



Neutral Citation Number: [2023] EWHC 64 (Admin)

Case No: CO/4886/2023

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

Tuesday, 17th January 2023

Before:

MR JUSTICE FORDHAM

Between:

**THE KING (on the application of SHAFQUAT
AFZAL HUSSAIN)**

Claimant

- and -

CROWN COURT AT LEEDS

Defendant

-and-

CROWN PROSECUTION SERVICE

**Interested
party**

Richard Wright KC (instructed by SJ Law Solicitors) for the **Claimant**

Mark McKone KC (instructed by CPS) for the **Interested Party**

The **Defendant** did not appear and was not represented

Hearing date: 17.1.23

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM :

Introduction

1. This is a “rolled up” hearing of a claim for judicial review pursuant to an Order of Bourne J on 29 December 2022. I am going to begin by granting permission for judicial review because I am satisfied that the claim crosses the (modest) threshold of arguability and in those circumstances, it being a rolled up hearing, I am going to proceed to deal with the claim substantively.
2. The Claimant is a 46-year-old man who has been on conditional bail since he was charged in October 2021. The charges that he faces, in criminal proceedings, are two counts of rape alleged to have been committed during the period October 1998 to December 2002. The criminal case is part of a picture of alleged child sexual exploitation. At the trial in which he stands as a defendant, as I understand it from the papers, there are five other defendants. The trial was scheduled to take place in November of this year but has been deferred and will not now take place until September 2024.
3. Bail conditions which have been in place throughout, since being imposed in October 2021, then reimposed at the end of November 2021 by the Magistrates, and then continued after the case arrived at the Crown Court from December 2021. They include these bail conditions:

Not to travel, attempt to travel, or make any arrangements to travel outside the United Kingdom.

To surrender passport to West Yorkshire Police within 48 hours of being charged.
4. An application was made on 9 December 2022, to the Crown Court, to vary those bail conditions. The purpose of the application, and of the requested variation, was so that the Claimant would be able to “travel to Pakistan to accompany his mother when she sadly passes away for the funeral and burial which is to be held in Pakistan”, on what on the evidence was the imminent death of his dying mother. As the application explained, it was being made “in advance” because when the Claimant’s mother “does pass away she will be quickly taken to Pakistan in accordance with her wishes for the funeral and burial to take place within days of her passing away, in accordance with the Islamic burial procedures”. The proposed varied conditions of bail involved the Claimant informing the police of his mother’s death after which the passport would be released to him within 24 hours enabling his return to Pakistan; together with an obligation that he return to the UK within 45 days of departure and re-surrender his passport within a further 48 hours. At that stage the application was not accompanied by any surety or security. The argument was that in all the circumstances the bail conditions preventing travel were not justified as necessary and that variation was the appropriate course. A GP’s letter dated 16 November 2022 described the mother as being under palliative care and deteriorating rapidly with a poor prognosis of weeks. That first application was refused by HHJ Phillips KC on 19 December 2022.
5. There was then a second application for variation of the bail conditions which is the direct subject of these judicial review proceedings. The application that was made, again to the Crown Court, included within the proposed conditions that there be a “fixed itinerary” of flights to and from Pakistan. The reasons and rationale for the variation

were as before. But the proposed conditions included a security and a surety. The security was of £25,000 pre-variation security to be lodged by a friend of the Claimant, Basharat Ditta. At the time that the application was made orally by Mr Wright KC on 22 December 2022 there was an additional pre-variation security of £15,000 from another friend, Fida Mohayyussin. The total of those two cash securities was therefore £40,000. There was also a surety, valued at approximately £110,000, offered by the Claimant's brother-in-law Navaid Akhtar. That was described as surety in relation to unencumbered land namely Mr Akhtar's commercial car park. Those were the circumstances in which the second application for a variation came to be made before HHJ Singh ("the Judge") on 22 December 2022.

6. The transcript of that hearing records the brief and succinct submissions made by Mr Wright KC on behalf of the Claimant, seeking the variation; by Mr McKone KC for the Interested Party (the "CPS") opposing it; and then the oral reasons given by the Judge. In the circumstances I think it right to set out contents of the transcript. First, from Mr Wright KC:

MR WRIGHT: Your Honour I know will have read the papers. It is essentially a variation that would enable Shafaquat Hussain to accompany his mother's body to Pakistan for burial when she dies, as she inevitably will. Your Honour has seen---- JUDGE SINGH: At the moment she is receiving palliative care, isn't she? MR WRIGHT: She is. I spoke to the defendant who is here outside this morning. He has not been able to see her for six days because he has had a cold but he was able to go to see her yesterday. She is now beyond speech and is very much at the end of her life. Your Honour will appreciate that we have tried to approach this responsibly by making an application in good time and one which in our submission is reasonable, given the fact and acknowledging the serious nature of these allegations they are very old allegations. He is a man of good character with extremely settled ties to this country and he simply wants to complete what he considers to be his obligation to his mother by taking her body home for burial and complying with the funeral rites and traditions of his homeland. He offers, because I know the Crown are concerned he won't come back-- he has got every intention of coming back and this trial, his trial, is now up until the end of 2024. JUDGE SINGH: Yes. MR WRIGHT: He offers a security. That is money lodged with the court. In fact, we have this morning been able to establish that he could lodge, in fact, £40,000 in cash with the court which would obviously be forfeit if he shouldn't return. There is also his brother-in-law, Navaid Akhtar, outside. He owns a commercial car park in Dewsbury. It is free of mortgage. Its value is in excess of £100,000 and he is willing to stand surety with that piece of land in addition to the security and my simple submission is that when your Honour looks at this case in the round, both the way in which we have approached the application and what he is willing to offer to secure his return, bail can properly be varied. It is a reasonable request in our submission and it would be, with the greatest respect to the Crown, bordering on oppressive and certainly disproportionate to not allow him to perform this duty at the end of his mother's life.

7. Then, from Mr McKone KC:

MR McKONE: Your Honour, the concern the police have, of course, is that he would not return from Pakistan. He faces Counts 8 and 9. JUDGE SINGH: Yes. MR McKONE: They are offences of rape in circumstances where a long sentence would be imposed if he was convicted. We accept he has significant ties in the United Kingdom but he also has significant ties in Pakistan as well. The police are concerned that he will not return. That being said, I concede that the defence have put a lot of steps in place to guard against that concern but the final (inaudible) is that their concerns have not been satisfied. Can I assist further? JUDGE SINGH: No. Thank you very much.

8. Then, from the Judge:

JUDGE SINGH: Mr Wright, I have a great deal of sympathy with the position that Mr Hussain of course finds himself in and I fully accept that this is a reasonable request that has been made on his behalf. I am afraid the nature of the offences that the defendant faces is going to mean inevitably if convicted this will be a significant custodial sentence and any attempt to leave the jurisdiction, I am afraid, provides the opportunity of a substantial risk of the defendant not returning and I am afraid on that basis the application is refused. MR WRIGHT: Thank you very much. JUDGE SINGH: Thank you very much. Thank you. MR McKONE: Thank you, your Honour.

9. As was indicated at the hearing, the Claimant had seen his mother on 21 December 2022. There are further letters, updating this Court, from the mother's GP and from a hospital in Pakistan. What happened was that on 27 of December 2022 the Claimant's siblings took their mother to Pakistan she is now there in hospital. The GP's letter of 6 January 2023 confirms that the family are leading the care for the mother and that all of her children had been present. The letter from the hospital in Pakistan explains that her health condition is very poor and rapidly deteriorating.

The Claim

10. The claim for judicial review, which I have already held is arguable, rests on two distinct contentions. They are advanced orally by Mr Wright KC, who adopts the skeleton argument of Matthew Stanbury.
- i) The first ground advanced is that the Judge gave legally inadequate reasons for his ruling. Mr Wright KC submits that in law the Judge was required to give reasons which engaged with the issues raised, in a manner to reveal that the Judge had properly considered the application for variation in accordance with the relevant criteria in the Bail Act 1976 ("the 1976 Act"). He submits that the Judge was required in this case specifically to address the conditions that have been put forward including the surety and security and the other conditions including relating to a fixed itinerary of flights. He submits that the Judge's decision cannot withstand scrutiny in public law and should be quashed, the Judge having failed to give adequate reasons and explained the way in which the Judge balanced the question of the concerns arising and the safeguards being put forward.
- ii) The second distinct ground for judicial review invokes the common law standard of reasonableness, in a context in which it is emphasised that there needs to be necessity and proportionality of bail conditions in particular in a case engaging Article 8 ECHR rights (to respect for family life) both of the Claimant and of his mother. On this part of the case Mr Wright KC submits that the Judge, in refusing the variation, made a decision which was beyond the bounds of reasonableness; it was wrong, unnecessary, disproportionate and legally insufficient.
11. The position as to remedy is this. On the second ground (reasonableness) Mr Wright KC submits that the Court should not only quash the Judge's decision but should also substitute its own decision mandating that bail be granted on the proposed conditions. He submits that in all the circumstances of the present case that that is the only reasonable, lawful and justified course that could be taken in response to this application for this bail variation. On the first ground (reasons), Mr Wright KC submits that the remedy there would be remittal but not to the same Judge – rather to a new

judge for a fresh look – that is, were he only to succeed on his first ground (reasons) and not his second (reasonableness).

Features of the Case

12. So far as the circumstances and features of this case are concerned, the key points advanced on behalf of the Claimant – as I see it – are as follows. The alleged offences are very old. The trial is two years away (Mr Wright KC accepts that it might be very different if trial were imminent). The Claimant is of previous good character. He is, of course, innocent until proven guilty. He has no record of any previous failure to comply with any requirement imposed on him. He has made no attempt to leave the United Kingdom, since bail conditions were first imposed upon him in December 2021. Indeed, he had been arrested back in June 2019 and interviewed by the police then, and again in January 2020, but there was no attempt by him to leave the United Kingdom. That is notwithstanding ties that he has had with Pakistan. In the United Kingdom, the Claimant is very well settled, with very long standing ties. The application for the bail variation is plainly a proper one. It arises in anxious circumstances. The variation would be a time-restricted one. The objection, the risk, and the fear being described by the CPS and the police are “generalised” and “generic” (Mr Wright KC described the position in the pithy phrase “lurking generic risk”). The fears and risks do not arise out of any specific point relating to the Claimant. They are not based, or said to be based, on any particular intelligence. Really what is being said could equally be said of any person facing prosecution for a serious offence and having a connection with another country as well as with the United Kingdom. The security and surety are very substantial. They stand as very significant safeguards in the context of any perceived fear or risk.
13. The key points in relation to the features of the case – as I see it – that are relied on by the CPS are these. The Claimant faces the prospect of a lengthy prison sentence were he to be convicted, bearing in mind that these are two counts of rape of a vulnerable 15 year old. The sentence will probably be a high custodial one, were a conviction to ensue. The Claimant has links and ties, including family links, to Pakistan. The bail conditions imposed, from the start, were imposed because they were properly and with justification concluded to be “necessary” to “secure” the Claimant’s “surrender”. They remain necessary. As is explained in the CPS’s summary grounds of resistance (written by Douglas Tomlinson of the CPS and adopted in Mr McKone KC’s skeleton argument), there is no extradition treaty with Pakistan and special arrangements would be needed were extradition needed because of a failure by the Claimant to return to the United Kingdom. Although there is an element of “generality”, or of a “generic” nature in the concerns raised, they nevertheless arise in the context of this particular case. The sureties do not allay the concerns that arise. Although this was no doubt a “difficult” decision for the Judge, in an anxious context, nevertheless it was justified and reasonable.

The Law

14. It is necessary, in my judgment, for me to say something about the legal landscape before turning to the two key grounds in the case and my analysis of the submissions. Under the 1976 Act the question of whether or not to grant bail is governed by section 4 read together with Schedule 1. Under paragraph 2(1)(a) of Schedule 1 (as relevant to the present case) the defendant need not be granted bail “if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail

(whether subject to conditions or not) would fail to surrender to custody”. The statutory test so far as the imposition of conditions is concerned (so far as relevant) in section 3(6)(a) of the 1976 Act. It provides that the defendant may be required to comply, before release on bail or later, with “such requirements as appear to the court to be necessary to secure that he surrender to custody”. There is a distinction between those two tests as formulated, but also a clear interrelationship. In the CPS’s summary grounds of resistance, a passage is cited from Blackstone’s Criminal Practice 2023 at paragraph D7.48, citing a case called R v Mansfield Justices ex p Sharkey [1985] QB 613 at 625. There discussed, in the context of prevention of the commission of offences, is a distinction between the “substantial grounds” test for bail and a “necessary” test for bail conditions. I say at this stage that I agree with Mr Wright KC that, at least for the purposes of the present claim in this Court, there is no distinction of substance between those two tests, and that both should be borne in mind. I have already quoted from the transcript in which the Judge clearly describes the substantial risk of the Claimant not returning.

15. Section 5(3) of the 1976 Act deals expressly with a statutory duty on the Crown Court to give reasons for decisions regarding bail and bail conditions. The categories of cases there described include the Crown Court withholding bail (section 5(3)(a)) or imposing conditions when granting bail (section 5(3)(b)) or in varying conditions of bail or imposing new conditions (section 5(3)(c)). Both Counsel recognise that, on its face, that provision does not expressly impose a duty to give reasons for a decision which refuses to vary the conditions of bail. Mr McKone KC submits that there is no statutory duty to give reasons for such a decision. Although he would not exclude the common law imposing a duty to give reasons, he submits that where identifiable reasons have already been given for imposing conditions, it could be sufficient by way of reasons simply to say “no” to an application for a variation. I say at this stage that, in my judgment, at least in the present case, I am satisfied that the common law would fill any lacuna or gap in the statutory scheme and would require that reasons be legally adequate. This is not a case in which a previously articulated reason is being pointed to, and where it is being said that nothing has changed. The Judge was not being given or referred to such a previously articulated reason. Moreover, the Judge did give brief reasons. In those circumstances, in my judgment, Mr Wright KC is right when he submits that those reasons needed to be legally adequate in the circumstances of the present case. Indeed, Mr Wright KC submits that the very vice is that what may have been a sufficient reason earlier, when bail conditions were originally imposed, does not and cannot deal with the changed circumstances that were being put forward, with which the Judge needed to grapple.
16. So far as concerns the law relating to this Court’s role, it is common ground that there is no jurisdictional bar on judicial review under Senior Courts Act 1981 s.29(3) (matters relating to trial on indictment), for the reasons given (in the context of a refusal of bail) in R (M) v Isleworth Crown Court [2005] EWHC 363 (Admin) at §7. This Court has jurisdiction. It is also common ground that the standard to be applied, on a judicial review of a refusal of bail or in this case a refusal of variation of bail conditions, has authoritatively been identified in R (Iqbal) v Canterbury Crown Court [2020] EWHC 452 (Admin) (2020) 2 Cr App R 1 at §§28-38. It is not necessary for me to quote from those passages or mention the various authorities there referenced. What are identified, including having regard to human rights considerations, are two potential formulations (at §38). One is that the judicial review Court “will only interfere if the Judge wrongly

exercised [their] discretion”; the other is that the Court “will only interfere if the decision was not within the bounds of what is reasonable”. What is required is “the robust application of Wednesbury principles” (§38). The meaning of “robust”, in that context, is explained earlier (at §29), in describing a judicial review jurisdiction to be exercised only “sparingly”. The Court in Iqbal at §38 did not think that there was a material difference for the purposes of that case between the two ways of putting the test. Nor did Mr Wright KC or Mr McKone KC in this case. Nor do I.

17. Cases cited before me which have assisted me in relation to legally inadequate reasons. R (NB) v Central Criminal Court [2010] EWHC 667 (Admin) is a case where judicial review (once again, of a refusal to grant bail) was successful in circumstances where the reasons were legally inadequate because the Judge had “failed fully to consider all relevant factors” (§15). That was a case where the remedy was remittal back, without specifying that it could not be to the same judge (§15). Central to that case was whether the Judge had “given sufficient or appropriate consideration to the whole aspect of the proffered safeguards and the question whether, with the involvement of the [claimant’s] father [as surety], there could be sufficient protection against any risks of absconding or failure to surrender to bail” (§11). In R (Rojas) v Snaresbrook Crown Court [2011] EWHC 3569 (Admin), judicial review (again of a refusal of bail) succeeded. There too the reasons were inadequate in legal terms. In Rojas the remedy went further because the Court also concluded (at 33) that “no judge, acting reasonably and properly directing [themselves] with regard to the Bail Act, and properly exercising a discretion with regard to bail, could refuse bail subject to the strengthened conditions”.
18. So far as human rights considerations are concerned, I was also assisted by the citation of R (Thompson) v Central Criminal Court [2005] EWHC 2345 (Admin), one of the cases cited in Iqbal; and of R (Walker) v Secretary of State for Justice [2009] EWHC 3634 (Admin). Walker arose in a distinct context where an IPP prisoner wanted to visit his dying father in Sheffield, and arrangements could be made for an “escorted visit”. The issues related to the measures which were available for an escorted visit, in this country, accompanied by appropriate personnel, to an appropriate location. That was all considered in the context of the positive duty arising under Article 8 ECHR (see Walker at §19). Although a very different context, in my judgment it is relevant and important to have in mind the way that the positive duty and the importance of a proportionality balancing exercise (see Walker §§19, 25-28) were there articulated.

Requested Amplification

19. I asked Mr Wright KC whether there was relevance in the fact that some cases have recognised that a Judge can be asked to amplify reasons at the time that they are given or shortly afterwards (I mentioned R v Harrow Crown Court, ex p Dave [1994] 1 WLR 98.) In the event, I am quite satisfied in the circumstances of the present case that I can put that point to one side. Even if it may appropriately provide a solution in other cases, this was not raised by the CPS. I do not have the relevant line of authority. I do not therefore hold against the Claimant or his representatives that, insofar as there was an opportunity to invite the Judge to say more at the time he gave his reasons, that opportunity was not taken. I make clear that I am leaving that to one side and focusing on the issues and circumstances of the particular case and am doing so against what is a very anxious backcloth.

Reasons

20. I turn then, finally, to the analysis of the two grounds for judicial review which have been raised. I am going to start with the first of Mr Wright KC's grounds, namely the legal adequacy of the reasons. As I have recorded, it is an essential submission for the Claimant that the reasons did not address the safeguards that had been put forward and the balance, between the concerns raised and those safeguards in allaying the concerns. In my judgment, these reasons were not legally inadequate. It is, in my judgment, very important to see the Judge's (brief) reasons in the context of the point with which he was concerned, and the (brief) submissions that had been made to him about it. It is correct that the Judge did not expressly refer to proposed conditions. He did not refer to security and surety. He did not refer to the conditions, for example relating to the "fixed itinerary" of flights, or the 45 days maximum period of absence. But, in my judgment, it is important to see the reasons that the Judge gave in the particular context in which he was giving them.
21. The whole point of the second application for bail was that it now put forward the surety and the security. That was the aspect absolutely central to what was being addressed, in the submissions, and in what the Judge had to consider. In my judgment, it is plain that the Judge did precisely that. The submission of Mr McKone KC— although the transcript did not pick up the entirety of it ("inaudible") — which had just been made to the Judge was that "a lot of steps" were in place "to guard against the concern", but nevertheless the "concerns" of the CPS and police had "not been satisfied". That word "satisfied" is plainly a reference to the conditions not being sufficient to take away the risk and allay the concerns. The Judge identified the concerns that arose, and the basis on which they arose. He explained the nature of the offences faced, and the inevitability — if convicted — of a significant custodial sentence. He referred to the "reasonable request" that had been made on behalf of the Claimant. That was a reference to the purpose and period of time in being permitted to leave the United Kingdom. The Judge said that "any attempt to leave the jurisdiction" was such as to provide "the opportunity of a substantial risk of the defendant not returning", and that "on that basis" the application was refused. In my judgment, it is clear — in context — that what the Judge was doing was considering the prospect of the Claimant leaving the jurisdiction in the circumstances that were being put forward in the proposed conditions; that is to say, the surety and security that were now at the heart of the application. What the Judge meant by the phrase "any attempt to leave" was leaving even with sureties and securities of this kind and in place. In my judgment, it is clear that the Judge was concluding that the proposed safeguards did not allay the concerns that arose. There is no ambiguity or lack of clarity, in context. In my judgment it would have been clear to an informed audience, in the light of knowledge of the points that had been advanced and what was central to the case, that the Judge considered that and that this was the conclusion at which he had arrived. In my judgment, the reasons would have been absolutely unassailable if the Judge had added the phrase that 'in my judgment the proposed conditions including the surety and security are not sufficient to allay the serious concerns that arise'. But, in my judgment, the Judge's reasons did not become legally inadequate because he did not add such a sentence. It is obvious that that is what the Judge meant.
22. There is therefore, in my judgment, no question of quashing and remitting the case to the Judge or another Judge on the first ground namely the reasons and the balance. I will say, for transparency and completeness, that had I concluded that there was a legal inadequacy in the reasons — and leaving aside the reasonableness point that I have not

yet addressed – any remittal would have been to a different judge. I would have been persuaded by Mr Wright KC’s submission that – if the reasons in this case were legally inadequate – the Claimant ought not to be back in the hands the Judge who had already arrived at an adverse conclusion on bail variation in the context of these proposed conditions. But that cannot assist the Claimant given the finding that I have made about the legal adequacy of the Judge’s reasons.

Reasonableness

23. The remaining question, then, is whether I am persuaded that this outcome was a decision “beyond the bounds” of what was reasonable or justified; or, putting it another way, of what was necessary and proportionate. As I have indicated, Mr Wright KC’s central submission is that (i) the risks here were “general” and “generic” and non-specific and (ii) on the other side of the balance were the very significant surety and security and other proposed conditions. As Mr Wright KC put it: absent any factors particular to this defendant, in all the other circumstances and given the other features of the case, a “generic” concern could not displace (or, as he put it, “overwhelm”) the features in support of variation of bail conditions, given the surety and security, and given the Article 8 rights interfered with.
24. I cannot accept that submission. This second ground for judicial review also fails. I have already explained why the present context is very different from the “escorted visit”, and in-country arrangements, in play in the Walker case. I have also recorded that the case law, which authoritatively guides my approach, reminds me of the latitude which must be afforded to the Crown Court. Viewed in terms of the statutory scheme, the section 3(6)(a) question whether bail conditions are – and in the context of variation remain – necessary to secure surrender to custody is a test deliberately formulated by Parliament as involving what “appears to the court to be” necessary to secure surrender to custody. The Schedule 1 §2(1)(a) question is similarly formulated (“if the court is satisfied”). The consequence, as I see it, of the reminder in the case law that this is ultimately a reasonableness standard links to the fact that “the court” in “appears to the court” (and “the court is satisfied”) is the Crown Court. The Crown Court is the primary judicial decision-maker, evaluating risk. It goes without saying that Crown Court Judges have experience and expertise in relation to questions of bail and bail conditions. There is therefore, in my judgment, a latitude that has to be recognised on the part of the Crown Court. I recognise that there can be circumstances, as there were prior to the 2004 abolition of the High Court’s general inherent power (see Iqbal §28), where the role of the High Court can be to look at bail issues ‘de novo’ (entirely afresh). But that is not so in the present context. I need therefore to start in the legally correct place.
25. In my judgment, the evaluative risk-assessment conclusion which was arrived at by the Judge is not beyond the bounds of what was reasonable. The Judge expressed his recognition of the circumstances, so far as the Claimant, his mother and the rest of the family are concerned. He expressed what he called “a great deal of sympathy with the position [in] which [the Claimant] finds himself”. I have no doubt that the Judge had well in mind – and I record that I have well in mind – that the Claimant’s absence from Pakistan, in the period of time that is to come, will be an extremely harsh consequence for him and for all members of the family. It will not be possible to turn back the clock in relation to what has been lost. Moreover, any support which the Claimant is able to give – or any connection or participation or observation which is able to have – from the United Kingdom “remotely” is no substitute for him being able to go to Pakistan.

But these bail conditions – which have been throughout been necessary bail conditions under the statutory scheme pursuant to which he has his liberty secured conditionally by reason of bail – are, in my judgment, justified as necessary; and also as proportionate. Their retention in the current circumstances is neither unreasonable; nor unnecessary; nor disproportionate. The surety and security are very substantial. The implications, for the individuals concerned, and for family and for friendships, if they were lost because the Claimant did not return to the United Kingdom weigh heavily in this case. They are conditions which had been put forward, designed to demonstrate that they would stand to secure the Claimant’s return, and to allay any concerns on that score. But the Judge assessed the risk as substantial that the Claimant, provided with the opportunity of returning to Pakistan, would not then return to the United Kingdom to face the implications of the criminal proceedings against him. I can find no public law error in that as a conclusion and outcome, given the circumstances and features of this case; nor in the balancing of concerns and safeguards; nor for that matter striking the balance so far as concerns human rights and public interest justification. I said earlier in this judgment that there were two locations on the statutory map and two distinct – but interrelated – questions. I said that I agree, at least in the circumstances of the present case, that each of them is relevant. I have addressed the question of necessity (by reference to section 3(6)(a)). Putting the point as it arises under Schedule 1 §3(6)(a), the question is whether, absent the conditions (as disapplied by variation), and if permitted to travel to Pakistan, “the court is satisfied that there are substantial grounds for believing” that the claimant “would fail to surrender to custody”. The Judge plainly concluded that there were those substantial grounds. Again, in my judgment, that conclusion and outcome – in the circumstances of this case – involves no public law error. It is justified, and it is proportionate. I think it is only right that I should add, to this analysis of my secondary review function, the following. Based on the materials before me and the submissions made about them, were I to apply an objective ‘correctness’ standard of review, I would have upheld the decision of the Judge, on the basis that I agree with it.

Conclusion

26. I am very grateful to all Counsel and solicitors for their written and oral representations in this case. For the reasons that I have given, although I grant permission for judicial review, I dismiss the substantive claim.

Costs

27. The consequential matter that arises is this. Mr McKone KC applies for an order for costs. He invited me summarily to assess the CPS’s costs in the sum of £4,146 from which he tells me, and I accept, the costs of his solicitor’s attendance today have been subtracted. Mr Wright KC accepts that he cannot resist a costs order but invites me to limit it to assessing costs in the amount of £2,500. He accepts that this case has come before the court as a rolled up hearing, and so there will have been preparation for today’s hearing as though it were a substantive hearing. But he reminds me that, were this a permission hearing, the CPS would not, in the ordinary course, have obtained a costs order. I am persuaded by Mr Wright KC that its appropriate to assess the costs in his figure of £2,500. In my judgment that figure that reflects the circumstances of the case, and the justice of the case. That is against the backcloth where the claim has been brought, the rolled up hearing secured, where the CPS have prevailed, and these costs have been incurred by them. I take into account, nevertheless, that the costs arise out of

a permission-stage acknowledgement of service and that they relate to preparations at the permission stage and not just following a direction for a rolled up hearing. I also take account of the fact that I am not ordering costs on an indemnity basis. It is also relevant, in my judgment, that no costs schedule was provided prior to the hearing. I have accepted a description of a global figure from Counsel but if a party is going to take a broad-brush approach, then it can expect the Court equally to take a broad-brush approach. Finally, I am not going to pretend that I have not also had regard – in relation to my discretion and judgment as to costs – to the anxious human circumstances of this case and the issues that brought the Claimant to make his application for his bail variation and to pursue his legal rights of bringing the arguments before me. In the special circumstances of the present case that human context has weighed, to some extent, with me on this question of costs and it is important that I am transparent in what I say about costs. It is for those reasons that I am going to adopt the figure suggested by Mr Wright KC.

17.1.23