early consideration and preparation of any applications—whether by the Crown or by the defence—for witnesses to testify from another country via a live link. The relevant statutory provisions and Crim PR must be complied with; appropriate steps must be taken to ascertain whether the foreign state concerned has any objection to a person within its territory giving evidence as proposed to a court in England and Wales; and the technical and practical arrangements must be tested in good time, so that alternative ways of adducing the evidence can be considered if necessary.'"

Ground 1: refusal to adjourn

70. As I have explained the question for me is whether the Court's refusal to adjourn – which was a case management decision - is vitiated by the sort of error which would properly permit me to intervene.

71. In considering this submission, it is important to look with care at: (a) the Chronology; and (b) that which the Claimant must have understood were the risks involved in the Court acting a conduit for the Interested Party's submissions (an arrangement which the Claimant had demanded because of the alleged threats to its directors). Those risks were expressly set out in (A)-(D) of the order of 2 July, which I set out earlier.

72. By 2 July the Claimant, although by then unrepresented, had filed a number of Skeleton Arguments. From that date onwards, the Claimant knew the Interested Party's response was due by 4pm on 6 August. The appeal bundle was to be filed by the same time. Those deadlines were set out in the order of HHJ Griffith of 2 July, which the Claimant obviously knew about, not least because Ms Sokolova was present by video link at the hearing when the substance of the order was read out by the judge.

73. Following the Claimant's unsuccessful adjournment application of 22 July, by the Court's order of 27 July 2021 (made administratively), the Claimant again knew that the Interested Party was going to reply to its Skeleton Arguments by 4pm on 6 August. In the event, there were a multiplicity of Skeleton Arguments and applications from the Claimant which the Interested Party had to respond to.

74. It is clear that by 29 July at the latest, the Claimant had received the 27 July order. That is because it filed submissions on that date taking issue with the application of s 33 of the Criminal Justice Act 1925 (partially correctly, as I shall explain later). It follows it must have received the order, and thus that it knew what the relevant deadlines were.

75. In due course, on 4 August, shortly before the deadline, the Interested Party requested a short extension for the service of the appeal bundle. The main reason for seeking the adjournment was the volume of material which the Claimant had filed.

76. The appeal bundle was filed one working day after the initial deadline, namely on 9 August. Paragraph 5 of the witness statement from Ms Gamon of the Interested Party's solicitors said:

> "5. A bundle the subject of analysis in the Judicial Review is a bundle entitled 'Appeal Trial Bundle'. I was a party to the assembly and service of the Appeal Trial Bundle for the purposes of the hearing of the conviction appeal in the Crown Court. It was intended to encapsulate for the Crown Court all of the relevant documents for the appeal. Pursuant to the order of the Crown Court dated 27 July 2021, it was due for service on Southwark Crown Court by 4pm on Friday 6 August 2021. However, by reason of the multiplicity of additional material served by or on behalf of the Claimant after 27 July 2021 it was not possible to complete the Appeal Trial Bundle by that deadline. It was served instead on the Court on the following Monday, Monday 9 August 2021, in readiness for the appeal which was due to commence on Tuesday 17 August 2021."

77. The appeal bundle ran to 564 pages. It consisted very largely of material from the Claimant, and not new material from the Interested Party, as Mr Ashley-Norman explained to the Court on 17 August 2021. Only a small proportion was new material which the Claimant had not seen before. The SGD said there were 29 such pages. The Claimant disputed this figure, but the exact number does not matter. It was a comparatively small number of pages, albeit, as I said in argument, it was material which required consideration (as opposed to being, for example, just a collection invoices which could be flicked through quickly) I reject Ms Sokolova's claim in her witness statement at [97] and [100] that 'over 100 pages' were new, and I understood Mr Jacobs not to press that figure.

78. For the reasons I gave earlier, the Claimant was under a duty to ensure that the Interested Party complied with the deadline for the service of the appeal bundle, whether it understood that to be 6 August *per* the order of 2 July, or 9 August. Whenever the deadline was, the Claimant was required by the Crim PR to raise the matter immediately with the Court once it believed the deadline had been missed. What was *not* reasonably open to the Claimant to do was for it to wait until virtually the eve of the appeal, and *then* complain about non-service and seek an adjournment.

79. However, that is what the Claimant did. The first time there is any evidence it raised the issue was an email timed at 11.27pm (I assume local time, some time behind London), probably about 5.27am on 13 August 2021 London time. That delay of a week was inexcusable and not in accordance with the Crim PR.

80. Paragraph 23 of the Claimant's Response to the SGD says 'the Claimant instructs that' Ms Sokolova raised the non-service of the bundle in a phone call to the Court on 11 August. There is no independent evidence of that alleged call. In the absence of such evidence, I am unable to find that any such call was made. Given the Court forwarded the file to the Claimant on 16 August shortly after the Claimant requested it writing, it is likely, had a call been made on 11 August, as the Claimant now says it was, the file would have been forwarded then.

81. The Claimant certainly did not make any enquiry of the Interested Party's solicitor. A phone call would have remedied the matter, and Mr Ashley-Norman said that had one been made, it would have been dealt with 'in a moment'.

82. There was a particular need for vigilance by the Claimant, over and above that engendered by the Court's unorthodox buffer role which, as I commented at the hearing, had the capacity to fail. It is the experience of most of us that sometimes emails do not arrive, eg, because of the size of attachments, or a mis-spelling of the recipient's email address, or for other reasons. That risk meant the Claimant should have been alert to, and monitoring, its email inbox from the deadline on 6 August onwards. It might have been the case that the appeal bundle had been sent by the Interested Party to the Court on time, and just not arrived; or that it had been sent by the Court to the Interested Party on time, but again not arrived.

83. In short, knowing that the appeal was due for hearing imminently, and believing that the appeal bundle should have been filed by the Claimant by 4pm on 6 August (or else 9 August), the Claimant made no enquiry of the Court in respect of the missing file until 13 August (London time). The Claimant therefore failed to discharge the duty that had been identified in the order of 2 July to remain in contact with the Court, and that imposed on it by the Crim LR. The Claimant's want of access to the appeal bundle was therefore almost entirely of its own making. It was not, as Mr Jacobs put it orally, 'all the Court's doing'.

84. Mr Jacobs said it would appear that HHJ Baumgartner's response in the email of 16 August at 9.57 that the adjournment request was refused because HHJ Griffith had already dealt with matters was an error, because the adjournment was based on the late appeal bundle, which had only just surfaced as an issue. However, in my judgment it was not a material error. The question of whether to adjourn was considered afresh by the Court the following day on the proper basis. Criteria (b) and (f) in *Picton* therefore weighed strongly against an adjournment.

85. I do not accept that there was any prejudice to the Claimant caused by the relatively small number of pages of new material in the bundle. The appeal was essentially a re-run of the case in the magistrates' court, and the Claimant therefore knew full well what the issues were and what the evidence against it was. It had had ample time to prepare for the appeal. The Claimant was sent the bundle at 15.15 on 16 August, which would have been the start of the working day where the relevant personnel were located. That gave it a full working day to absorb the small amount of new material (not two hours, as Ms Sokolova disingenuously claimed in her witness statement at [110]). It is clear from all the Skeleton Arguments and applications that it had a significant degree of legal expertise available to it. Applying the *Picton* principles, it was well within the Court's proper discretion to refuse an adjournment. I deal below with the Court's not

allowing Mr Sokolova or Mr Rudyk to address it, but even if they had done so, I very much doubt the outcome would have been different.

86. Overall, I agree with how the matter was put orally by counsel for the Interested Party on 17 August:

> "JUDGE BAUMGARTNER: Very good. I think first that we would consider the application to adjourn which came late. It was a renewed application yesterday evening and again I hoped it would have found its way to you.
>
> …
>
> MR ASHLEY-NORMAN: The respondent - the respondent's approach to that application is as follows: 'By virtue of the orders made on 2 July and 29 July, by your brother judge, His Honour Judge Griffith, the appellant was well aware that the respondent was to serve material on Friday 6 August. The appellant continued to serve material after our skeleton argument of Friday 26 July, and shortly before the date upon which we were to provide our response, we received 25 applications for witness summons and a further skeleton argument. As a result of that, our material was one working day late, arriving at this Court on Monday 9 August. The appellant well knew that that material was due to arrive before this Court. The appellant communicated with the Court on 10 August, so last week, making enquiries about CVP. At no point did the appellant say, "We haven't received the material. Please could the Court forward the material to us, pursuant to the arrangement that we asked the Court to make". The appellant deliberately did not seek out the material that it knew was due and was available to be provided to it, and it made a choice in order that it could make it's application to adjourn'.
>
> JUDGE BAUMGARTNER: Is your point that it is not new material- and the bulk of it is not new material anyway ?
>
> MR ASHLEY-NORMAN: And the bulk of it is not new material in any event .."

87. It follows that I reject Ground 1.

Ground 2: dismissal of appeal on the basis that the Claimant had failed to appear before the court

88. I am satisfied that the Court was correct to hold that the Claimant was not properly before the Court because no proper written authorisation had been given to Ms

Sokolova, or anyone else, to represent the Claimant on the appeal. I set out earlier what the rules require, and those requirements were not satisfied.

89. By 17 August neither Ms Sokolova nor anyone else involved with the Claimant could have been in any doubt about what they were required to do to establish proper representation on the appeal. Mr Jacobs' submission to the contrary was, with respect, not tenable. The issue of representation had been raised at an early stage in the appeal proceedings; Ms Sokolova had been aware of the issue on 2 July, if not earlier; and it was then provided for expressly in (vi) of the order of 27 July.

90. I note the following from the SGD, [65] et seq:

    a. Shortly after the first instruction of MK Law, in September 2019, confirmation of the basis of their instruction was sought in a letter directly referencing s 33 of the Criminal Justice Act 1925. Shortly after this, MK Law was dis-instructed.

    b. Upon the re-instruction of MK Law, confirmation of the basis of its re-instruction was sought by the Interested Party.

    c. Upon receipt of the Skeleton Arguments referenced above, on 11 June, prior to their withdrawal, MK Law were requested to confirm the status of the documents filed, with specific reference to Crim PR Part 46

    d. Upon the withdrawal of MK Law and counsel, on 16 June the Interested Party wrote to the Claimant at their registered office seeking the identity of any lawyers instructed or to be instructed, alternatively, confirmation that an officer of the company or duly authorised representative would be in attendance at the then forthcoming directions hearing. No reply was received.

    e. On 30 June an email was sent 'on behalf of the officers of Lehram Capital Investments' to the Southwark Crown Court, copied to the Interested Party. It did not address the question of representation. In reply, the Interested Party wrote again to the Claimant's Lehram's registered London office, pointing out that no reply had been received to the letter of 16 June.

91. Despite all of this, if the Claimant had been in doubt about what was required, it could have asked the Court and would have been given the answer. It says it did so in the magistrates' court enforcement proceedings later in 2021, and so it could have done so in the Crown Court.

92. The Claimant took issue in written submissions with the mention in [vi] in the order of 2 July of s 33 of the Criminal Justice Act 1925. As I said earlier, it was partially correct to do so. On its face, that provision is mainly concerned with arraignments. However, s 33(6) is applied in respect of magistrates' courts proceedings under Sch 3 of the Magistrates Courts Act 1980 by [8] of Sch 3 (including, by [2(c)], entering pleas to trials on information) and, because the procedure of a Crown Court appeal broadly mirrors that of a trial on information, I think is of relevance to such appeals also. It makes the general point that someone needs to be 'duly appointed' to appear for a company in criminal proceedings. As I have said, s 33 is mentioned in the Notes to Crim PR r 46.1.

93. That said, it would perhaps have been better if the order had recited CPR r 46.1(1)(b), and the need: (a) for the representative to have *written* authority (my emphasis) to act for the corporation on the appeal from someone on behalf of the corporation; and (b) for the lawful basis on which that authorisation was given (ie, the relevant board resolution, etc) also to be set out. Nonetheless, as I have said, the position had been made clear in various ways, and the Claimant had the wherewithal to find out what it had to do.

94. I reject the suggestion that the various emails sent to the Court in August (in particular on 12 August at 11.27pm and on 16 August at 5.06am) from unnamed persons purportedly on behalf of the Company Secretary, and/or the Claimant's directors, were sufficient authorisation to Ms Sokolova or anyone else to act on behalf of the Company on the appeal for all purposes. Mr Jacobs fairly accepted this in his oral reply. They primarily referred to Ms Sokolova (or someone) acting as a translator ('translator/activist') to read things out in English, and *not* as the Claimant's representative, and they did not set out the authority the author of the email (or the person on whose behalf it was purportedly being sent) had to act on behalf of the Claimant. Further, as Mr Ashley-Norman observed in relation to the email of 11.27pm on 12 August, for example, it said the Claimant did *not* have a representative.

95. The 16 August email timed at 5.06am said to have been sent 'on behalf of' the Claimant's officers stated:

> "As of the date of this letter, the appellant has not been able to secure any representative, a contingent/*pro bono* UK qualified attorney nor UK barrister, to assist in this matter, therefore it appears the appellant will have to rely on the pro bono assistance of Maria Sokolova's non-native English translation skills to read the statement of the appellant and to read the submissions presented on behalf of the Appellant."

96. There are numerous problems with this. Who was the actual author of the email ? What was their capacity/authority ? Was that authorisation (such as it was) being given on behalf of all of the officers of the Claimant and if not, then which ones ? If so, did the officers who did not speak English know and understand what was being asserted on their behalf ? What was the officers' authority ? Was there a board resolution ? If so, where was it, and when was it passed ? What statement was being referred to ?

97. I also reject the suggestion that some document along the lines of the letters of authorisation provided for the magistrates court in November would have been sufficient. Mr Jacobs said that something like these in August would have been 'all it took to comply' with the need for authorisation. I disagree. On their face, these letters emanated from two of the Claimant's directors, Mr Vargas and Mr Rudyk. Mr Rudyk's letter is in English even though he supposedly does not speak English (see below). Mr Vargas' letter is in translation from Spanish. The letters said Ms Sokolova had been authorised to act for the company 'before any courts in England & Wales since at least May 2021'. Mr Rudyk used sophisticated English constructions such as 'including but not limited to Magistrates Court, Crown Court, Courts of Appeal, High Court and

before any public or semi-public body she might consider appropriate' The reasons for Ms Sokolova's supposed authorisation and why it was specifically needed are not explained. The source of the directors' authority was not set out. And the letters are contradicted by other evidence, not least from Ms Sokolova herself. In short, they raise more questions than they answer.

98. In her witness statement for this judicial review, Ms Sokolova referred a number of times to her dealings with court staff, and impliedly suggested that she had been accepted as the Claimant's duly appointed representative. I do not accept that suggestion. It is quite clear that even as a late as 27 July the question of representation was still to be resolved. As set out above, the Interested Party accepted her as a conduit for communications for purely pragmatic reasons and without prejudice to its position about there having to be properly authorised representation for the Claimant on the appeal. The fact Court staff interacted with her is irrelevant.

99. I therefore conclude that up to and including 17 August, no-one had proper written authority to act on behalf of the Claimant for the purposes of the appeal, as required by CPR r 46.1(1)(b). It follows that the Claimant was not before the Court, and the Court was right so to hold.

100. I have not overlooked Mr Rudyk's assertions in his statement of 29 November that (*sic*):

> "1) Should had I been provided with the videolink for the 17 August 2021 appeal hearing at Crown Court in the matter of *Cyrith v Lehram*, I would have connected, as I was ready and available to participate since July 2021.
>
> 2) Should had I been provided with the videolink for the 17 August 2021 appeal hearing at Crown Court in the matter of *Cyrith v Lehram*, I would have clarified any concerns in relation to the authority of Maria Sokolova in relation to Lehram Capital and its members.
>
> 3) Should had I been provided with the videolink for the 17 August 2021 appeal hearing at Crown Court in the matter of *Cyrith v Lehram*, I would have made certain representations on behalf of Lehram irrefutably evincing that the private prosecution *Cyrith v Lehram* is inappropriate"

101. However, given that an authorisation must be in writing, such 'clarifications' would not have solved the problem. Moreover, because Mr Rudyk was not the Claimant's sole director, as I have said, proof of his authorisation to act on behalf of the company would have been required: cf *Lim*, [60].

102. I am reinforced in my overall conclusion by the doubts which surround exactly what Ms Sokolova's role and status is or was. As I said earlier, she described herself as a 'polyglot translator', and as having had some legal or quasi-legal roles. There is mention in the papers of her having had involvement with Baker & McKenzie in

Moscow. Mr Marshall, of the Interested Party's solicitors, made a witness statement in this judicial review pursuant to [4] of the order of Linden J on 13 May 2022. He carried out internet research of public information about Ms Sokolova, which threw up many unanswered questions. He concluded at [38}

> "38. The evidence demonstrates a length, depth and nature of relationship that I consider to be devoid of any explanation from the Claimant and, accordingly, I do not consider the Claimant has clarified the relationship with the Claimant, as ordered."

103. The status of Ms Sokolova remained in doubt when the matter came before me in December 2022: see at [9]-[13] of my judgment, where I said:

> " 9. In her witness statement Ms Sokolova said this:
>
> > '127. I have witnessed how pursuant to the power of attorneys from Mr Saavedra and Mr Vargas jointly with the request and authorization from Lehram's members and officers, when in late May 2021/June 2021 the counsel acting for Lehram in the private prosecution *Cyrith v Lehram* demanded more fees which could not be satisfied, and Lehram and its members could not continue to instruct him, I took over assisting the officers of Lehram, and Lehram itself in relation to the private prosecution Cyrith Holdings v Lehram Capital as I speak multiple languages and the registered persons with significant control of Lehram who are also officers of Lehram do not speak any English.
> >
> > 128. I was authorized by Lehram and its officers to act for them since at least May 2021, as shown in the under penalty of perjury statements of its directors (pages 156, 157 of renewal bundle).
> >
> > 129. I am not legally trained in the UK and nor legally trained in any jurisdiction in the world regarding dispute resolution proceedings nor litigation to properly understand the difference between 'emanation of Claimant' and 'authorized by Claimant'.
> >
> > 130. I am not the legal person Claimant, neither a director of Claimant.'
>
> 10. In a Reply from Mr Ashley-Norman dated 10 June 2022, and a witness statement from Andrew Marshall, a barrister and a partner with the firm representing the Interested Party, of the same date, and in its Skeleton

Argument for this CMC, the Interested Party objects to Ms Sokolova taking (further) part in this case.

11. It says that despite Linden J's order, considerable doubt remains about Ms Sokolova's status and that: (a) if she is seeking to act as a *McKenzie* friend (which some of what she has written would suggest) then I should not let her address me, as *McKenzie* friends are generally not entitled to address the Court: Administrative Court Judicial Review Guide 2022, [4.6.2] and [4.6.3]; alternatively (b) if she is seeking to appear for the Claimant pursuant to CPR r 39.6, then she has not shown she is an employee (or a director) of the Claimant, and in any event I should exercise my discretion not to allow her to appear for the company because of how she has conducted the case to date.

12. Among the points it makes are: her witness statement does not comply with CPR Part 32 because it provides no place of residence [PD32 18.1(2)]; (b) she provides no occupation or, if she has none, her description [PD32 18.1(3)]; (c) she fails to indicate which of the statements in it are made from her own knowledge and which are matters of information or belief [PD32 18.2(1)]; (d) the format requirement is not met, in that the statement has been provided only in electronic form [PD32 19.1 (1)]. At [323], p76, of its Skeleton Argument, the Claimant requests electronic submission because it claims to have no printing facilities and claims physical submissions are impossible because of the Interested Party (an assertion which is not further explained).

13. Mr Marshall says this in his witness statement:

> ‘15. I consider so little is known of the witness such as to make her untraceable. In relation to a witness who will not attend the UK or the court, I consider there to be an importance to very clear identification of the witness. The witness is silent about all matters that provide a basis for identification
>
> a. No identity documents have been provided.
>
> b. The witness communicates (vis a vis this matter) only from an (untraceable Protonmail) email account.
>
> c. The witness' qualifications are unspecified, as is her (presumed) university.

> d. The witness' whereabouts in the world are unstated, her usual address is unstated and the location where the statement was made is unstated.
>
> e. Nobody vouches for her or introduces her save for documents whose provenance is equally unclear and whose authors are equally untraceable.
>
> 16. At paragraphs 64-69 of her statement, the witness states what she is not but at no point does the witness state these in the positive by providing such details about herself. Where she does state matters about herself, for example paragraph 68 WS, it is expressed in a way that provides no detail at all by which the witness may be identified – the witness avoids stating what job, when she held that job, with which employer and where that job was.
>
> 17. With a view to establishing evidence of identity, I carried out Google searches of the names 'Maria Sokolova' or 'Maria Vladimirovna Sokolova', the reason for the latter name explained below. Other than Companies House, I have been unable to find an internet mention of anyone that I consider likely to be the witness; to the best of my knowledge, none of the results showed an image that approximates to the image of the person I saw on the video link in the High Court on 4 May 2022. I am not a professional researcher but I did seek to find public source evidence of the witness.'"

104. Deepening the mystery, in her witness statement at [7]-[9], Ms Sokolova stated that she had in fact been duly authorised to represent the Claimant since 2017:

> "7. I was asked by the officers of Lehram (directors and secretary) to assist in all matters related to their interests in Lehram, in their capacity as officers of Lehram as well as in their capacity as registered persons with control of Lehram.
>
> 8. In August 2017 I received powers from Mr Saavedra, Mr Vargas to represent them and represent Lehram before any public authority due to the trust relationship I have with them. Those powers were notarized in August 2017 and are valid until August 2022.
>
> 9. Those powers allow me to act for them and for Lehram before any public entity, including any Court."

105. As I commented during the hearing, this does not sit easily with the assertions on behalf of the Claimant in the run up to the appeal that it did not have a representative.

106. The notarised document itself has not been exhibited. If it exists, it is a mystery why it was not produced to Southwark Crown Court. If it had, it might have gone a long way towards ensuring compliance with (vi) of the order of 27 July. I note that it does not appear to have been relied upon in the Claimant's SFG. I do not accept the explanation in the Claimant's Response to the SGD, [32], that it has not been disclosed because it shows the location of the Claimant's directors, who are in fear. It could have been disclosed in a redacted form, with any sensitive material removed, or dealt with in some other appropriate way.

107. This explanation is also at odds with [55] of Ms Sokolova's witness statement:

> "55. Should the Court had shown any hesitation or concern in regard to me being authorized by the officers of Lehram and Lehram itself, a copy of the notarized power of attorney dated August 2017 and valid until August 2022, would have been shared with the Court, an email from one of Lehram's directors would have been provided, or any other remedy would have been implemented to the satisfaction of the Court such as the under penalty of perjury letters of authority of Lehram's directors seen in exhibit 1."

108. Contrary to her understanding, as I have said, the issue of representation was very much in issue, and was expressly dealt with in (vi) of the order of 27 July. I do not consider Ms Sokolova could have been in any doubt about the position, or what she and the Claimant needed to do.

109. Adding to the confusion, the letters of authority in evidence purportedly from Mr Rudyk and Mr Vargas (another director of the Claimant) say Ms Sokolova had been authorised from May 2021 (not 2017, as she said) to act on behalf of the Claimant in court. The evidence about Ms Sokolova's alleged authorisation is therefore contradictory.

110. Also, as I noted in my December 2022 judgment at [14] (*sic*):

> "14. On the morning of the CMC I received two documents from Ms Sokolova. One purported to be a Companies House form AP3 appointing her as the Claimant's secretary. It was accompanied by a 26-paragraph set of further submissions (which the Court had not asked for).. These said at [25]:
>
> > '25. In addition to the above, the LiP Claimant would like to inform the Court that despite Ms Sokolova's reluctancy to be appointed as a co-secretary of Claimant due to the risks its supposes because Claimant is exposing Kremlin-originated

> corruption arriving to England and to the West, in order to save time to the Court and to the Parties during the 1 December 2022, Ms Sokolova agreed to become an officer (co-company secretary) of LiP Claimant (see enclosed) addition to being an authorized person/an emanation of the directors of Claimant Mr Rudyk and Mr Vargas (their proxy).'

111. The whole picture about Ms Sokolova is therefore totally unclear.

112. Equally unclear is whether the Claimant's directors and Company Secretary, or some or all of them, speak English, a point I made during the hearing. There are various references in the papers to them not being able to speak English: see eg Ms Sokolova's statement, [127]. However, as I have said Mr Rudyk wrote a letter of authority in English dated 20 October and gave a witness statement in English, dated 6 April 2023. This suggests he does speak English. He has also made two statements in translation dated 29 November 2021 and 10 March 2023, which suggests that he does not speak English. In her statement at [6] Ms Sokolova said Mr Saavedra the Company Secretary does not speak English, even though he has signed a statement in English (with his signature witnessed by Mr Vargas). I am therefore left not knowing what the position is. Mr Ashley-Norman therefore said that one needed to be sceptical about the Claimant's evidence. I make clear that I do not place undue weight on this aspect of the case, but point it out as another illustration of the uncertainty surrounding the Claimant's position.

113. For all of these reasons, the Court was entitled to – and in my judgment was correct to – conclude that the Claimant was not properly represented on the appeal before it as required by CPR r 46.1(1)(b), because there was no proper or adequate written authorisation appointing Ms Sokolova or anyone else to appear on its behalf as its representative. The Court was correct in substance when it said (*sic*):

> "Even if Miss Sokolova or Mr Saavedra did report to appear before us today, or indeed any director of the appellant whether in person or by video link, we would refuse to g behind His Honour Judge Griffith's clear direction six of 27 July 2021. Since that direction has not been complied with still to date, and the appellant does not appear before us by anyone else with such written authority, or by legal representation, we find that the appellant has failed to appear today for the hearing of this appeal."

Ground 3: dismissal of the appeal on the basis of the failure to comply with direction (vi) in the order of HHJ Griffith of dated 27 July

114. There is a degree of overlap between this ground and Ground 2, as the Interested Party observed at [62] of its SGD:

> "62. The second and third grounds are in fact a single ground. This is made explicit in the first particular of

> Ground Two, which avers at paragraph 66 that the Court 'erred and acted unreasonably in dismissing the appeal…on the basis that the Claimant had failed to comply with paragraph (vi) of the Order…dated 27 July 2021'. The subsequent paragraphs address the Court's failure to permit the Claimant to enter the hearing. This aspect is therefore considered compendiously. Furthermore, the appeal was not dismissed because of the failure to comply with direction (vi); rather the Court refused to permit Ms Sokolova or Mr Saavedra to appear because of this failure. The dismissal of the appeal was a consequence of the failure to appear."

115. The nub of Ground 3 is therefore that the Court's refusal to allow Ms Sokolova and others to take part in the hearing by video link resulted in procedural unfairness. This was the principal basis on which Linden J granted permission in May 2022.

116. In considering this ground of challenge, the starting point is that Ms Solokova and Mr Rudyk had not been authorised as required by the Crim PR to represent the Claimant. It follows they were in the position of laypersons before the Court. It therefore had a discretion whether or not to hear them over the video link. I accept that discretion had to be exercised fairly and in the interests of justice. As to who would have appeared, the evidence is not entirely clear. Ms Sokolova in her statement at [112]-[113] just refers to officers and directors, but not specifically whom. Mr Rudyk has made a statement indicating what he would have done had he been linked in, but Mr Ashley-Norman said, I think with some justification, that his statement is ambiguous as where he was and whether he would have actually been able to link in.

117. Mr Ashley-Norman said that HHJ Baumgartner knew there were people 'in the ether', but not necessarily that Ms Sokolova and Mr Rudyk were waiting to be joined to the hearing (if indeed they were). He pointed me to the transcript of the beginning of the appeal, where the judge commented that his 'concern in reading the papers, was that I do not know who they are dealing with. I have been dealing with people at the end of emails. I have not seen them', and that there was no written authorisation for anyone to appear for the Claimant:

> "JUDGE BAUMGARTNER: -and they do not have a corporate domain. And my concern is to make sure that this appellant, which is an English-registered company, is properly before the Court.
>
> MR ASHLEY-NORMAN: Yes.
>
> JUDGE BAUMGARTNER: And so in those circumstances, without any resolution, or without any written appointment of a representative for the purposes of these proceedings, or even without having a director before the Court-
>
> MR ASHLEY-NORMAN: Yes.

> JUDGE BAUMGARTNER: -the only people who appear to have been in the background, are a translator, I think, by the name of Miss-
>
> MR ASHLEY-NORMAN: Maria Sokolova.
>
> JUDGE BAUMGARTNER: -Sokolova and the company secretary who ordinarily could not [bind] the company."

118. That said, the Interested Party had warned in its submissions opposing the adjournment application in late July of the consequences of the Claimant not appearing by a representative:

> "28. For the avoidance of doubt, if the Appellant chooses not to comply with the requirements of Section 33 and duly appoint Ms Sokolova (or another representative) to represent the Appellant, then the Respondent will object to Ms Sokolova appearing as a representative of the Appellant.
>
> 29. The Appellant has more than adequate time between the service of this Note and the appeal listed on the 17 August 2021 to attend to the appointment of Ms Sokolova, should the Appellant choose to do so.
>
> 30. Should the Appellant choose not to appoint Ms Sokolova (or any other representative) prior to the trial, with the result that the Appellant is unrepresented at the trial, the Respondent will apply for the appeal to proceed in the absence of the Appellant."

119. Mr Jacobs said his client did not see these submissions until 16 August. However, it was referred to in the recital of the 27 July order, and so the Claimant had constructive notice of them and could have asked for them (if it did not).

120. After much thought, I have concluded that there was a proper basis for the Court to exercise its discretion to decline to hear from Ms Sokolova or Mr Rudyk given the history of non-compliance by the Claimant with the need to duly appoint a representative, and the matters discussed in *Kadir* and *Pierini*. These show that the grant of a video link for someone overseas is not a formality but requires a careful assessment of the relevant circumstances. A court needs to know who it is dealing with, and as HHJ Baumgartner said at the beginning, he did not know this. As the Court explained, as well as no-one having been duly appointed to appear for the Claimant, the Court did not have the information it needed to exercise its power in the Claimant's favour. The missing information included: the identity of the person(s) intending to appear; their locations; and the attitude of the foreign state concerned. This last matter could not be ascertained because of the Claimant's failure to answer the Court's questions. The authorities I have mentioned show that this is a 'vital' matter when considering whether to make a live link direction having effect abroad. The Claimant

helpfully referred to the CPS's Guidance on video links in its email of 16 August at 16.37pm, and the information which that guidance made clear has to be supplied, but it did not actually supply the required information.

121. There was, so far as I can see, no good reason why the Claimant could not have supplied it. It would not have placed anyone in jeopardy for the Claimant to have said, pursuant to the Court's request, for example, that 'the person we wish to appear is called X, X's role is …. and they located in the United States', and to have supplied any other information.. If necessary, a method of doing so without the Interested Party being aware of the location could have been fashioned.

122. I do not consider the fact that HHJ Griffith on 12 August had given an indication that a video link would be granted for representation makes any difference. Even assuming the email he sent to Court staff is to be treated as an order of the court (and I have not seen an actual order encapsulating it), the video link was expressly 'for representation', and as I have explained, the Claimant had no representation on 17 August. The order (such as it was) had therefore fallen away. The video link matter was therefore at large before the Court on that date.

123. In his submissions I was taken by Mr Jacobs to various passages from the hearing on 2 July, and things which HHJ Griffith had said, for example:

> "You I am afraid, Lehram Capital have got to sort out representation in this country if they want to be represented because that is the appeal date, and I am afraid they will have to work to that in order to be represented if they want to do so. Otherwise, it may be you, if they ask you to come along and do it, and you and they will have to decide at some point what evidence they are going to put before the court about whatever it is that you are talking about."

124. However, neither this, nor any of the other passages I was shown, amounted to – or could have amounted to – a statement by the judge that Ms Sokolova *would* be allowed to appear by a live link. The statements I was shown were made in the context of discussing *who* would represent the Claimant, rather than *how* they would do so.

125. I do not doubt that some judges might have given the Claimant 'one last chance' to put its house in order, despite all the chances it had already had by 17 August. But that is not the question. Ultimately, the question is one of fairness in what the Court did on the appeal. I do not consider that there was any unfairness in the Court declining to hear from Ms Sokolova or Mr Rudyk on that date, or in it not granting an adjournment to allow the Claimant to try and regularise its position, even for a short time.

126. The Claimant had had ample opportunities to sort out its position for months, but had steadfastly failed or refused to do so. The transcript of the hearing of 2 July in particular shows the Court acted with conspicuous fairness - Mr Ashley-Norman said orally 'indulgence' - towards the Claimant and Ms Sokolova, and took time to explain the position and then to draw up a detailed order. No-one objected to Ms Sokolova appearing on 2 July despite her lack of authorisation, for wholly understandable

pragmatic reasons. The Court drew up a further order on 27 July. Notwithstanding that, the Claimant chose not to comply with the Court's orders and requests for information, nor even to ask what it needed to do.

127. I was shown the transcript of the permission hearing before Linden J, where he postulated the Court on 17 August hearing from Ms Sokolova and granting a brief adjournment ('… until 2 o'clock …') to sort out the position. But the Claimant had had weeks, if not months, to sort out the issue of representation, and it was therefore not unfair not to allow more time, even on the speculative basis that a few hours would have resulted in proper authorisation for someone to act and any other issues to be ironed out.

128. Although the complaint now is that the Claimant was not provided with a reasonable opportunity to be heard, as the Interested Party points out, it appears from the correspondence that an opportunity to be heard in the conventional sense was not what was being sought by the Claimant. Rather, what the Claimant primarily wanted was the opportunity for a *pro bono* 'translator/activist' to read to the court the arguments it had filed, and also what was described as a 'statement'. It is unclear what the statement would have contained, but the written arguments (which were in English) could be read by the Court for itself. Ms Sokolova, not being an English lawyer, could not therefore have provided any assistance if she had been permitted to appear by video link. I therefore struggle to identify any unfairness which resulted from her or Mr Rudyk not being heard. So far as I know, he is not an English qualified lawyer either.

129. Paragraph 80 of the SFG asserts:

> "The Court erred in dismissing (or purporting to dismiss) the appeal due to procedural difficulties arising from the presentation of the Claimant's case. Whilst there might have been procedural difficulties if the Claimant's directors had sought to give evidence without enquiries having been made as to mutual legal assistance – those difficulties may not have proved insurmountable. Neither would any such difficulties have prevented Miss Sokolova or any other individual acting as a Mackenzie Friend and making submissions on the legal points which the Claimant had persisted in seeking to raise (for example in relation to abuse of process and the argument that the charges were time-barred and whether the Respondent had discharged the burden of proof in relation to the offences). The Claimant did not intend for Miss Sokolova to give hearsay evidence on behalf of the Claimant. Neither would such procedural matters have necessarily impeded the ability of Miss Sokolova to apply for an adjournment or put questions to the Respondent's witnesses."

130. With respect, this misunderstands the position. Ms Sokolova was not being put forward as a *McKenzie* friend, ie, someone who attends court with a party and provides some practical assistance, eg with papers, and moral support. She was being put forward as a translator and/or to read documents out. As a *McKenzie* friend, she could not properly

have made any submissions or applications on the Claimant's behalf, nor addressed the Court at all. Problems with mutual legal assistance would have arisen whether or the directors proposed to give evidence; they would have arisen because the proposed link was overseas. A mutual assistance request would inevitably have delayed matters.

131. I reject the arguments based on legitimate expectation. The 'order' of HHJ Griffith of 12 August (if that is what it was) was never received by the Claimant and so could not have founded any expectation. By 17 August the Claimant knew that the Court was raising issues about the overseas video link, and any belief it may have had arising out of things the Court may said at earlier times could no longer reasonably have continued. No legitimate expectation could have arisen in the Claimant that proceedings would take any course other than the course they did if they failed to comply with (vi) in the order of 27 July. Nothing in the correspondence or the other attempts by the Court to manage the unorthodox circumstances it had adopted at the Claimant's request could have caused the Claimant to consider (vi) waived, or to consider that the express warnings contained in paragraphs A, B and C of the order of 2 July had been disapplied.

132. Overall, therefore, I do not consider that the Court's decision not to allow Mr Sokolova or Mr Rudyk to address it was procedurally unfair.

The decision to dismiss the appeal

133. This is the final step in the Interested Party's argument. It submits that because the Claimant had not appeared on the appeal, it was open to the Court to dismiss it. I agree.

134. In *R v Croydon Crown Court ex parte Clair* [1986] 1 WLR 746, 749, the Divisional Court said:

> "He relies, first, on section 79(3) of the Supreme Court Act 1981, which deals with appeals from magistrates' courts to the Crown Court. It reads:
>
> > "The customary practice and procedure with respect to appeals to the Crown Court, and in particular any practice as to the extent to which an appeal is by way of rehearing of the case, shall continue to be observed."
>
> So one then has to find what was the customary practice and procedure with respect to appeals to the Crown Court before 1981. One moves back and one comes to section 9(6) of the Courts Act 1971. That reads:
>
> > "Subject to any provision contained in or having effect under this Act, the transfer of appellate Jurisdiction to the Crown Court from quarter sessions shall not affect the customary practice or procedure on any such appeal, and in particular shall

> not affect the extent to which the appeal is by way of re-hearing of the case."
>
> That, of course, was the statute which abolished quarter sessions and therefore one has to see what was the practice and procedure on those appeals before 1972. It was not essential for a party to be present at his appeal at quarter sessions, although he was very well advised to be so if he wished his appeal to be heard and to succeed. The last edition of *Archbold's Quarter Sessions*, 6th ed. (1908), p. 254, begins with a passage dealing with the practice and procedure of quarter sessions. This was the book which was the vade mecum of everybody who had to appear, organise and preside at quarter sessions. It deals with appeals from magistrates. On p. 255 is this passage:
>
> > "If the parties to an appeal do not appear, by themselves or by counsel, when it is thus called on, the court will order the appeal to be struck out of the list, and they will not usually allow it to be restored to it without the consent of the opposite party, or a very strong and satisfactory statement on the part of the appellant, supported by affidavit, or the oath of witnesses present, accounting for his absence."'

Other matters

135. In its Skeleton Argument at [80] the Claimant raised a number of issues which it said had a bearing 'on whether the Court acted with real or apparent bias'. I have already dismissed the suggestion of actual (real) bias. The law on apparent bias was recently summarised in *H (A Child) (Recusal)* [2023] EWCA Civ 860 (the principles are well-settled and not controversial):

> "24. In *Re AZ (A Child) (Recusal)* [2022] EWCA Civ 911, [2022] 1 WLR 78 at paragraph 54, this Court observed:
>
> > '… case law has established that an appellate challenge to the conduct of a judge during a trial may take two forms. The first is a broad challenge to the fairness of the trial which is a matter for judicial evaluation. The second is an assertion that the judge gave the appearance of 'bias'.
> >
> > The test for apparent bias involves a well-established two stage process summarised by Leggatt LJ in *Bubbles & Wine Ltd v Lusha* [2018] EWCA Civ 468, [2018] BLR 341 at paragraph 17 in these terms:

> ‘The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased . It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the judge was biased: see *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357, paragraphs 102-103.’

25. It has been stated in several cases since *Porter v Magill* that apparent bias means a prejudice against one party or its case for reasons unconnected with the merits of the case: *Flaherty v National Greyhound Racing Club Ltd* [2005] EWCA Civ 1117, per Scott Baker LJ at paragraph 28; *Secretary of State for the Home Department v AF (No2)* [2008] EWCA Civ 117, [2008] 1 WLR 2528, per Sir Anthony Clarke MR at paragraph 53; *Bubbles and Wine*, supra, per Leggatt LJ at paragraph 17. As Lord Wilson observed in *Serafin v Malkiewicz* [2020] UKSC 23, [2020] 1 WLR 2455 at paragraph 39, this definition of bias is ‘quite narrow’. For that reason, like Lewison LJ, whose judgment I have read, I consider it preferable to consider the matter on the more general level of whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the father would not receive a fair trial.

26. A party may argue that a particular decision during proceedings was unfair. If so, his remedy is to seek to appeal against that decision. Alternatively, he may argue that the judge's treatment of his case was unfair over the course of the proceedings and that he should therefore recuse himself. In those circumstances, however, it is necessary to consider the whole of the proceedings to determine whether the judge's approach to the aggrieved party has been unfair. In *Singh v Secretary of State for the Home Department* [2016] EWCA Civ 492, [2016] 4 WLR 183, a case about apparent bias Davis LJ said, at paragraph 36:

> "It is necessary to consider the proceedings *as a whole* in engaging in the objective assessment of whether there was a real possibility that the tribunal was biased.
>
> In my judgment, it is also necessary to consider the proceedings as a whole when addressing an allegation that over the course of the proceedings the judge has treated a party unfairly.”

136. Two additional points mentioned in *Bubbles & Wine*, [18] are: (a) the fair-minded and informed observer is not unduly sensitive or suspicious, but neither is he/she complacent: *Lawal v Northern Spirit Ltd* [2003] ICR 856, [14]; (b) the facts and context are critical, with each case turning on 'an intense focus on the essential facts of the case': *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416, [2].

137. I have dealt with some of the points made by the Claimant already, eg [80(iv)] ('The Court was aware that the Claimant's representatives were seeking to attend the hearing via video link, but refused to permit entry to the Claimant and dismissed the appeal on the basis of the Claimant's non-attendance'); and [80(x)] ('HHJ Baumgartner stated: 'There is no evidence before us that Miss Sokolova has authority to act for and on behalf of the appellant as its representative' This was incorrect. There were letters before the court dated 12 and 16 August which were capable of having this effect.') However, I have reviewed the matters raised in this paragraph and I am satisfied that alone or collectively they would not lead a fair-minded and informed observer to conclude that there was a real possibility that the Court which dismissed the Claimant's appeal was biased.

138. I do not accept, for example, the contention at [80(vii)] that the Court 'had brought about the situation whereby the Claimant felt compelled to apply for an adjournment'. I have found the fault was almost entirely that of the Claimant for not pursuing the matter timeously. Even if the appeal bundle was not forwarded to the Claimant on 9 August through oversight on the part of the Court staff (and I emphasise 'if' because I have no evidence about it), then that does not give rise to an appearance of bias on the part of the Court which dismissed the appeal. It was unfortunate (per [80(ii)] that the Court wrongly stated that an overseas video link was not permitted, however the Claimant rapidly set out the legal position by pointing to the amendments to s 51 made by the Coronavirus Act 2020, and the matter was then judged on its merits on the appeal. The Court did refuse an adjournment on the papers on 16 August for the reasons HHJ Baumgartner gave ([80(iii)], but then considered the matter again at the beginning of the appeal. He did say ([80(ix)] that the Court suspected that the Claimant retained lawyers when it suited, but he also said it did not influence the Court's judgment, and I am not prepared to go behind that clear statement.

139. The bulk of the Claimant's arguments under this heading relate to the Court's failure to admit Ms Sokolova by video link, however for the reasons I have set out, the Court was entitled to take that course.

Conclusion

140. This application is therefore dismissed.

141. It follows that I need not deal with the Interested Party's 'no difference' argument under s 31(2A) of the Senior Courts Act 1981, which Mr Ashley-Norman did not really press in any event. However, regarding adjournment and representation, it is perhaps worth noting the question of Ms Sokolova's capacity and role had still not been resolved by the time of the hearing before Linden J in May 2022, nor before me in December 2022. Hence, granting the Claimant's application for an adjournment in August for these matters to be resolved may well not have remedied the matter.