



Neutral Citation Number: [2023] EWHC 72 (KB)

Appeal Refs: QA-2020-000239,
QA-2021-000110,
QA-2021-000175,
QA-2021-000179

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

ON APPEAL FROM ORDERS OF COSTS JUDGE JAMES
DATED 23 OCTOBER 2020 (x2), 16 NOVEMBER 2020,
23 NOVEMBER 2020, 4 MAY 2021, AND 12 JULY 2021
RELATING TO CASE NOS: 6LV57936 AND 7LV54200
(SCCO REF: SC-2018-DAT-002542 (formerly JJ1802567))
AND ORDER DATED 12 JULY 2021, RELATING TO
CASE NO: E11LV805 (SCCO REF: SC-2021-APP-000808)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 January 2023

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

AB

Applicant

- and -

SECRETARY OF STATE FOR JUSTICE

Respondent

Mr David Pilling for the **Applicant**

Mr Paul Joseph (instructed by the **Government Legal Department**) for the **Respondent**

Hearing dates: 17 November, 8 December 2021

Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down are deemed to be 19 January 2023 at 10:00 am.

Mr Justice Murray :

1. I have before me four applications for permission to appeal against seven orders made by Costs Judge James (“the Judge”) on various dates specified below. The identity of the applicant, AB, is protected by an anonymity order made by Jeremy Baker J on 11 June 2014. An application has been made by the respondent for the anonymity order to be discharged, but I do not deal with it in this judgment and for the moment I simply emphasise that it remains in place.
2. AB was at the time of the hearing of this matter a solicitor-advocate and a principal in his own firm. These applications for permission to appeal arise out of costs proceedings that AB has conducted on behalf of his firm, arising out of County Court proceedings issued by AB, as claimant, against the respondent, the Secretary of State for Justice (the Ministry of Justice having no separate legal personality). Consistent with the proceedings below and the documents provided by the parties in relation to these applications, I will refer to the respondent as the Ministry of Justice or “MoJ” in this judgment.

The applications for permission to appeal

3. AB has filed four separate applications for permission to appeal (“the PTA Applications”) against orders made by the Judge. Those orders were made in relation to the following proceedings:
 - i) Case Number 6LV57936 (“Claim 6LV”), which were proceedings issued in the County Court at Liverpool on 19 December 2006 by AB against the MoJ, alleging a breach of the MoJ’s duty under section 7 of the Data Protection Act 1998 (“the DPA 1998”) in respect of a subject access request (“SAR”) made by AB on 22 October 2006, seeking a declaration of the breach, an order compelling compliance, and damages under section 13 of the DPA 1998;
 - ii) Case Number 7LV54200 (“Claim 7LV”), which were proceedings issued in the County Court at Liverpool on 1 November 2007 by AB (on his own behalf and for the benefit of the estate of his late wife and a third party) against the MoJ, alleging breaches of the MoJ’s duties in respect of various SARs and requests under the Freedom of Information Act 2000 made on 19 December 2006, 21 April 2007, and 12 September 2007, respectively, seeking a declaration of those breaches, an order compelling compliance, and destruction of data under section 14 of the DPA 1998; and
 - iii) Case Number E11LV805 (“Claim E11”), which were proceedings issued on 20 August 2018 in the County Court at Liverpool by AB against the MoJ, involving claims under the Equality Act 2010 and the DPA 1998, which proceedings, following a mediation that took place on 12 February 2020 and the entry by the parties into a settlement agreement dated 12 February 2020, were stayed by a consent order dated 13 March 2020 approved by HHJ Freeland QC sitting in the County Court at Central London.
4. In more detail, the applications of AB that require determination are his:

- i) application dated 7 December 2020 for permission to appeal against four orders made by the Judge, two made on 23 October 2020, the third on 16 November 2020, and the fourth on 23 November 2020, each relating to the costs proceedings arising out of Claim 6LV and Claim 7LV (Appeal Ref: QA-2020-000239) (“the First PTA Application”);
 - ii) application dated 20 May 2021 for permission to appeal against an order made by the Judge on 4 May 2021 relating to the costs proceedings arising out of Claim 6LV and Claim 7LV (Appeal Ref. QA-2021-000110) (“the Second PTA Application”);
 - iii) application dated 28 July 2021 for permission to appeal against an order made by the Judge on 12 July 2021 relating to the costs proceedings arising out of Claim 6LV and Claim 7LV (Appeal Ref: QA-2021-000175) (“the Third PTA Application”); and
 - iv) application dated 28 July 2021 for permission to appeal against an order dated 12 July 2021 of Costs Judge James relating to the costs proceedings arising out of Claim E11 (Appeal Ref: QA-2021-000179) (“the Fourth PTA Application”).
5. I note that there are other applications currently outstanding in relation to these matters, but I am solely concerned in this judgment with the PTA Applications.

The background to the PTA Applications

6. By way of illustration of the complex background to the PTA Applications, the parties, having been unable to agree, each separately filed a lengthy chronology.
7. AB’s chronology dated 11 October 2018 comprises 231 pages, beginning on 12 March 2018 and ending on 6 October 2021. It is, in essence and for the most part, an abstract of the correspondence between various persons and bodies concerned in the background to AB’s applications, including AB’s solicitors, the Senior Courts Costs Office (“SCCO”), the Government Legal Department (“GLD”), the Liverpool District Registry of the High Court, and so on. The MoJ suggests that AB’s chronology is far too long and detailed to be of material assistance, including lengthy extracts from dozens of items of correspondence that could have simply been cross-referenced to the Appeal Bundle. The MoJ has prepared a chronology that, while still lengthy, runs to a more manageable 27 pages. It begins on 19 December 2006, with the issue of Claim 6LV in the County Court at Liverpool and ends on 15 October 2021 with a hearing before Eady J relating to these PTA Applications. I have had regard to each of the chronologies in preparing this judgment.
8. Given the complex and lengthy history of these matters, it is necessary to summarise the background at considerably greater length than would be normal when dealing with an application for permission to appeal.
9. In due course, it was ordered that Claim 6LV and Claim 7LV be transferred to the High Court and tried together. The trial took place before Jeremy Baker J on 25-26 February 2014.

10. On 11 June 2014, Jeremy Baker J handed down his judgment in relation to liability and quantum in respect of the two claims (neutral citation: [2014] EWHC 1847 (QB)) (“the 2014 Substantive Judgment”). He set out the background to the proceedings up to the date of the trial, including the procedural history, in some detail in the 2014 Substantive Judgment at [1]-[31].
11. At the end of the 2014 Substantive Judgment at [59]-[62], Jeremy Baker J dealt with privacy issues, giving his reasons for making an anonymity order to protect AB’s name. He also indicated that he would make related orders to protect AB’s privacy, including an order under CPR r 5.4C restricting the ability of a non-party to obtain access to court documents relating to the case. At [61]-[62] Jeremy Baker J set out the terms of the anonymity order and related orders that he was making.
12. In the 2014 Substantive Judgment, Jeremy Baker J found that the MoJ had contravened the provisions of DPA 1998 in relation to the provision of what he termed “the disclosed material” and one item of what he termed “the withheld material” (see the 2014 Substantive Judgment at [29] for definitions of those terms). He made the following awards to AB:
 - i) in relation to AB’s claim for compensation under section 13(1) of the DPA 1998, nominal damages in the conventional sum of £1; and
 - ii) in relation to AB’s claim for damages for distress under section 13(2) of the DPA 1998, damages in the sum of £2,250.
13. On 28 November 2022, Jeremy Baker J handed down a separate judgment dealing with the costs aspects of the claims (neutral citation: [2014] EWHC 3934 (QB)) (“the 2014 Costs Judgment”), the parties having been unable to reach agreement. In their written submissions on costs, each party took the position that they should receive most, if not all, of their costs of the litigation and trial from the other party, failing which they invited the judge to consider a variety of intermediate positions.
14. In the 2014 Costs Judgment, Jeremy Baker J noted that, during the course of the litigation, AB discontinued or abandoned all of the claims he had other than in relation to material concerning the death of his wife. In other words, he abandoned his claims in relation to “the vast majority” of the material upon which he had originally founded his claims: the 2014 Costs Judgment at [13].
15. Ultimately, Jeremy Baker J concluded in the 2014 Costs Judgment at [15]-[16] that (i) the issues at trial represented only 20 per cent of the total figure of costs leading up to and include the pre-trial review and (ii) on the issues at trial AB “in large measure” succeeded.
16. Jeremy Baker J noted that AB contended in his written submissions that he was entitled to be awarded his costs on an indemnity basis. AB made various submissions about the conduct of those representing the MoJ. On those submissions by AB, Jeremy Baker J made the following comments in the 2014 Costs Judgment at [21]-[22]:
 - “21. ... I do not consider that the defendant has shown an inappropriate attitude to the claimant in its dealings

with him. **Indeed to my mind there are occasions in the course of the litigation where the claimant has displayed a less than appropriate attitude towards those representing the defendant. ...**

22. In these circumstances I am quite satisfied that the criteria for the making of an indemnity order, in respect of unreasonable behaviour or otherwise, have not been made out by the claimant against the defendant. **Indeed I have given consideration as to whether the claimant's conduct of the litigation justifies any part of an award of costs to be made on an indemnity basis against him.** However, although there are aspects of his conduct during the course of the litigation which could be open to criticism, ultimately it is not such as to satisfy the criteria for the making of an award on that basis.” (emphasis added)
17. I mention this, and have highlighted specific comments made by Jeremy Baker J, because judicial criticism of AB's conduct of this litigation, not only by the Judge but also by Johnson J and Cavanagh J, has been a recurring theme in the subsequent proceedings forming the background to the PTA Applications.
18. Jeremy Baker J set out the terms of the costs order that he was making in the 2014 Costs Judgment at [24]:
- “24. In these circumstances the orders in relation to costs which I will make are that save and except where specific pre-existing orders require otherwise:
- i. The claimant is to pay 80% of the defendant's costs relating to the 1st and 2nd claims on a standard basis from the commencement of the proceedings up to and including the pre-trial review on 20.1.14;
 - ii. The defendant is to pay 20% of the claimant's costs relating to the 1st and 2nd claims on a standard basis from the commencement of the proceedings up to and including the pre-trial review on 20.1.14;
 - iii. The defendant is to pay 100% of the claimant's costs relating to the 1st and 2nd claims on a standard basis from 21.1.14 up to and including the trial.”
19. The parties subsequently entered into correspondence regarding the preparation of their respective bills of costs. The three-month period provided for by CPR r 47.7 for each party to commence detailed assessment proceedings following the hand-down of

the 2014 Costs Judgment ended on 27 February 2015 without detailed assessment proceedings having been commenced. The parties continued to correspond regarding the format of the bills of costs, the rate(s) of VAT to be claimed, and other matters relating to the preparation of their respective bills of costs during the remainder of 2015 and 2016. There were also meetings on 29 April and 27 October 2015 between AB and a member of the GLD, during which, among other things, issues relating to the preparation of AB's bill of costs were discussed. Much of the correspondence involved the GLD chasing AB for an update regarding when he would be in a position to exchange bills of costs.

20. On 13 December 2016, a member of the GLD wrote to AB to inform him that, as he still had not indicated when he would be in a position to serve his bill of costs nearly two years after the 2014 Costs Judgment, the MoJ would serve its bill of costs on him in accordance with CPR r 6.20.
21. On 19 January 2017, a member of the GLD hand-delivered to AB the documents required to commence assessment proceedings on behalf of the MoJ in respect of its bill of costs ("the First MoJ Bill"). The MoJ also voluntarily granted AB an extension of time of an additional 7 days beyond the 21 day period provided for in CPR r 47.9(2) for service of his points of dispute to the First MoJ Bill.
22. Further correspondence ensued regarding various matters before a meeting took place at the offices of the GLD, attended by AB and two representatives of the GLD. At the meeting, AB was reminded that his points of dispute were due by 27 February 2017 and told that if no points of dispute were served by that date, the MoJ would apply for a default costs certificate ("DCC"). AB agreed that he would deliver his schedule of costs to the offices of the GLD by 8 June 2017.
23. AB did not serve any points of dispute by 27 February 2017. He also did not serve his schedule of costs to the GLD by 8 June 2017.
24. On 14 November 2017, upon the application of the MoJ, the SCCO issued a DCC in the sum of £114,808.72. AB objected to the issue of the DCC, and discussions between the parties, including at a brief meeting on 28 November 2017, ensued during the following weeks as to the terms on which the DCC might be set aside by consent, however the parties failed to reach agreement.
25. On 10 January 2018 AB applied to set aside the DCC and for other directions, including as to data handling. Discussions continued between AB and the MoJ. AB's application to set aside the DCC was listed to be heard at 2:00 pm on Monday, 12 March 2018.
26. On 7 February 2018, the MoJ applied for orders that:
 - i) interest on AB's costs be disallowed for the period between the date of the 2014 Costs Judgment and the date on which AB commenced detailed assessment proceedings in respect of his own costs; and
 - ii) any detailed assessment proceedings be heard by a Master sitting in the SCCO in London.

27. On 13 February 2018, the court made an order amending the listing of AB's application, listing AB's application to be heard together with the MoJ's application of 7 February 2018 at 10:00 am on 12 March 2018, and giving other directions.
28. On 12 March 2018, the applications were heard by DJ Jenkinson, who made a number of orders, including that:
 - i) the DCC was set aside;
 - ii) unless AB served points of dispute by 4:00 pm on 14 May 2018, the MoJ could apply for a further DCC;
 - iii) unless AB paid £50,000 on account by 2 April 2018, the MoJ could apply for a further DCC;
 - iv) unless AB commenced detailed assessment proceedings in respect of his claim for costs pursuant to the 2014 Costs Judgment by 14 May 2018, his costs would be assessed at nil;
 - v) the MoJ's application to disallow interest on AB's costs was adjourned to be heard at the detailed assessment of AB's bill;
 - vi) the action was transferred to the SCCO with any detailed assessment proceedings to be heard by a Master of the SCCO;
 - vii) AB was to pay the MoJ's costs of AB's application of 10 January 2018 and the MoJ's application of 7 February 2018, subject to detailed assessment if not agreed; and
 - viii) AB was to pay £10,000 on account of those costs by 4:00 pm on 2 April 2018.
29. On 13 March 2018, DJ Jenkinson listed a further hearing for 16 March 2018 to take place by telephone to address the final terms of the order of 12 March 2018. At that hearing, DJ Jenkinson made an order dismissing AB's application to amend the costs order made against him on 12 March 2018 and ordering AB to pay the MoJ's costs of the hearing on 16 March 2018 on an indemnity basis.
30. On 6 April 2018, the MoJ, believing that AB had failed to make the payments on account ordered by DJ Jenkinson, applied for a new DCC.
31. On 14 May 2018, AB:
 - i) commenced detailed assessment proceedings ("the AB Bill"); and
 - ii) served points of dispute to the First MoJ Bill.
32. On 15 June 2018, following correspondence from both parties, the Judge made an order without a hearing staying the MoJ's application of 6 April 2018 for a new DCC in light of the MoJ's indication that it no longer sought one, for reasons set out in a witness statement dated 8 June 2018 filed by the MoJ. The Judge stayed the MoJ's application of 6 April 2018 until the detailed assessment of the First MoJ Bill, with costs of the MoJ's application reserved to that occasion. In her reasons appended to

the order of 15 June 2018, the Judge noted that the MoJ, in its witness statement, acknowledged that AB had, in fact, made the payments on account ordered by DJ Jenkinson prior to its application of 6 April 2018 having been filed, however it had not been aware of this due to the payments having been made by AB in an unreasonable way. AB had sent the payments directly to the MoJ (and not to the solicitors on record) in the form of cheques with no covering letter and no GLD reference endorsed on them. AB had also failed to respond to repeated requests from the MoJ to clarify what the cheques were for. The Judge made comments on the progress of the matter, resisting AB's proposal that the matter should be stayed so that alternative dispute resolution ("ADR") could occur. She explained her reasons for staying the MoJ's application, and encouraged the parties to make progress with the detailed assessment while pursuing ADR in parallel so that, if ADR did not succeed, the court could decide the quantum and (if needs be) incidence of costs as soon as practicable.

33. On 18 June 2018, the MoJ served points of dispute in relation to the AB Bill.
34. On 20 June 2018, the MoJ commenced detailed assessment proceedings in respect of the costs that AB was ordered to pay by DJ Jenkinson in his orders of 12 and 16 March 2018 ("the Second MoJ Bill").
35. On 2 July 2018, the MoJ served replies to AB's points of dispute on the First MoJ Bill.
36. On 30 July 2018, AB served points of dispute to the Second MoJ Bill.
37. Further correspondence ensued between the parties, with the parties meeting on 21 January 2019 at the offices of the GLD, following which each party wrote to the court.
38. On 29 January 2019, the Judge listed a hearing on 3 May 2019 with a time estimate of one day to deal with preliminary points of dispute and objections raised by AB to the First MoJ Bill and the Second MoJ Bill. A Schedule was appended to her order setting out the preliminary points of dispute and objections.
39. On 29 April 2019, AB applied for the MoJ to make an interim payment to him on account of his costs owed to him under the costs order made by Jeremy Baker J as set out in the 2014 Costs Judgment.
40. At the hearing on 3 May 2019, according to the transcript, the Judge, having checked availability of the parties and counsel, listed the matter for a detailed assessment hearing to commence on 9 September 2019 with a time estimate of five days. Later in the hearing, it appears that AB, who appeared in person, became distressed and had to leave. The Judge therefore made an order adjourning the hearing to a date to be fixed, reserving costs to be determined on a later occasion.
41. Following a telephone hearing on 14 May 2019 to consider AB's application dated 29 April 2019 for the MoJ to make a payment on account of costs, the Judge dismissed the application and ordered that AB pay the MoJ's costs of the application, to be summarily assessed at the detailed assessment hearing listed to commence on

9 September 2019. At the hearing, the Judge gave a short ruling, which I quote in full from the transcript:

- “1. I am not going to order any payment on account. There has been a lengthy delay in this matter and I appreciate that Mr AB says he has found this incredibly difficult and that he finds the defendant’s position entirely obstructive and obstreperous; I have invited him in writing and I have now invited him verbally to consider instructing somebody else and he says no, as difficult as he finds all of this, he cannot surrender any of it to a third party because it is too private. Be that as it may, it means that from an order in November of 2014 we only got his bill in April of this year I think and he commenced detailed assessment by serving that bill on the defendant approximately year ago. I have got the exact dates written down here. With delays of that nature and a substantive hearing only four months into the future I think that is certainly a good reason not to order a payment on account.
 2. I will also say that I have got concerns about [AB’s] bill. I have never come across a £700-odd per hour rate for somebody in 2013 up in Liverpool. Those are City rates, this is eminently not City work and I appreciate the importance of the case to Mr AB, as does the defendant, but that does not translate into a million pounds for a matter of this nature.
 3. I am very concerned about trying to put a figure on it based on everything that I have heard today and given in any event the lengthy delay in making the application I dismiss it and I am not going to make any order for payment on account of costs. So?”
42. On 30 August 2019 the court sealed a consent order signed by the parties on 23 August 2019 adjourning the detailed assessment hearing listed to commence on 9 September 2019 to the first open date after 13 September 2019 with a time estimate of 5 days.
 43. On 4 September 2019, the MoJ served supplemental points of dispute to the AB Bill expanding on the MoJ’s position that no success fees were recoverable from it.
 44. On 6 November 2019, the court relisted the detailed assessment hearing for 11 May 2020 with a time estimate of 5 days.
 45. On 19 December 2019, the MoJ applied for directions as to the conduct of the detailed assessment hearing.
 46. On 5 February 2020, the court listed the MoJ’s application of 19 December 2019 for 3 April 2020.

47. On 2 April 2020, the court, having reviewed correspondence from the parties, made an order without a hearing (“the April 2020 Directions Order”) that, among other things:
- i) vacated the directions hearing listed for 3 April 2020 as a result of the Coronavirus emergency;
 - ii) adjourned the detailed assessment hearing listed for 11 May 2020 to 14 September 2020 with a revised time estimate of 3 days and to be held in person;
 - iii) gave directions for written submissions on each of the issues set out in the Schedule to the order (“the Preliminary Issues”), including the filing by the MoJ, to be agreed, if possible, with AB, of a bundle of relevant documents;
 - iv) provided that the court would issue its rulings on the Preliminary Issues prior to the detailed assessment hearing;
 - v) set out the order in which matters would be dealt with at the detailed assessment hearing, providing that the order would be:
 - a) detailed assessment of the First MoJ Bill;
 - b) costs of the detailed assessment of the First MoJ Bill;
 - c) detailed assessment of the Second MoJ Bill;
 - d) costs of the detailed assessment of the Second MoJ Bill;
 - e) costs of the MoJ’s application dated 6 April 2018 for a further DCC and summary assessment of those costs (if applicable);
 - f) summary assessment of MoJ’s costs of the hearing on 14 May 2019;
 - g) summary assessment of MoJ’s costs of its application for directions issued on 19 December 2019; and
 - h) if time permits and, if and only if, AB has complied with the Practice Direction to CPR Part 47, the detailed assessment of the AB Bill and costs of that detailed assessment;
 - vi) ordered AB to file and serve a witness statement by 4:00 pm on 1 May 2020, exhibiting copies of any conditional fee agreement (“CFA”) on which he relied in order to claim any uplift on any costs claimed in the AB Bill and copies of any correspondence sent to the MoJ or its solicitors which he asserts enclosed a copy of any such CFA, and stating in the witness statement when and by what method the correspondence was sent;
 - vii) giving MoJ permission to file and serve, if so advised, by 4:00 pm on 5 May 2020 evidence in response to AB’s witness statement referred to in (vi) above;

- viii) directing that the whole of the detailed assessment hearing on 14 September 2020 would be conducted in open court, unless otherwise ordered;
 - ix) ordering that AB pay the MoJ's costs of its application dated 19 December 2019, to be summarily assessed at the detailed assessment hearing; and
 - x) as the order was made without a hearing, liberty to any affected party to apply for it to be set aside, varied or stayed, any such application to be made by 4:00 pm on 9 April 2020 and supported by evidence, and the application, if made, to be heard by the Judge by telephone at 10:00 am on Monday, 11 May 2020 with a time estimate of 45 minutes.
48. On 7 April 2020, AB applied to set aside the Directions Order and asked that his application be dealt with on paper ("the Set-aside Application").
49. On 8 April 2020, the MoJ filed its written submissions on the Preliminary Issues in compliance with the Directions Order.
50. On 30 April 2020, the Judge directed that the Set-aside Application would be determined following written submissions, and she vacated the telephone hearing listed for 11 May 2020.
51. On 5 June 2020, the Judge, on a review of various documents provided by the parties (as set out in the second recital to her order), without a hearing, made an order ("the June 2020 Directions Order"), in which she dismissed the Set-aside Application and varied the directions in paragraphs 3 to 12 of the April 2020 Directions Order, which I have summarised at [47(iii)-(ix)] above, primarily as to the timetable. The Judge noted in recitals to the June 2020 Directions Order that the MoJ had filed its written submissions on the Preliminary Issues in compliance with paragraph 3 of the April 2020 Directions Order and that AB had failed to do so. Paragraphs 3 to 12 of the June 2020 Directions Order, which varied paragraphs 3 to 12 of the April 2020 Directions Order, were essentially the same except as to dates, the relevant changes being as follows:
- i) paragraph 3 required only AB to file written submissions on the Preliminary Issues (the MoJ having already done so on 8 April 2020) and required AB to do so by 4:00 pm on 26 June 2020;
 - ii) the parties were directed to file and serve replies, if so advised, to each other's written submissions on the Preliminary Issues by 10 July 2020, with the MoJ to file a bundle of relevant documents (agreed, if possible, with AB) by 24 July 2020;
 - iii) the court to issue its ruling on the Preliminary Issues prior to the detailed assessment hearing listed for 14 September 2020;
 - iv) AB to file and serve the witness statement referred to in paragraphs 8 and 9 of the April 2020 Directions Order (summarised at [47(vi)] above) by 26 June 2020; and

- v) the MoJ to have permission to file and serve, if so advised, by 4:00 pm on 10 July 2020 any evidence in response to AB's witness statement referred to in (iv) above.
52. Save for the variations of paragraphs 3 to 12 of the April 2020 Directions Order, the Set-aside Application was dismissed. Paragraph 13 of the June 2020 Directions Order provided that AB should pay MoJ's costs of the Set-aside Application.
53. On 25 May 2020, AB filed an Appellant's Notice at the Liverpool District Registry of the High Court seeking to appeal the June 2020 Directions Order on various grounds, including apparent bias on the part of the Judge.
54. On 26 June 2020, AB filed his Seventh Witness Statement to which he exhibited copies of his two CFAs. He also applied for:
- i) an extension of time to lodge written submissions because no schedule was attached to the June 2020 Directions Order and pending receipt of the Judge's written reasons for the June 2020 Directions Order;
 - ii) a stay of the assessment proceedings currently before the Judge pending determination of AB's appeal filed on 25 May 2020; and
 - iii) for the matter to be remitted to another costs judge.
55. On 13 July 2020, Turner J, sitting at the Liverpool District Registry of the High Court, transferred AB's appeal to the Royal Courts of Justice in London.
56. On 17 July 2020, the Judge varied the June 2020 Directions Order, primarily to vary the timing of various steps to be completed before the detailed assessment hearing and also, under the slip rule, to append the Schedule setting out the Preliminary Issues, which had been omitted from the June 2020 Directions Order.
57. I note that the order of 17 July 2020 includes at the bottom of the third page, before the Schedule, the words "Dated this 5th day of June 2020. Timetable and paragraph 4 amended and Schedule added under the slip rule this 17th day of June [sic] 2020". The Judge's written reasons appended to the order are clearly dated 17 July 2020, and so it appears that the order, amending the June 2020 Directions Order, was made on 17 July 2020 (rather than 17 June 2020).
58. I observe that the Schedule added under the slip rule is identical to the Schedule that was appended to the April 2020 Directions Order (which, in turn, was essentially the same as the Schedule appended to the order made by the Judge on 29 January 2019), and AB could have had no realistic doubt, when he originally received the June 2020 Directions Order, that he was required to provide written submissions on the same Preliminary Issues as were set out in the Schedule to the April 2020 Directions Order, although he sought to rely on the absence of the Schedule to support his application dated 26 June 2020. It is also fair to observe, however, that when AB made his application dated 26 June 2020 and when he filed his appeal against the June 2020 Directions Order, he had not yet received the Judge's written reasons for making it.

59. On 7 August 2020, AB filed his Eighth Witness Statement. The MoJ notes in its chronology that it treated this witness statement as AB's written submissions on the Preliminary Issues.
60. On 28 August 2020, AB's application for permission to appeal against the June 2020 Directions Order (as amended) was considered by Johnson J. AB's grounds of appeal included that (i) the Judge failed to consider all relevant papers, (ii) the Judge failed to give reasons for the order appealed against, (iii) the Judge's conduct and that of the SCCO in respect of secure data handling had given rise to further claims by AB such that the Judge could not properly adjudicate on such and that she had a personal interest preventing her from properly making the June 2020 Directions Order (as amended), and (iv) she demonstrated apparent judicial bias making it improper for her to have made the order appealed against. On this last ground, AB alleged, as purported evidence of her apparent bias that showed hostility to AB and used intemperate language in her dealings with him.
61. Johnson J refused AB's application for permission to appeal on all four grounds and certified it as totally without merit. He noted at paragraph 10 of his reasons for refusing permission to appeal that, before he determined AB's application for permission, he had ensured that AB had an opportunity to review the Judge's written reasons for making the June 2020 Directions Order and to make any revisions he wished to make to his grounds of appeal. Johnson J also noted that AB's skeleton argument for the appeal contained extensive reference to the Judge's reasons.
62. On 10 September 2020, the Judge issued her rulings on the Preliminary Issues, in accordance with the June 2020 Directions Order (as amended), including various observations about the materials she had received from AB in support of the AB Bill.
63. On Sunday, 13 September 2020, the day before the detailed assessment hearing was due to take place, AB applied to Cavanagh J, as the High Court Judge on duty to consider urgent out-of-hours applications, for an injunction to restrain the Judge from commencing the detailed assessment hearing on the following day.
64. In his order made on 13 September 2020, Cavanagh J dismissed the application for an interim injunction and directed AB to notify the Judge at the outset of the detailed assessment hearing that he had made the injunction application and that Cavanagh had made an order dismissing it. Cavanagh J's order also recorded the undertaking made by AB to serve Cavanagh J's order and his written reasons for it "forthwith (today) by email" on the defendants (who were HM Attorney General, the Secretary of State for Justice and Lord Chancellor, and the Treasury Solicitor), "Counsel acting for the other party or parties in the costs proceedings", and the Judge and/or her clerk.
65. In his written reasons appended to his order, Cavanagh J indicated that he had declined to grant the injunction for four cumulative reasons, namely, delay (which would have been sufficient on its own as a ground of refusal), failure by AB to take reasonable steps to notify the defendants of the application, failure to provide adequate documentation for the application, and the lack of merit in the application. There were, in his view, no prima facie grounds that would even justify a short injunction to hold the ring. There was no serious issue to be tried, and Cavanagh J considered that the application was "quite inappropriate" as an attempt to use the injunction jurisdiction of the High Court as a *de facto* court of appeal to challenge

prior case management decisions made by the Judge in the costs proceedings, given that there was a well-established route of appeal. The application was, in short, “wholly misconceived”.

66. I note that it appears that AB did not draw to Cavanagh J’s attention that he had applied for permission to appeal the June 2020 Directions Order, including on the ground of judicial bias by the Judge, and that Johnson J had refused permission on the basis that it was totally without merit.
67. On 14 September 2020, the detailed assessment hearing commenced as a telephone hearing. AB applied orally to adjourn the hearing on the basis that he could not effectively participate in a telephone hearing due to his hearing impairment. AB had uploaded a note prior to the hearing to CE-File and asked the Judge to find it and read it before proceeding further. AB did not reply to the Judge’s question as to whether he had mentioned to Cavanagh J that his application for permission to appeal against the June 2020 Directions Order had been refused and certified as totally without merit by Johnson J. Ultimately, after AB indicated repeatedly that he was having difficulty hearing, the Judge adjourned the hearing and indicated that she would provisionally assess the three bills before her over the remaining two and a half days allocated for the detailed assessment hearing.
68. In her order of 14 September 2020 (sealed on 25 September 2020), the Judge:
 - i) ordered that the detailed assessment hearing was adjourned;
 - ii) indicated that she would provisionally assess the First MoJ Bill and the Second MoJ Bill and gave directions for the review by the parties of the provisional assessments, including for a hearing, if appropriate;
 - iii) gave directions for written submissions as to the quantum of the MoJ’s costs of the hearing on 14 May 2019, after having considered which, she would summarily assess those costs;
 - iv) gave directions for an exchange of skeleton arguments by the parties as to the entitlement of AB to recover from the MoJ under the AB Bill, including as to success fees, after which she would provisionally assess the AB Bill, giving directions for the review by the parties of the provisional assessment, including for a hearing, if appropriate; and
 - v) gave directions for any further matters listed in paragraph 7 of the June 2020 Directions Order (summarised at [47(v)] above in relation to the April 2020 Directions Order, which contained essentially the same list); and
 - vi) reserving the costs of the hearing on 14 September 2020.
69. Following this order, the MoJ provided written submissions on the AB Bill, in particular in relation to the CFAs, on 16 September 2020 and, at the request of the Judge, on 23 September 2020 in relation to the case of *Gempride Limited v Bamrah* [2018] EWCA Civ 1367.

70. On 6 October 2020, about 40 minutes before the expiry of the deadline for his response, AB applied for an extension of time in order to instruct specialist tax counsel.
71. On 23 October 2020, the Judge released her provisional assessments of all three bills to the parties. She also made two orders on that date, which are the first two of the four orders that are the subject of the First PTA Application.
72. In her first order on 23 October 2020, the Judge dismissed AB's application dated 26 June 2020 and certified it as totally without merit. She ordered that the costs of the application were payable by AB to the MoJ, to be assessed on the standard basis if not agreed. In her second order on 23 October 2020, the Judge dismissed AB's application dated 6 October 2020 and certified it as totally without merit. She ordered that the costs of the application were payable by AB to the MoJ, summarily assessed in the sum of £550. In relation to each of these orders, the Judge considered that they could be dealt with fairly on paper without a hearing, and she appended to each order her written reasons for making it.
73. On 2 November 2020 the Judge made an order dealing with various other outstanding matters. She noted in her recitals to the orders that following receipt of the provisional assessments of the various bills, the MoJ provided AB with its calculations of each of the bills, but AB had neither agreed those calculations nor provided any alternative calculations. The court accepted the MoJ's calculations of the provisional assessments and recorded in a recital that the bills were provisionally assessed in the following sums:
 - i) in relation to the First MoJ Bill, £112,418.73;
 - ii) in relation to the Second MoJ Bill, £43,138.45; and
 - iii) in relation to the AB Bill, £53,775.99.
74. In her order dated 2 November 2020, the Judge:
 - i) ordered that the MoJ's costs of the hearing on 14 May 2019 were summarily assessed in the amount of £2,083;
 - ii) having noted in a recital that AB had previously made payments on account totalling £60,000, ordered AB to pay the further sum of £40,000 on account of his liability to the MoJ by 4:00 pm on 13 November 2020, such payment to be made to the MoJ's solicitors (the GLD);
 - iii) under paragraph 3 of the order, directed that the parties should file and serve on each other by 4:00 pm on 13 November 2020 written submissions on five issues set out in that paragraph, together with, as appropriate, schedules of costs (or revised and updated schedules) for summary assessment, one of the issues being whether all or any part of the parties' costs, as provisionally assessed, should be disallowed pursuant to CPR Part 44.11 (Court's powers in relation to misconduct) and, if so, on what basis and evidence;

- iv) under paragraph 4 of the order, directed that the parties should file and serve on each other by 4:00 pm on 20 November brief written submissions in response to the written submissions filed and served under paragraph 3 of the order;
 - v) under paragraph 5 of the order indicating that the court would notify the parties of its decisions on the five specified issues by 4:00 pm on 4 December 2020; and
 - vi) under paragraphs 6 to 11 of the order, further case management directions, including providing for a hearing on a date to be fixed to conduct an oral review of any timely challenged decisions on the various bills.
75. On 6 November 2020, AB applied for:
- i) the Judge’s order of 2 November 2020 to be set aside;
 - ii) permission to appeal the two orders she made on 23 October 2020;
 - iii) pending the issue of her bias being “ventilated and ... determined by a supervisory court” for the proceedings before her to be stayed and no further steps taken including as to payment of costs by AB to the GLD on behalf of the MoJ; and
 - iv) AB to “be at liberty to adduce and add to the evidence filed herein and time for so doing and for such further and other steps be extended generally”, in other words, without specific limit of time.
76. As noted above, the Judge’s order of 2 November 2020 had directed the parties to provide written submissions on various outstanding issues. The deadline for the first and principal set of written submissions provided for in paragraph 3 of the order was 4:00 pm on 13 November 2020. Neither party met this deadline. AB’s written submissions, comprised of two pages, were deemed filed on 16 November 2020. The MoJ maintains that they were never served on the MoJ as required by the order.
77. The MoJ’s written submissions were deemed filed and served on 16 November 2020.
78. On 16 November 2020 the MoJ wrote to AB noting that it had not yet received AB’s written submissions, asking AB to send those by 4:00 pm that day, and proposing that the parties should then agree an extension of time until 4:00 pm on 16 November 2020 to file and serve their written submissions, so that the next stage in the timetable set out in paragraph 4 of the order of 2 November 2020 could be met, namely, 4:00 pm on 20 November 2020 for brief written submissions responding to the other party’s first set of written submissions. It was only after that point that the court would take the next step, specified in paragraph 5 of the order, namely, notifying the parties of its decisions, including on the question of misconduct, by 4:00 pm on 4 December 2020.
79. AB failed to pay the sum of £550 that he was required to pay by 13 November 2020 under the second order made by the Judge on 23 October 2020.

80. AB failed to make timely payment to the MoJ of either of the amounts it was required to pay by the Judge's order of 2 November 2020, namely, £2,083 and £40,000.
81. On 16 November 2020, the Judge made an order dismissing AB's application of 6 November 2020 and certified it as totally without merit, ordering that AB pay the MoJ's costs of the application, to be assessed on the standard basis if not agreed. As in the case of the two orders made by the Judge on 23 October 2020, in relation to this order, the Judge considered that AB's application of 6 November 2020 could be dealt with fairly on paper without a hearing, and she appended to her order her written reasons for making it, which, in this case, were particularly detailed. This is the third of the four orders that are the subject of the First PTA Application.
82. On 17 November 2020, the Judge issued a memorandum of four pages to the parties, referring to recent correspondence from them, and setting out various observations intended "to keep things on track". The first part of the memorandum dealt with the written submissions that the parties were directed to provide under paragraphs 3 and 4 of her order of 2 November 2020, as discussed at [74(iii)-(iv)] and [76] to [78] above. The Judge noted that each side had missed the deadline of 4:00 pm on 13 November 2020 and that AB's very brief written submissions were, in essence, "little more than holding responses". (In paragraph 76 of her written reasons for her order of 16 November 2020, the Judge had set out the entirety of those submissions.)
83. In her memorandum, the Judge indicated that, "if it will save time and costs", she would be prepared to amend the timetable for the relevant written submissions so that the written submissions required under paragraph 3 of the order of 2 November 2020 could be provided by 4:00 pm on 20 November 2020 and the responsive written submissions required under paragraph 4 of the order could be provided by 4:00 pm on 27 November 2020.
84. On the same day, the MoJ applied for an extension of time until 4:00 pm on 16 November 2020 to comply with paragraph 3 of the order of 2 November 2020 (the application notice says "paragraph 4", but it is clear that the intended reference is paragraph 3 of that order).
85. On 18 November 2020, in an email sent to the parties by the Judge, she confirmed her view that AB's brief written submissions filed after the deadline of 4:00 pm on 16 November 2020 were no more than holding submissions, but she would allow until 4:00pm on 20 November 2020 for him to file and serve "proper" submissions.
86. On 19 November 2020, AB filed and served a request for oral reviews of various items in all three bills.
87. On 20 November 2020, the MoJ filed and served its responsive written submissions to AB's brief written submissions pursuant to paragraph 4 of the order of 2 November 2020. The MoJ also applied for AB's requests for oral reviews of the provisional assessments of each of the three bills be dismissed or, in the alternative, for his challenges to decisions made on the Preliminary Issues set out in the Judge's rulings dated 10 September 2020, as noted at [62] above. (The MoJ's application refers to "the order of 7 September 2020", but it is clear that this must be a reference to the Judge's rulings dated 10 September 2020, which deal with the Preliminary Issues.) The MoJ submitted that the Judge was entitled to grant the application on the basis

that AB had failed to comply with three orders of the court that he pay costs to the MoJ, namely:

- i) under the second order made by the Judge on 23 October 2020, the MoJ's costs summarily assessed in the sum of £550, which fell due for payment on 6 November 2020;
- ii) under the order made by the Judge on 2 November 2020, the MoJ's costs summarily assessed in the sum of £2,083, which fell due for payment on 16 November 2020; and
- iii) under the same order made by the Judge on 2 November 2020, the payment on account of AB's liability to the MoJ in the sum of £40,000, which fell due for payment on 16 November 2020.

88. In its evidence set out in section 10 of its application notice dated 20 November 2020, the MoJ submitted that AB's failure to pay these amounts were "flagrant breaches of the court's orders [that] constitute unreasonable conduct to a high degree which takes this case out of the norm. I remind the court that [AB] is a Solicitor Advocate."
89. On 23 November 2020, the Judge made an order extending the MoJ's time to file and serve its written submissions under paragraph 3 of her order of 2 November 2020 until 4:00 pm on 16 November 2020. In paragraph 1 of her order, she refers to "paragraph 4 of the Order [of 2 November 2020]", presumably replicating the typographical error in the MoJ's application notice (see [84] above) and/or draft order, however it is clear that the reference is intended to be to paragraph 3, which she sets out in quotation (along with paragraphs 4 and 5) in her reasons for the decision, which are appended to the order.
90. As in the case of the two orders made by the Judge on 23 October 2020 and her order made on 16 November 2020, the Judge considered that she could deal fairly on paper with the application in hand. She appended to her order of 23 November 2020 her detailed written reasons for making it. It is the fourth of the four orders that are the subject of the First PTA Application.
91. On 7 December 2020, AB filed the First PTA Application.
92. On 23 April 2021, the Judge handed down her lengthy judgment on various issues relating to the detailed assessment of the bills, in particular the AB Bill ("the Misconduct Judgment"). Most of the Misconduct Judgment is concerned with the Judge's findings of misconduct by AB throughout the proceedings. The Misconduct Judgment runs to 167 paragraphs and contains 3 appendices across 35 pages. In view of the anonymity order made by Jeremy Baker J in 2014, the public version of the Misconduct Judgment is anonymised.
93. The Judge summarised her "Headline points" in the first five paragraphs of the Misconduct Judgment. The first paragraph notes the length of the unabridged judgment and that it deals with certain key legal principles, including as to misconduct, but also that a significant portion of the judgment consists of her findings of fact regarding misconduct. She directed that any appellate court asked to consider

any application for permission to appeal the judgment should have the “complete and unabridged” version of the judgment.

94. The reason that she felt the need to make a direction on this otherwise obvious point is clarified at paragraph 160 of the Misconduct Judgment where she mentioned that among what she found to be AB’s unreasonable and/or improper actions during the course of these proceedings was “his use of cut and paste to omit key phrases when seeking to challenge Costs Judge James’ previous Orders”. This was misleading and was her reason for the direction in the first paragraph of the Misconduct Judgment.
95. The next four paragraphs of the Misconduct Judgment read as follows:

“2. AB acted for himself, initially through a law firm in which he is a Partner and subsequently through a limited company of which he is the sole Director. AB is both the Claimant and the Solicitor for the Claimant and has indisputably acted with the Claimant’s full knowledge and upon instructions. He is also a Solicitor Advocate bound by ethical and professional standards including the Code of Conduct for Solicitors. This matter has gone on for so long (the main Order for Costs was made as long ago as 28 November 2014) that the Code has changed during these proceedings; any references to the Code, are to the relevant Code at the time.

3. This Court made an Order for Directions on 2 November 2020, including Directions regarding written Submission in relation to Misconduct, which it did after both parties had accused each other of Misconduct, alleged to have occurred during both the underlying proceedings (‘the main action’) and the Detailed Assessment proceedings. The assertions by AB’s law firm in Points of Dispute on the Defendant’s second Bill that there had been ‘sharp practice and incompetence’ (Objection 2, items 1-3) and that the fees claimed, indicated ‘something ulterior’ (Objection 26, item 21) are two of the milder examples. AB stating in a Hearing held remotely via BT MeetMe (and audio recorded) on 14 September 2020 that Costs Judge James had fabricated matters and refusing to continue with the Hearing, and AB stating in Court 95 on 3 May 2019 that he had had ‘absolute shit’ from the Defendant (transcript, page 36, paragraph E) before walking out of Court several times, leading that Hearing to come to an equally abrupt end, are two of the more extreme examples; there are more below but this is not a comprehensive list.

4. Under AB’s fee structure as a Partner in his own law firm back in 2014, his charge-out rate was already £779.48 per hour. The 2014 Guideline Hourly Rate (‘GHR’) was £217.00 per hour. That is just under 28% of the rate claimed by AB in 2014. Had matters continued with his law firm under the same fee structure, by 2021 AB’s hourly rate would have been

£1,519.00 (see Appendix 1 below for calculation) 7 times the GHR. AB's current fee structure as sole Director of his limited company is not known. In the Claimant's Bill, 100% Success Fee was claimed on top of AB's law firm's hourly rates, despite (on the facts of this case) being irrecoverable. These, plus other matters including AB's habitual sending of multiple letters in a single day to the same recipient (on one occasion sending 17 letters to Counsel within a 31-minute period) and charging each one at the full 6-minute unit Grade A rate plus 100% Success Fee, have led to egregious overcharging in a matter where costs were being claimed against the public purse, given that the Defendant is the Ministry of Justice.

5. As shown below, this Court finds that the actions of AB, his law firm and his limited company, have substantially lengthened and made these proceedings more complicated and expensive, with multiple breaches of professional standards and the Civil Procedure Rules in terms of wasting Court time alone. Worse, as the Assessment has gone on, AB, his law firm and his limited company have repeatedly alleged, in writing and at Hearings, that the proceedings, and/or the conduct of the Defendant, this Court and others, are causing the Claimant ongoing distress, which (he asserts) will lead to further litigation. The fully contested Trial in the main action resulted in damages of £2,251.00 for AB as Claimant and a Bill of £936,875.78 for AB's law firm, who time spent is alleged to total 1,313 hours and 18 minutes. The man on the Clapham Omnibus might think, in the main action and in the proposed future litigation, that costs for AB, his law firm and his limited company (rather than damages for the Claimant) have been the true driver of this litigation."

96. In contrast to her extensive findings of misconduct against AB, the Judge notes at paragraph 84 of the Misconduct Judgment that AB had made assertions (in his points of dispute on the Second MoJ Bill) that there had been "sharp practice and incompetence" on the part of the MoJ and that the fees claimed by the MoJ indicated "something ulterior". She noted that he had also used the term "fraud" to describe the MoJ's conduct. However, AB had not filed any submissions or evidence to substantiate these assertions. She noted that she had seen nothing in the MoJ's conduct to warrant the accusations made by AB. She therefore made no finding adverse to the MoJ in respect of its own conduct, pursuant to CPR r 44.11.
97. At paragraphs 86 to 93 of the Misconduct Judgment, the Judge set out her reasons for concluding that it was reasonable and just to determine the issue of misconduct on the papers and recordings of hearings, without an oral hearing. At paragraphs 102-103, the Judge added the following:

"102. Due to the way in which Hearings in the Royal Courts of Justice are organised, every interaction between Costs Judge James and AB, AB's law firm and AB's limited company, has either been reduced to writing (via email or otherwise) or has

been audio recorded in a Courtroom or via BT MeetMe etc. Likewise, the Emergency Injunction Hearing before Cavanagh J on 13 September 2020 was audio recorded.

103. There are more than sufficient recorded examples of unreasonable and improper conduct, upon which to reach a fair decision on this issue. Any perceived unfairness to the Claimant in respect of the lack of a Hearing on Misconduct has been weighed against the fact that every incident upon which this decision depends, can be read or listened to at the next tier if the need should arise.

104. In this Court's judgment, the behaviour of AB, AB's law firm and AB's limited company constitutes Misconduct under CPR Part 44.11 in and of itself. More significant is the way in which such behaviour has manifested at times or in ways which appear calculated to turn matters in a particular direction. This Court has not enumerated each and every incident (AB's conduct has been consistently poor) but has concentrated upon incidents where there is an underlying concern that the misconduct in questions, appears to have been deployed deliberately in an attempt to gain some advantage in the litigation."

98. The Judge set out her findings of fact on specific instances of misconduct for the purposes of CPR r 44.11 at paragraphs 105-153 of the Misconduct Judgment.
99. At paragraphs 154-155 of the Misconduct Judgment, the Judge set out the impact of her findings on the assessment of the AB Bill as follows:

"154. The Claimant's Bill as drawn, at £936,875.78, has been assessed to approximately £55,000.00. The disallowance of Success Fee (£368,929.95) and most of the Bill drafting (£162,010.42, not to double count the success fee) with VAT thereon, account for some £637,128.44 of the reduction and it is this Court's Judgment that it was both unreasonable and improper to pursue both of these claims. There have been further reductions due to over-recording of time, claiming at 100% costs which were allowed at just 20% and other factors. Given that those reductions amount to nearly a quarter of a million pounds more, it is this Court's Judgment that the decision to present the Claimant's Bill in its original state was both unreasonable and improper and was Misconduct worthy of sanction under CPR Part 44.11.

155. As the Defendant states, and as this Court finds, no reasonable Solicitor and officer of the Court could properly have signed the certificate on the Claimant's Bill. It has been reduced by approximately 95%. Had it been properly drawn, it would have been assessed on paper initially, by the process set out in CPR Part 47.15. The fact that it has unnecessarily gone

to a full detailed assessment (with both live Hearings being abandoned due to AB's actions on 3 May 2019 and 14 September 2020) is the fault entirely of AB, AB's law firm and AB's limited company. This Court agrees with the Defendant that, when all the relevant circumstances, instances of improper and unreasonable conduct and breaches of Rules and Practice Directions are taken into account, in the round, this matter is a paradigm case for a very substantial reduction for misconduct under CPR Part 44.11."

100. At paragraphs 156-160 of the Misconduct Judgment, the Judge gave her reasons for her decision under CPR r 44.11 to reduce AB's assessed costs by reason of misconduct by 70%.
101. In the remaining paragraphs 161-167 of the Misconduct Judgment, the Judge indicated next steps and noted that the anonymity order remained in place but that the MoJ had indicated an intention to apply for the anonymity to be lifted. Pending that, the anonymised version of the Misconduct Judgment would be made a document of public record in the normal way.
102. On 4 May 2021, the Judge made an order to, among other things, give effect to the findings in the Misconduct Judgment. The order included 12 recitals, including in the second recital noting that, after a further small adjustment, the provisional assessment of the AB Bill was revised to £54,014.99 and summarising in the fifth recital, in general terms, her conclusion on the question of AB's misconduct for the purposes of CPR r 44.11.
103. In the order of 4 May 2021, the Judge, among other things:
 - i) ordered AB to pay the MoJ's costs (together with accrued interest) of the following:
 - a) the MoJ's application dated 6 April 2018 for a DCC, on the indemnity basis, summarily assessed in the sum of £4,500;
 - b) the hearing on 3 May 2019, on the indemnity basis, summarily assessed in the sum of £12,750;
 - c) the MoJ's application for directions dated 19 December 2019 and the Set-aside Application, on the standard basis, summarily assessed in the sum of £15,000;
 - d) AB's application dated 26 June 2020, on the standard basis, summarily assessed in the sum of £3,000;
 - ii) dismissed AB's application to reduce under CPR r 44.11 the assessed costs on the First MoJ Bill and the Second MoJ Bill by reason of misconduct;
 - iii) allowed the MoJ's application to reduce under CPR r 44.11 the assessed costs on the AB Bill by reason of misconduct, such that, the AB Bill, provisionally

assessed in the sum of £54,014.99, was reduced by 70% to the sum of £16,204.50;

- iv) ordered AB to make a further payment on account to the MoJ in the sum of £78,235.68, that sum to be paid, without any deduction or set-off, to the GLD as solicitors on the record for the MoJ, with payment to indicate that it is in relation to AB v MoJ and to bear the MoJ's solicitors' reference LT63583G, it being the case that payment otherwise than in accordance with this order would mean that the default provisions would apply as if the payment had not been made at all (see [32] above for the background that presumably explains this unusual provision);
 - v) ordered AB to pay the MoJ's costs of paragraphs 3, 4 and 5 of the Judge's order dated 2 November 2020, which provided for the written submissions following which the Misconduct Judgment was handed down, on an indemnity basis, to be summarily assessed at a further hearing on 12 July 2021; and
 - vi) varied the order of 2 November 2020 to list the matter for further hearing on 12 July 2021, to be conducted by Cloud Video Platform, to deal with various outstanding issues including the summary assessment of the costs referred to in (v) above and made related case management directions, including directing (in paragraph 10 of the order) that AB, not less than 14 days prior to the hearing on 12 July 2021, file and serve a skeleton argument that contains clear and concise reasons for each of his proposed challenges to each decision in the provisional assessments.
104. The Judge's order of 4 May 2021 also provided, at paragraph 12, that if AB failed to comply in full with paragraph 7 (summarised at [103(iv)] above) and paragraph 10 of the order (summarised at [103(vi)] above), then he would not be entitled to pursue any review of any decision in the provisional assessments. The Judge's order of 4 May 2021 is the order that is the subject of the Second PTA Application.
105. On 20 May 2021, AB filed the Second PTA Application.
106. On 25 June 2021, AB made an application:
- i) to vacate the hearing on 12 July 2021;
 - ii) that any hearing involving AB should be an attended hearing (at which AB is permitted to use his Roger Assistive Devices);
 - iii) that the costs proceedings before the Judge be stayed;
 - iv) that the Judge should be recused from any further involvement in the costs proceedings; and
 - v) that the MoJ should advise AB as to what steps have been taken, when and by whom with regard to the progress of his appeals within 7 days of the order made on the application, with such communication to be in writing only to be opened by AB sent to his office address by tracked delivery.

107. On 25 June 2021, AB filed a skeleton argument of a half-page in length in purported compliance with paragraph 10 of the Judge's order of 4 May 2021.
108. On 12 July 2021, the hearing that the Judge had ordered in her order of 4 May 2021 proceeded as an in person hearing, with AB permitted to use his Roger Assistive Devices. At that hearing, among other things, the Judge found that AB's half-page skeleton argument filed on 25 June 2021 did not comply with paragraph 10 of the order of 4 May 2021. Further to that hearing, the Judge made an order dated 12 July 2021 (sealed on 15 July 2021) in which she:
- i) refused AB's application dated 25 June 2021 with regard to (a) her recusal from the costs proceedings arising out of Claim 6LV and Claim 7LV, (b) a stay of those proceedings, (c) a direction that the MoJ should advise as to steps taken in relation to AB's appeals, and declared each of those parts of the application to be totally without merit;
 - ii) ordered AB to pay the MoJ's costs of AB's application dated 25 June 2021 on the standard basis, to be assessed at a hearing to ordered further to paragraph 5 of the order;
 - iii) declared that AB was not entitled to pursue any of his oral reviews of any of the detailed assessments of any of the bills (having failed, as recorded in the fifth and sixth recitals to the order, to comply with paragraph 10 of the Judge's order dated 4 May 2021);
 - iv) ordered (in paragraph 5) that the matter be adjourned to a hearing on the first open date after 28 days with a time estimate of 1 day, to take place in person, at which the court would deal with the rest of the matters outstanding from paragraph 9 of the order dated 4 May 2021; and
 - v) refused AB's application for permission to appeal.
109. The judge's reasons for making the order were given *ex tempore* at the hearing on 12 July 2021 and in summary form in Form N460, where she gave her reasons for refusing permission to appeal. This order is the subject of the Third PTA Application.
110. On 12 July 2021, the Judge also made in order in relating to the costs arising out of Claim E11, in which she:
- i) ordered that, unless AB by 4:00 pm on 9 August 2021 commenced detailed assessment proceedings in respect of the costs ordered in his favour by paragraph 3 of the order of HHJ Freeland QC dated 13 March 2020, then all the costs to which AB was entitled under that order would be disallowed;
 - ii) ordered that AB pay the MoJ's costs of the MoJ's application dated 15 June 2021, on the standard basis, to be assessed at the detailed assessment of AB's costs in relation to Claim E11, if not agreed;
 - iii) refused AB's application that the Judge recuse herself from the costs proceedings arising out of Claim E11; and

- iv) refused AB's application for permission to appeal against paragraph 3 of her order (described at (iii) above).
- 111. The judge's reasons for making the order were given *ex tempore* at the hearing on 12 July 2021 and in summary form in Form N460, where she gave her reasons for refusing permission to appeal. This order is the subject of the Fourth PTA Application.
- 112. On 28 July 2021, AB filed each of the Third PTA Application and the Fourth PTA Application.
- 113. On 29 July 2021, the court notified the parties that the adjourned hearing to consider the outstanding issues in the costs proceedings relating to Claim 6LV and Claim 7LV would take place on 5 October 2021.

Procedural history of these appeal proceedings

- 114. On 2 September 2021, AB made an application that the costs proceedings before the Judge be stayed pending the determination of four appeals that I am considering in this judgment and for various other directions in relation to his intended appeals.
- 115. On 20 September 2021, Stewart J made four orders without a hearing (each order sealed on 21 September 2021), each order in essentially the same terms, with the same supporting reasons, in relation to each of AB's four intended appeals. Stewart J noted in each order that the appeal to which the First PTA Application relates (QA-2020-000239) was already linked with the appeal to which the Second PTA Application relates (QA-2021-000110) and then ordered that these appeals be further linked to the appeals to which the Third PTA Application (QA-2021-000175) and the Fourth PTA Application (QA-2021-000179) relate. Each of the four orders also, in relation to the relevant appeal, included the following additional orders, namely, that:
 - i) AB file a composite appeal bundle for the four appeals, including documents relevant to AB's application dated 2 September 2021, the appeal bundle to comply with the normal requirements of PD 52B, to be filed by 4:00 pm on 27 September 2021 and served on the MoJ on the same day;
 - ii) AB's application dated 2 September 2021 be heard by a High Court Judge on a date to be fixed, not before 5 October 2021 and not later than 29 October 2021, with a time estimate of three hours, and, if the High Court Judge hearing the application considers it appropriate, the PTA Applications also to be heard on the same occasion, with the MoJ expected to attend and with AB permitted to use his Roger Assistive Devices at the hearing; and
 - iii) the hearing before the Judge (that is, Costs Judge James) on 5 October 2021 be stayed pending determination of the hearing referred to in paragraph 3 of the order (described at (ii) above) with the question of whether the stay shall continue to be determined at that hearing by the High Court Judge.
- 116. On 27 September 2021, AB filed an application for further directions and for more time to prepare his grounds of appeal and skeleton argument.

117. On 28 September 2021, the MoJ applied to strike out AB's application of 2 September 2021 and the appeals and for the matter to go back to the Judge or, alternatively, for the four appeals to be considered after the Judge had finished her tasks.
118. On 15 October 2021, the hearing ordered by Stewart J on 20 September 2021 took place before Eady J. At the hearing, AB, who had represented himself throughout the costs proceedings before the Judge, was represented by counsel, Mr David Pilling, who appeared before me for AB in respect of the PTA Applications. The MoJ was represented by Mr Paul Joseph, who acted for the MoJ in relation to the costs proceedings before the Judge, and appeared for the MoJ before me in relation to the PTA Applications.
119. In her order made on 15 October 2021 (the minute of order having been signed and sealed on 18 October 2021), Eady J made the following orders:
- i) the anonymity order in respect of AB that had been made by Jeremy Baker J in relation to Claim 6LV and Claim 7LV was extended to Claim E11;
 - ii) any application to remove or vary the anonymity order was to be filed and served by the MoJ by 4:00 pm on 27 October 2021 and any response by AB to be filed and served by 4:00 pm on 8 November 2021 (the parties were reminded that, even in the absence of an application, the court might choose in the future to consider the continuation of the anonymity order and the parties needed to be prepared to deal with that issue);
 - iii) the time for filing and serving the composite appeal bundle ordered by Stewart J on 20 September 2021 was extended to 4:00 pm on 14 October 2021;
 - iv) AB had permission to rely on the consolidated Grounds of Appeal, skeleton argument and chronology filed and served with the appeal bundle;
 - v) the hearing of the PTA Applications remained listed for 17 November 2021 with a time estimate of 1 day;
 - vi) the MoJ had permission to rely on a skeleton argument in relation to the issue of permission to appeal, to be filed and served by 4:00 pm on 1 November 2021, was directed to attend the hearing on 17 November 2021 and had permission to be heard;
 - vii) AB was to file and serve a bundle of authorities and other source material (agreed if possible) by 4:00 pm on 8 November 2021, together with suggested pre-reading for the judge conducting the hearing of the PTA Applications;
 - viii) the MoJ's application dated 28 September 2021 was dismissed; and
 - ix) AB was to pay the MoJ's costs of AB's applications of 2 September 2021 and 27 September 2021 and the MoJ's application of 28 September 2021, summarily assessed in the sum of £8,500.

Adjournment of hearing on 17 November 2021

120. As noted and confirmed by the order of Eady J of 15 October 2021, this matter was originally listed for hearing on 17 November 2021. However, no pre-reading time was allocated for it by the Listing Office, despite the parties having indicated to the Listing Office that a day's pre-reading time was necessary, given the long and complex history of these proceedings and the volume of documents that the parties considered should be read by the court before the hearing.
121. I note in this regard that the materials listed in the Combined Suggested Reading List prepared by the parties amount to nearly 750 pages, the Appeal Bundle runs to 3,169 pages, and further documents were provided to the court shortly before the hearing. In addition, the MoJ filed a short supplemental bundle amounting to a further 109 pages.
122. Accordingly, with the agreement of the parties, I adjourned the hearing to 8 December 2021 to allow time for judicial pre-reading.
123. Prior to hearing on 8 December 2021, I read all of the documents listed in the Combined Suggested Reading List, which includes AB's Chronology as well as the MoJ's chronology, to each of which I have already referred.
124. During the course of preparing this judgment, I have carefully re-read all of those documents, including the skeleton arguments, and also carefully read numerous other relevant documents in the Appeal bundle and in the MoJ's supplemental bundle. This includes the transcripts of the hearings before the Judge on 3 May 2019, 14 May 2019, 14 September 2020, and 12 July 2021.

Confidential papers submitted by AB before the hearing

125. Shortly before the hearing on 17 November 2020, a member of the court staff handed papers to me in hard copy, telling me that they had just been delivered to the court on behalf of AB for my attention and that they were sensitive, private and confidential papers. The materials were for my eyes only.
126. I was concerned that these materials might not have been provided to the MoJ as well, given the manner in which they were provided to me. I did not look at any of the papers but instead immediately sealed them in a large envelope, appropriately marked as private, confidential, and not to be opened without my permission, which I have kept ever since under lock and key in my room at the court.
127. I raised the receipt of these papers with the parties at the beginning of the short hearing on 17 November 2021. Mr Joseph for the MoJ confirmed that the MoJ had not received the papers. In light of that fact, I indicated that I would not look at the materials unless and until good reason for me to do so was established, including a legitimate basis for me to consider papers that had not been provided to the MoJ. That point has never been reached, and I have therefore not opened the envelope or considered those papers. When considering the consequences of this judgment, AB should indicate whether he wishes to have the return of these materials by an appropriate secure route or would prefer for the envelope and its contents to be confidentially destroyed unopened under my supervision.

Consolidated Grounds of Appeal

128. Further to the orders of Stewart J and Eady J, AB has prepared and filed consolidated grounds of appeal (marked “Draft Consolidated Grounds” in the appeal bundle) dated 13 October 2021, grouping his challenges into three categories:
- i) challenges on the ground of actual or apparent judicial bias by the Judge;
 - ii) challenges to specific orders on the ground that they were unjust due to serious procedural irregularity in the proceedings before the Judge; and
 - iii) challenges to specific decisions and findings on the basis that the Judge erred in law and/or in the exercise of her discretion outside the generous ambit within which reasonable disagreement is possible.
129. The consolidated grounds of appeal make clear that they are to be read with his consolidated skeleton argument dated 13 October 2021. I also note that the consolidated skeleton argument is signed by AB’s firm through which he was represented at that time, rather than by his counsel, Mr Pilling.
130. At the hearing on 8 December 2021, Mr Pilling focused relatively little on the accusations of judicial bias in the consolidated skeleton argument and made the bulk of his submissions on the Misconduct Judgment, although he was careful to make clear that no submission made in the consolidated skeleton argument were to be treated as abandoned simply because he did not mention it at the hearing. I have considered all of the arguments raised by and in the consolidated grounds of appeal, consolidated skeleton argument and orally by Mr Pilling, as well, of course, as the MoJ’s skeleton argument and the oral submissions of Mr Joseph.
131. As the foregoing summary of the consolidated grounds of appeal suggests, AB makes many allegations against the Judge, about her alleged bias, about the fairness of her conduct of the costs proceedings and of her dealings with him, and about her competence and judgment. It is not necessary or appropriate, in my view, to detail each allegation or every instance in this judgment, particularly given that this is not the hearing of the appeal but only consideration of whether there is any one or more ground of appeal that is arguable such that permission to appeal should be granted in relation to one or more of the seven orders subject to appeal.
132. I acknowledge that this judgment is long for a judgment dealing with applications for permission to appeal, but I considered it necessary to set out the long and complicated history as it helps to explain the orders and other rulings, including the Misconduct Judgment, that have been made by the Judge during the course of the costs proceedings, and AB’s reaction to them.

Legal principles

133. For present purposes, the relevant legal principles are well-known and appear to be common ground.
134. The criteria for granting permission to appeal are set out in CPR r 52.6, namely, whether the appeal would have a real prospect of success or there is some other

compelling reason for the appeal to be heard. Under CPR r 52.21, the appeal is limited to a review of the decision of the lower court and will only be allowed if the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings of the lower court.

135. Some of the orders appealed against are against case management decisions. An appellate court will not lightly interfere with a case management decision made by a lower court: *Mitchell v News Group Newspapers Ltd (Practice Note)* [2014] 1 WLR 795 at [52] (Lewison LJ), quoted in *Abdulle v Commissioner of Police of the Metropolis* [2016] 1 WLR 898 at [26].
136. Much of the rest of the proposed appeals are against findings of fact, particularly in the Misconduct Judgment. An appellate court will only allow such an appeal if it determines that the factual finding was unsupported by the evidence or was a decision that no reasonable judge could have reached: *Haringey LBC v Ahmed* [2017] EWCA Civ 1861 (Hamblen LJ) at [31]; see also *Staechelin v ACLBDD Holdings Ltd* [2019] EWCA Civ 817 (Lewison LJ) at [30].
137. Both parties agreed that Freedman J's review of the law on judicial bias in *Surrey Heath Borough Council v Robb* [2020] EWHC 1952 (QB) at [19]-[29] is a useful one, which cites the relevant leading authorities, including the classic statement of the test in the speech of Lord Hope in *Porter v Magill* [2002] 2 AC 357 at [103], whether:

“... the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”
138. I have had regard to that helpful summary and the relevant principles in the cases cited by Freedman J.

Challenges on the grounds of judicial bias

139. In the consolidated grounds, AB alleges that the Judge exhibited actual bias against him on grounds of pecuniary and self-interest and becoming a judge in her own cause. These grounds are hopeless.
140. AB has chosen to bring litigation against the Judge. She has legal representation in the case. As she noted herself in her ruling on 12 July 2021 refusing AB's application that the Judge recuse herself from the costs proceedings in relation to Claim 6LV, Claim 7LV and Claim E11, it cannot be that a litigant can force a change of judge by the expedient of suing the judge. The fact that AB made a complaint about the Judge to the Judicial Conduct Investigations Office (JCIO) that was dismissed is also not a reason for the Judge to have recused herself. Any alleged breaches of data protection requirements or the anonymity order (none of which are admitted by the Judge and about which I am not in a position to make a judgment) are not evidence of bias. The fact that AB has made applications to the Judge about data handling does not make her now a judge in her own cause.
141. AB also alleges that she exhibited apparent bias against him by, for example, having:
 - i) pre-determined issues before considering the arguments of AB;

- ii) made offensive comments to or about AB;
 - iii) communicated unilaterally with the MoJ;
 - iv) had access to without prejudice material;
 - v) failed to consider all of the publicly available evidence,
 - vi) conducted proceedings in an irregular manner;
 - vii) treated AB differently from the MoJ to AB's detriment;
 - viii) demonstrated animus toward AB;
 - ix) been incompetent; and
 - x) made factual errors.
142. The bulk of AB's submissions in his consolidated skeleton argument concern the ground of judicial bias, actual or apparent.
143. Having reviewed each of the seven orders subject to a PTA Application and the written reasons for them, the transcripts of the hearings referred to in the grounds of appeal, relevant correspondence, the Judge's rulings on various matters, the written and oral submissions of the parties and the other documents referred to in those submissions, I find no arguable example of judicial bias, actual or apparent, by the Judge.
144. The documents, including the Judge's orders, written reasons, and other rulings show, to the contrary, an experienced costs judge doing her best to manage costs proceedings in difficult circumstances, including those created by the Coronavirus pandemic, and doing so with considerable patience and fairness. A considerable part of the difficulty faced by the Judge throughout has been the conduct of AB, as she details in the Misconduct Judgment.
145. In relation to the ground of alleged judicial bias, there are many assertions in the consolidated skeleton argument, but none is borne out by the documents. Some of the examples also appear to be off point. It is not made clear by AB, for example, how alleged incompetence or error in fact-finding could be examples of actual or apparent bias. I should add that in my review of the Judge's orders, reasons and rulings I have not found any example of a material error, such that the Judge's decision to make any of the orders appealed against was wrong in law, nor have I found any reason to doubt any of her findings of fact.
146. As my summary of the course of the costs proceedings demonstrates, and in particular the summary of the Misconduct Judgment, the Judge has had occasion to criticise AB in robust terms. She has given detailed reasons for that criticism. Robust criticism is not evidence of bias. The transcripts of the hearings also, at times, include robust exchanges between the Judge and AB. That is not evidence of bias.
147. In short, I have found nothing that supports AB's case that the Judge has pre-determined issues before considering his arguments, made offensive comments to

or about AB, conducted proceedings in an irregular manner, treated AB unfairly relative to her treatment of the MoJ, or demonstrated animus toward AB.

148. As to unilateral communication by the Judge with the MoJ, there is no evidence of this relevant to these appeals. There is some discussion between the Judge and Mr Joseph recorded on the transcript after AB had abruptly left the in-person hearing on 3 May 2019 and before he joined (late) the telephone hearing on 14 September 2020. This was entirely natural, in the circumstances, and did not involve any detriment to AB. He was, in each case, voluntarily absent from hearings in open court. There was no substantive unfairness to AB as a result of those brief conversations, and they do not amount to evidence of bias.
149. As to the without prejudice material that was inadvertently sent to the Judge, she made clear that she did not have regard to it. That is neither evidence of actual or apparent bias nor a reason why she should have recused herself from these costs proceedings.
150. Finally, there is no requirement that a Costs Judge consider “all of the publicly available evidence” (rather than simply the evidence that the receiving party is required to provide in compliance with PD 47, paragraph 13.12), but even if there were, the failure to do so would not be evidence of bias, actual or apparent.
151. At the hearing, Mr Pilling made the argument that, given the findings of misconduct made by the Judge in the Misconduct Judgment which concerned the costs proceedings arising out of Claim 6LV and Claim 7LV, a fair-minded and informed observer would consider there was a real risk that the Judge would have pre-determined views on the costs arising out of the Claim E11 proceedings. This, in my view, does not follow. In that regard, I note the following observation in *Locabail (UK) Limited v Bayfield Properties Ltd* [2000] QB 451 at [25]:

“... The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. ...”
152. As may be self-evident, but in any event is clear from context, the Court of Appeal is speaking there of a sustainable objection on the ground of judicial bias.
153. In short, the Judge was right to refuse AB’s various applications that she recuse herself. His grounds of appeal on the basis of judicial bias are, in my view, totally without merit.
154. *Challenges to specific orders on grounds of serious procedural irregularity*
155. There is nothing in the documents that raises an arguable ground of appeal on the basis that any of the seven orders appealed against was unjust on the grounds of serious procedural irregularity. AB makes much of a reference by the Judge to Claim 6LV and Claim 7LV being a “relatively simple GDPR claim” on the basis that the GDPR was not then in existence. In context, this was a minor imprecision in her use of language, not a substantive error, as it is clear that she simply meant to characterise Claim 6LV and Claim 7LV as relatively simple claims. He disputes that

characterisation, but as nothing turns on it, it is not evidence of “serious procedural irregularity”.

156. Most, if not all, of the procedural difficulties experienced during the costs proceedings arising out of Claim 6LV and Claim 7LV appear to have been down to the approach taken by AB to the proceedings, including his failure to comply with deadlines, particularly for the provision of written submissions (as discussed earlier in this judgment). This made it difficult for the Judge at a number of stages of the proceedings, and the record shows that she made a number of case management decisions that were intended to keep things, in her own words, “on track”. AB had ample opportunity to express his views and for those views to be considered by the Judge. The Judge’s case management decisions about mode of hearing were constrained at times by the conditions of the Coronavirus pandemic. There was nothing unfair in any of the case management decisions she made to ensure the progress of the costs proceedings despite those constraints. A good example of this was her order of 14 September 2020 (which has not been appealed), in which she provided for written submissions so that matters could make progress following the abandonment of the telephone hearing on 14 September 2020. Her order provided a fair and sensible way forward in the circumstances.
157. Mr Pilling at the hearing described the nub of the appeal as being that the Judge had reached findings of fact, particularly in the Misconduct Judgment, on an improper basis because AB did not have the opportunity to provide evidence, as opposed to submissions, or to have his concerns addressed at an oral hearing. There was no arguable unfairness, however, in the approach taken by the Judge as reflected in her various orders, which, in each case, she was justified in making for the reasons she gave.
158. Having carefully reviewed each of AB’s challenges to various orders on the basis that they were unjust on the ground of serious procedural irregularity, I consider that each is bound to fail as a ground of appeal and they are, therefore, in my view, totally without merit.

Challenges to specific decisions and findings

159. In relation to AB’s various challenges to specific decisions and findings made by the Judge, for example, in relation to her decision in the provisional assessment of the AB Bill that he was not entitled to success fees, having carefully reviewed each challenge, I find that none of them is arguable. Each is bound to fail as a ground of appeal and therefore is totally without merit.

Summary and conclusion

160. The bulk of this combined appeal against seven orders made by the Judge concerns case management decisions by the Judge or factual findings by the Judge. None of the challenges to her case management decisions or to her factual findings comes close to surmounting the relevant threshold for a successful challenge on either of those bases. Nor are any of the remaining grounds arguable.

161. Accordingly, I refuse each of the First PTA Application, the Second PTA Application, the Third PTA Application, and the Fourth PTA Application. I will certify each of them as totally without merit.