OUTER HOUSE, COURT OF SESSION

[2024] CSOH 50

P1082/23

OPINION OF LORD SANDISON

In the Petition of

CAINS TRUSTEES (JERSEY) LIMITED and CAINS FIDUCIARIES (JERSEY) LIMITED as TRUSTEES for the EASTGATE UNIT TRUST

Petitioners

for

Judicial review of decisions of the Highland Council taken on 28 August and 14 September 2023

Petitioners: Burnett KC, A. Sutherland, Sol Adv; Burness Paull LLP
Respondent: Crawford KC, Colquhoun; Harper Macleod LLP

16 May 2024

Introduction

[1] In this petition for judicial review, the petitioners challenge the validity of decisions of the Highland Council to progress with proposals to redesign Academy Street, Inverness, aimed at greatly restricting vehicular traffic on the street. The hearing which took place before me was to determine whether that challenge was either incompetent or premature.

Background

[2] The petitioners are the trustees for the Eastgate Unit Trust, which owns the Eastgate Shopping Centre, Inverness. The centre is located at the east end of Academy Street there. The respondent is the Highland Council. On 28 August 2023 its City of Inverness Area Committee decided and resolved that officers should proceed to finalise a proposed design for Academy Street and consult on a relative Traffic Regulation Order. That decision was affirmed by a meeting of the full council on 14 September 2023.

[3] The petitioners claim that a non-statutory consultation exercise had been launched in May 2022 on a design proposal which did not indicate that there was any intention severely to restrict the use of Academy Street as a through route for private vehicles. Various consultation events were held. On 14 November 2022 another design proposal was put forward in a report to committee of the respondent's Executive Chief Officer for Infrastructure, Environment & Economy. That proposal involved a restriction of motorised vehicular access to and through Academy Street, and on 24 November 2022 the Area Committee resolved that officers should proceed with development of that design. The decisions of 28 August and 14 September 2023 which are challenged are said to concern a variant of that fresh proposal. The petitioners challenge the validity of the 2023 decisions on the basis that there was a failure to carry out proper consultation, that there was a failure to have regard to material considerations, that an internal report misled the Area Committee and in turn the full council in relation to the 2023 decisions on a material issue, and that the respondent's decisions were predetermined and pursue an improper purpose. Those are not issues that fall for decision at this stage of the proceedings.

[4] The respondent maintains that the decision challenged by the petition is not amenable to judicial review. It points out that, in terms of the Road Traffic Regulation

Act 1984, the appropriate mode of challenge to a Traffic Regulation Order ("TRO") is a statutory appeal to the Inner House of this court, and that a TRO may not be challenged, before or after it is made, except in accordance with the provisions of the 1984 Act. The decision to proceed with the proposal under consideration was, it claims, one to commence the process for making a TRO, in accordance with Part II of the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999, and the petition amounts to an attempt to challenge the TRO which the respondent may ultimately make, which it says is incompetent by way of a petition for judicial review. It further maintains that, in any event, no TRO having yet been made, the petition is premature. It argues that the consultation exercise which took place was part of an iterative process of design development, and that formal consultation, against the background of traffic and economic impact assessments, will be carried out under statute as part of the ultimate TRO process.

Relevant provisions

[5] The Road Traffic Regulation Act 1984 provides as follows:

> *"1.— Traffic regulation orders outside Greater London.*
>
> (1) The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a *'traffic regulation order'*) in respect of the road where it appears to the authority making the order that it is expedient to make it—
> [for various specified reasons]
>
> *2.— What a traffic regulation order may provide.*
>
> (1) A traffic regulation order may make any provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the order …
>
> …

> Schedule 9
> *35.*
> If any person desires to question the validity of, or of any provision contained in, an order to which this Part of this Schedule applies, on the grounds—
>
> (a) that it is not within the relevant powers, or
> (b) that any of the relevant requirements has not been complied with in relation to the order,
>
> he may, within 6 weeks from the date on which the order is made, make an application for the purpose to the High Court or, in Scotland, to the Court of Session.
>
> …
>
> *37.*
> Except as provided by this Part of this Schedule, an order to which this Part of this Schedule applies shall not, either before or after it has been made, be questioned in any legal proceedings whatever."

Respondent's submissions

[6] On behalf of the respondent, senior counsel submitted that, in preparing for the formal process for the imposition of a TRO on Academy Street in terms of section 1 of 1984 Act, the respondent had chosen to conduct a public consultation and engagement (or "optioneering") exercise in order to enable the identification of a single TRO proposal upon which a formal statutory process (including a mandatory consultation) would then take place. It was against the outcome of that exercise that the petitioners had brought this challenge. Reference was made to various reports and minutes leading up to and including the decision complained of.

[7] The petitioners had failed to understand the various aspects of the process undertaken by the respondent in considering whether to make a TRO for Academy Street. Optioneering was not a process which led directly to a real-world outcome, but was simply an administrative step engaged in by the respondent when consideration was being given to the formulation of a TRO. The fact that the respondent had decided in 2023 to proceed to

develop and progress the current proposal did not in itself make any changes to traffic regulations on Academy Street, and did not render the eventual adoption of the proposal within a TRO inevitable. The petitioners had challenged an intermediate step in an overall procedure, which rendered the entire challenge premature. Moreover, the availability of statutory appeal of any TRO which might ultimately be made by the respondent rendered the petition incompetent.

[8] The respondent was the traffic authority for Inverness for the purposes of the Road Traffic Regulation Act 1984. Sections 1 and 2 of the 1984 Act set out its power to make TROs, and the relevant general duty imposed on traffic authorities was set out in section 122 of the Act.

[9] The Act delegated authority to the Secretary of State and to the Scottish Ministers to make regulations for the procedure to be followed in making a TRO, and the current procedure was governed by the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999 (SI 1999/614). In brief, that procedure was follows: First, the local authority had to engage with statutory consultees. Depending on the proposal, the list of statutory consultees would vary, but would always include Police Scotland, the Scottish Fire and Rescue Service, the Freight Transport Association, and the Road Haulage Association. Next, there had to be publication of the proposals in at least one local newspaper (along with appropriate other methods), and documents related to the proposal had to be made available for inspection by the general public. Objections to the proposal could be made in writing by any person, within a period of at least 21 days from publication of the proposal. Such objections had to state reasons, but might otherwise take any form. The local authority was required, in considering whether to make the contemplated TRO, to consider all objections made to the proposal and in certain circumstances had to hold a public hearing.

Having considered any objections made, it would be open to the authority either (a) to make the TRO as proposed, (b) to make the TRO subject to appropriate modifications, (c) to re-start the TRO consultation process with a modified proposal, or (d) to decline to make the proposed TRO. Where an objection had been made to the proposed order, the TRO would be considered by councillors, rather than by an officer of the council.

[10] In order to begin the TRO process, a local authority firstly had to have a draft TRO prepared on which to consult. It was not possible to run the TRO process with more than one proposal at a time, although members of the public might suggest alternative schemes when submitting objections to a proposal. It was fundamental to the statutory and regulatory scheme that a single proposal was published, consulted upon, and then considered by the local authority. The respondents decided in the present case to undertake a pre-TRO consultative process by way of optioneering. The intention was to seek public engagement in preparing a draft TRO for submission to more formal public consultation in accordance with the 1999 Regulations. Optioneering was intended to be an iterative process, whereby an initial proposal would be changed or replaced in the light of ongoing public responses: the eventual outcome could then be fed into a statutory consultation for a proposed TRO. Optioneering, whilst non-statutory, formed an integral part of the respondent's overall TRO process.

[11] The 1984 Act provided that challenges to TROs made under section 1 of the 1984 Act might be challenged by statutory appeal within 6 weeks of the date when the order was made to the Court of Session, and not otherwise. The decision dated 14 September 2023 challenged by the petitioner was a decision to "proceed with finalising the proposed design and consult on a Traffic Regulation Order". That was a decision to commence the statutory TRO process, in terms of the 1999 Regulations. A challenge to a decision to begin the TRO

process was a challenge to a TRO "before it has been made". The intention of the provision was clearly to prevent the premature challenge of a TRO before it had been adopted by the relevant traffic authority, and the present petition fell squarely within that prohibition. Accordingly, it was incompetent.

[12] In any event, it was well-established that the availability of an alternative route of appeal was an absolute bar to challenge by way of judicial review: see, in the particular context of the 1984 Act: *Strathclyde Buses Limited* v *Strathclyde Regional Council* 1994 SLT 724. Even if the statute did not explicitly prohibit the bringing of a challenge to a TRO by way of judicial review, it would be incompetent to seek to do so. If a TRO were ultimately to be adopted by the respondent, it would be open to the petitioners to challenge it by way of statutory appeal. If they did so, it would be open to them to seek *interim* suspension of the TRO, to prevent it coming into effect whilst the appeal was in dependence. The petitioners would not lose the benefit of any of the grounds of challenge stated in the petition by having to wait to bring their challenge by way of statutory appeal in due course.

[13] The question in law was whether the decision challenged was an antecedent step, separate and distinct from any eventual decision to put in place a TRO under the 1984 Act. If so, then the decision was not part of the TRO process and could legitimately be challenged by way of judicial review. Reference was made in this connection to *R* v *Cornwall County Council, ex parte Huntington* [1994] 1 All ER 694, per Simon Brown LJ (Sir Stephen Brown P and Peter Gibson LJ concurring) at 700 - 701, and to *The Manydown Company Ltd* v *Basingstoke and Deane Borough Council* [2012] EWHC 977 (Admin) at [70], [77] - [78] and [81] - [88].

[14] Even if the present petition was competent, it was manifestly premature. The true object of the petitioners' challenge was not the decision of 14 September 2023 (which, of itself, had no real-world effects), but the TRO which might ultimately be adopted by the

respondents. Before any TRO was adopted, the respondent would require to follow the procedure set out in the 1999 Regulations. Consultation with statutory consultees had begun on 15 December 2023, but there was as yet no draft TRO. Publication of the proposal would take place in at least one local newspaper, and the respondent would then make documents related to the proposal (including impact assessments) open for inspection by the general public. That had not yet taken place. The petitioner could object to a proposed TRO on the basis that an alternative scheme would be preferable. The respondent would, in considering whether to make the TRO, consider all objections made to the proposal. Having considered the objections made (if any), it would be open to the respondents to either (a) make the TRO as proposed, (b) make the TRO subject to appropriate modifications, (c) re-start the TRO consultation process with a modified proposal, or (d) decline to make the proposed TRO. No TRO had yet been made in respect of Academy Street; neither was one likely to be made (in any form) for several months. On consideration of the objections, or the conclusions of the economic and traffic impact assessments, the respondent might decide not to make the proposed TRO. Even if the respondent went ahead with the proposal, the extent to which the grounds of challenge might vitiate the ultimate making of a TRO could not be determined until that TRO was actually made, since neither its ultimate form, nor the respondent's considered reasons for making it, were yet known. The outstanding statutory procedure, and the fact that the form of the TRO had not been determined, rendered the petition premature.

[15] For those reasons, the court should dismiss the petition as incompetent, failing which dismiss it as premature.

Petitioners' submissions

[16] On behalf of the petitioners, senior counsel submitted that the respondent's decision to proceed with finalising the proposed design was the end of a non-statutory process taken to determine in principle the future design for Academy Street. It was not part of a TRO process, was intended to have (and indeed was having) "real-world effect" and was amenable to judicial review.

[17] In relation to the competence of the petition, the challenge did not concern the TRO process. That statutory process did not start until December 2023. The respondent chose to undertake an exercise to decide how Academy Street should be redesigned and it chose to consult the public as part of that exercise. It was essentially making a decision on a policy position. The papers relevant to the process which had been gone through, and to the decision reached, were further referred to. The petitioners challenged the respondent's decision to exclude the previous option and prefer the current proposal as its chosen design for Academy Street. That decision was not part of any TRO process. It was a prior decision. Any statutory ouster of the court's jurisdiction should be interpreted strictly in accordance with the words Parliament has chosen for it. *Strathclyde Buses* dealt with a very peculiar set of circumstances remote from those in the present case, and did not assist the respondent. The decisions impugned affected the parameters of the TRO process before it had begun. They were decisions antecedent to, and not part of the process. They were decisions *inter alia* to reject the previous option and to subject only the current proposal to further design consideration and a TRO adoption process. The current proceedings had been commenced before any TRO process began. An early and prompt claim for judicial review made it possible to test the lawfulness of decisions taken in the run-up to a statutory process, saving time and expense: *Manydown* at [82] - [85] and [88]. Administrative decisions that chose

which procedure to follow could be subject to judicial review if there was no separate statutory right of appeal available in relation to them: *Lakin Ltd* v *Secretary of State for Scotland* 1988 SLT 780, *London and Clydeside Estates Ltd* v *Secretary of State for Scotland* 1987 SLT 459.

[18] In relation to the question of prematurity, the question for the court was whether the decisions under challenge were amenable to judicial review. The petitioners submitted they were, and that the challenge was not premature. The Academy Street project did not comprise only a proposed TRO being promoted by the respondent as roads authority. It was part of a wider strategy for the city as a whole, the Inverness Area Committee having agreed in August 2021 "to retain a Spaces for People intervention in Academy Street' pending a full accessibility assessment and the delivery of a permanent scheme." When introducing his report to the full council meeting on 14 September 2023, the Executive Chief Officer for Infrastructure, Environment and Economy explained that the Academy Street proposal was "one of a number of projects being put together to regenerate the city centre and increase its appeal for residents, visitors and businesses…". The decisions that were approved were to note the "design progress, which struck a balance between delivering sustainable transport, city centre regeneration and supporting the city centre economy"; and agreeing that:

> "officers proceed with finalising the proposed design and consult on a Traffic Regulation Order, as explained in section 10 of the report, including appropriate equalities and economic impact assessments while exploring additional measures to encourage people to travel to the city centre including park and ride and improved public transport and active travel".

[19] The 1999 Regulations did not require the respondent to consult the public as part of the process for preparing a proposal for a TRO. That was an administrative matter for the respondent and its officers. The consultation exercise it chose to carry out was not part of

the statutory process for making a TRO. There was no requirement for the Inverness Area Committee to authorise officers to proceed with a TRO. The purpose of the respondent's consultation exercise on the redesign of Academy Street was so that that Committee could reach a decision on the principle of the design for Academy Street and instruct officers to proceed with a TRO based on that particular design principle. It was clearly intended to have the effect of determining the design for Academy Street in order to further the respondent's wider aims for the city centre. The TRO process was simply one of the means by which that decision was to be implemented. It was clear from concerns regarding the consultation process and the potential impact of the proposal raised by elected members in November 2022, and again in August and September 2023, that they considered they were taking a decision that would have consequences. The public consultation process on the design options for Academy Street and the subsequent decision to proceed with the current proposal was a discrete process. It was not merely a "step on the way" to a TRO. The respondent chose to undertake a consultation in relation to an "optioneering" process, to take a decision on its preferred option at the end of that process, and only after that decision had been taken, to proceed to commence the statutory process for a TRO based solely on that option. The prior decision affected the parameters of the TRO process before it had begun. It was a decision antecedent to, and not part of, the process and was amenable to judicial review. Judicial review, generally, was concerned with actions or other events which had, or would have, substantive legal consequences - for example, by conferring new legal rights or powers, or by restricting existing legal rights or interests. However, the courts should take a broad view of the justiciability of decisions, which would include "high policy" that would plainly be material to considerations in other decisions: see *R (on the application of Greenpeace Ltd)* v *Secretary of State for Trade and Industry* [2007] EWHC 311

(Admin), [2007] Env LR 29 per Sullivan J at [53]. The respondent's decision to proceed with the current proposal as its preferred design was clearly a fork in the road. It claimed that it would be competent to object to the making of the TRO on the basis that an alternative scheme would be preferable. However, it had already excluded the previous option primarily on funding grounds and had said that it would not assess the benefits and drawbacks of alternatives because the optioneering phase had been completed. Indeed, the advice to the Inverness Area Committee in August 2023 was that there was no other design solution, it was essentially the current proposal or nothing. Whilst it would be competent to object on the basis that the previous option was a preferable alternative, the effect of the respondent's decision would necessarily affect the approach to that alternative. It was also clear that the respondent's officers considered themselves bound by its decision on the principle of the design. The respondents' decision to proceed with the current proposal to the exclusion of the previous option had had a "real world effect". The respondent suggested that it would be open to it to "re-start the TRO consultation process with a modified proposal". However, it could not be required to restart the process from May 2022. It could only be required to restart the statutory consultation process for the TRO. The decision to exclude the previous option and proceed with the current proposal as the preferred design principle was not part of the statutory TRO process.

Decision

Competency

[20] The respondent's principal objection to the competency of this petition for judicial review is based on the suggestion that the ordinary supervisory jurisdiction of the court is excluded by paragraph 37 of Schedule 9 to the 1984 Act, which provides that no TRO shall

"either before or after it has been made, be questioned in any legal proceedings whatever." The respondent argues that the only remedy available to a person aggrieved by a TRO is an application to the court within 6 weeks after the order is made, in terms of paragraph 35 of the Schedule.

[21] As a straightforward matter of statutory construction, the respondent's argument in this regard is unfounded. It is clear from the terms of paragraph 37 that what is excluded from the court's supervision is something that can sensibly be described as an order to which the relevant part of the Schedule applies. The paragraph equally makes it clear that the order in question need not be in finalised or approved form; a draft going through the statutory consultation process would qualify for its protection. In the present case, there no order of any kind in existence and paragraph 37 accordingly does not bite.

[22] Turning to examine the relative authorities cited to me, in the *Cornwall County Council* case, the council had made orders relative to rights of way pursuant to the Wildlife and Countryside Act 1981, but in terms of the statutory scheme those orders did not take effect until confirmed by the Secretary of State, a step which had not yet occurred when the plaintiffs challenged their validity on procedural grounds. The Act allowed a person aggrieved by an order which had taken effect to apply to the High Court within 42 days of publication of its confirmation, and provided that the validity of an order should not otherwise be questioned in any legal proceedings whatsoever. It was held, unsurprisingly enough, that the court had no power to quash an extant but unconfirmed order. The court considered that the statutory scheme for challenge was clear and comprehensive. In the present case (where the statutory regime, including the ouster clause, is in any event very different) there is no extant order of any kind. As counsel for the respondent frankly accepted, there may never be one.

[23] Simon Brown LJ observed, citing *R* v *Camden London BC, ex parte Comyn Ching & Co (London) Ltd* (1984) P&CR 417 and *R* v *Secretary of State for the Environment, ex parte Stewart* (1979) 37 P&CR 279, that there might be cases where what was challenged was not a local authority's decision itself, but rather an antecedent step quite separate and distinct from any eventual decision reviewable under the relevant statute (p.701e) and observed that such cases would not be caught by a statutory ouster scheme such as that in the 1981 Act. His Lordship held, however, that a challenge against an extant but unconfirmed order could not be brought within the scope of that principle. Although I do not consider it necessary in the context of the ouster clause at issue in the present case to apply the "antecedent, separate and distinct" test - because the appropriate test here is simply the presence or absence of an order being challenged - had I been applying it, I would have concluded that it aptly described the decisions at which the petition is directed.

[24] In the *Manydown* case, the plaintiff sought to challenge the decision of a local authority not to make available for potential development in its pre-submission draft of a planning core strategy a large site which it owned. In terms of section 113 of the Planning and Compulsory Purchase Act 2004, certain development plan documents could not be questioned in any legal proceedings except on certain defined grounds. Lindblom J held at [81] to [88] that, as with any statutory ouster of the court's jurisdiction, an interpretation strictly in accordance with the words Parliament had chosen was required. I do not require to have resort to that principle of statutory interpretation in arriving at my view of the proper import of paragraph 37 of Schedule 9 in the present case, but if there had been doubt on that score, the principle would have supported that view.

[25] Lindblom J went on to point out that the challenge before him sought to impugn two decisions which each affected the parameters of the process that would culminate in the

ultimate adoption of a core strategy. Those decisions were antecedent to, and not part of, that process. The statutory ouster did not apply to some prior step on the part of the local planning authority, even one that might vitiate the development plan once adopted. There are obvious parallels with the present case, in that the decisions complained of here are likely (indeed, calculated) to affect the parameters of the Academy Street design and the relative TRO, but are not in themselves a part of the requisite process for making a TRO. However, the terms of the relevant ouster clause in *Manydown* were also so different, in context, from the terms in issue here, as to render inexpedient any attempt at direct application of anything there decided to the present circumstances.

[26] Lindblom J finally observed that the conclusion he had reached was, as well as being legally right, also pragmatic. An early and prompt claim for judicial review made it possible to test the lawfulness of decisions taken in the run up to a statutory process, saving time and expense that might otherwise be wasted. I agree with those observations, but did not find it necessary to have regard to such considerations in arriving at my view on the proper interpretation of paragraph 37. In short, nothing in either *Huntington* or *Manydown* informed my decision one way or the other.

[27] A secondary strand to the respondent's argument on the competency of the petition was based on the familiar argument that the supervisory jurisdiction of the court will not ordinarily be exercised where an alternative remedy exists for the wrongs complained of by the petitioner. As so often, that argument invites a very close examination of what exactly it is that forms the subject of the complaint. In the present case, what is complained of is a decision to start the statutory process towards a TRO within certain pre-defined parameters. As can be seen from its terms, the statutory remedy afforded by paragraph 35 of Schedule 9 to the 1984 Act exists to deal with complaints about the validity of a TRO or any provision

contained in it, on the grounds that it is not within the relevant powers conferred by the Act on the authority making it, or that any of the relevant requirements of the Act or the 1999 Regulations has not been complied with. That is not (or at least not obviously) what the petitioners are protesting about. It is not obvious to me that the grounds upon which they seek to impugn the 2023 decisions would necessarily carry through to be valid grounds upon which any TRO ultimately made by the respondent could be challenged in terms of paragraph 35. Much might depend on the incidents of the TRO process yet to be undertaken. I do not, therefore, consider that it can confidently be said that there exists an alternative remedy rendering recourse to the supervisory jurisdiction incompetent.

[28] The *Strathclyde Buses* case involved a rather complicated set of events whereby an initial petition for judicial review of a decision to implement an experimental traffic order was sisted. The order was subsequently made and recourse was then had to the statutory appeal route, but an attempt was also made to convert the existing judicial review proceedings into a challenge to the order itself. It was held that those proceedings could not be converted by amendment into an attack on the making of the order when paragraph 37 made it clear that such an attack could only be mounted by way of statutory appeal. The case has nothing to say about the competency of the present proceedings, which are not an attack on any extant order.

[29] I did not find the cases of *Lakin* or *London & Clydeside Estates* to have any light to shed on the proper disposal of the issues in the present case.

[30] For the reasons stated, I shall repel the respondent's plea to the competency of the petition.

Prematurity

[31] I do not consider that the petition is premature once its true nature is appreciated. For reasons already explained, properly viewed it does not seek to challenge any TRO; rather, what it challenges are decisions which, in the ordinary course of things, may reasonably be expected to affect the future design of Academy Street. That design will probably require a TRO in order to give it effect, but it will extend, possibly widely, beyond the mere adoption of a TRO. I do not accept that the decisions complained of are equivalent to the "high level" policy decision at issue in the *Greenpeace* case, at least in the sense that they will not affect and inform a slew of further decisions likely to have to be taken by the respondent and others. I did not understand counsel for the petitioners to insist very hard on the analogy. Nonetheless, they do represent a specific determination - it matters not whether it is called a "policy" determination or not - which the petitioners maintain was arrived at unlawfully and which is calculated in due course to affect the future design of Academy Street, a matter in which the petitioners have an obvious and legitimate interest. As already noted, I do not consider it obvious that everything (or indeed anything) of which the petitioners complain would necessarily be capable of being raised as an objection to the validity of any TRO eventually made. Nor is it clear that the current complaints could be ventilated and decided in law as and when a finalised design for Academy Street is eventually arrived at, whether with or without a relative TRO. In these circumstances it cannot plausibly be maintained that the petition embodying them is premature, and I shall repel the respondent's relative plea.

Further issue

[32] In the course of the hearing I raised a further issue with counsel, enquiring whether, if the court were ultimately to reduce the 2023 decisions, that would have any practical effect on the ability of the respondent to give effect to its current plans for the redesign of Academy Street. It will be recalled that the process gone through by the respondent before the decisions in question, the incidents of which are said to have generated the petitioners' grounds of complaint, was an entirely voluntary one. In these circumstances it seemed to me to be at least possible for the respondent, on seeing those decisions reduced, metaphorically to shrug its shoulders and make a new decision in the same terms without any further process whatsoever. Counsel on both sides indicated that they considered that that would be a "risky" thing for it to do. For my own part, I do not immediately see why, suitably advised and acting in accordance with that advice, the respondent might not be able to draw a firm line under what has already happened and yet lawfully proceed upon the same course as that which it is presently pursuing. This might be thought to be a matter capable of affecting fundamentally various aspects of the petition. However, given that the matter was raised by me and not the subject of full argument in the course of the hearing, and in deference to the initial views expressed by both experienced and knowledgeable counsel, I do not (at least for now) press the question further.

Conclusion

[33] I shall repel the respondent's first and second pleas-in-law (relating to the competency and prematurity of the petition respectively) and fix a further hearing for the determination of the remaining substantive issues in the case.