



Neutral Citation Number: [2024] EWHC 2799 (Admin)

Case No: AC-2022-MAN-000483

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

Date: 08/11/2024

Before :

**MR JUSTICE FOXTON**

Between :

**The King**  
**(on the application of Mohammed Naseem Dost,**  
**Tariq Ali Nasim and Wakas Nasim)**

**Claimant**

- and -

**THE CROWN COURT AT MANCHESTER**

**HM REVENUE AND CUSTOMS**

**Defendants**

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**Rupert Bowers KC** (instructed by **Khan Solicitors**) for the Claimants  
**James Fletcher** (instructed by **HMRC Solicitors Office and Legal Services**) for the Second  
Defendant

Hearing date: 31 October 2024  
Draft judgment to parties: 01 November 2024

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**Approved Judgment**

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

.....  
THE HONOURABLE MR JUSTICE FOXTON

Remote hand down. This judgment was handed down remotely at 14:00 on Friday 08  
November 2024 by circulation to the parties or their representatives by email and by release to  
The National Archives.

**Mr Justice Foxton :**

1. On 19 December 2022, the Claimants issued an application in the Administrative Court seeking judicial review of:
  - i) the First Defendant (“**the Crown Court**”)’s decision on 16 September 2022 to issue search warrants; and
  - ii) the Second Defendant (“**HMRC**”)’s decision on 21 September 2022 to execute the warrants so issued.
2. Permission to apply for judicial review was granted by HHJ Davies on 26 January 2024.
3. On 17 July 2024, HMRC filed a consent order signed by both Defendants conceding the judicial review application (having confirmed it would concede the application in April 2024). HMRC also filed a letter confirming its intention to make an application under s.59 of the Criminal Justice and Police Act 2001 (“**the CJP**A”) which would allow it to retain the items seized in the execution of the warrants (“**the Seized Items**”).
4. The one remaining issue in the Claimants’ application, which falls for determination at this hearing, is the relief which the court should grant, and, in particular, whether the court should make a mandatory order for the return of the Seized Items and an order prohibiting HMRC from making an application to retain the Seized Items under s.59 CJP

**The facts**

5. For the purposes of the fact findings which follow, I have had regard to the documents in the bundles before the court and the witness statements of:
  - i) Amjad Hasan, the Claimants’ solicitor;
  - ii) Peter Almond, HMRC’s solicitor;
  - iii) Donna Khan, an HMRC officer; and
  - iv) Zoe McMahon, also an HMRC officer.
6. I have also had regard to certain information provided in correspondence by HMRC, and, on instructions from Ms McMahon, who was present in court for the hearing.
7. On 17 June 2022, HMRC obtained search warrants from HHJ Manley in respect of premises linked to Mr Dost and Mr Wakkas Naseem in substantially the same terms as those in issue in these proceedings. Those warrants could not be executed during the period of their validity because Mr Dost was out of the jurisdiction. At that stage, the application was checked by a barrister (Mahesh Karu) in the criminal advisory team in HMRC’s Solicitors Office and Legal Services (“**SOLS**”), and also by Ms Anne Louise McCusker who is a solicitor and a member of that same team. No skeleton argument was filed on the application.
8. On 16 September 2022, HMRC made a fresh application for search warrants which was updated by the HMRC case team and now included Mr Tariq Naseem, but which was not

further reviewed by the SOLS criminal advisory team. On this occasion, the application was supported by a skeleton argument. That skeleton argument was filed to address concerns raised by Simler LJ in *Ashbolt v HMRC* [2020] EWHC (Admin)1588, [72], in which it was suggested that a judge asked to issue search warrants should be assisted on the relevant case law and legislation, “ideally by means of a short skeleton argument filed in advance of the hearing.”

9. The evidence of Ms McMahon, which was not challenged, was that the search warrant application had been checked by a Higher Investigation Officer, a Senior Investigation Officer and a HMRC Independent Assurance Officer. It was also reviewed by criminal advisory lawyers in HMRC Solicitors Office. Criminal advisory lawyers were consulted on the submission of the skeleton argument.
10. Section 353 of the Proceeds of Crime Act provides two sets of access conditions for search orders: those in s.353(3) (“**the s.353(3) Access Conditions**”) and those in s.353(5) (“**the s.353(5) Access Conditions**”). Ms McMahon (who is not a solicitor) prepared the skeleton argument, and asked Ms McCusker to confirm which set of access conditions should be addressed. It is to be inferred that Ms McMahon was told or came to understand that it was the s.353(5) Access Conditions which were relevant, because the skeleton argument was prepared on that basis.
11. The application form did not state in terms which set of access conditions was being relied upon, but the contents are consistent with reliance on the s.353(3) Access Conditions. As a result the skeleton argument gave cross-references in support of the contention that the s.353(5) Access Conditions were satisfied to parts of the application form which had not been prepared by reference to the s.353(5) Access Conditions.
12. The Judge hearing the application, HHJ Cross KC, had not had an opportunity to undertake any pre-reading. A statement from Ms McMahon was placed before the Judge, and Ms McMahon confirmed in sworn testimony that the duty of candour had been complied with. After the hearing, the Judge rose to sign the warrants. On returning to court, the Judge confirmed that he had now read all the documents and evidential material.
13. The warrants were executed on 21 September 2022.
14. On 3 October 2022, the Claimants’ solicitor, Mr Hasan of Khan Solicitors, wrote to Ms McMahon requesting “the written applications and other information that was placed before the Court in application for the warrants”. Ms McMahon was not in the office when this email was received, and another HMRC officer, Ms Khan, dealt with it. Ms Khan is not a lawyer. On 20 October 2022, Ms Khan provided a redacted copy of the application form, but not the accompanying skeleton argument. Ms Khan stated in her evidence that no one in the case or criminal advisory teams working on disclosure was aware that the skeleton argument should have been disclosed at that stage. Once again, I accept that evidence. Ms Khan also confirms that the significance of the skeleton – which I understand to mean its inconsistency so far as access conditions are concerned with the application form – was not appreciated at this stage. I accept that evidence. It is clear that it was only on 10 January 2023 that the inconsistency between the skeleton argument and the application form was identified by counsel (Mr Fletcher) when HMRC sought advice in relation to these proceedings.

15. On 31 October, Ms McCusker replied to a letter from Mr Hasan stating that HMRC would be making a Public Interest Immunity (“**PII**”) application to the Crown Court in respect of the redacted parts of the application form, although in the event no such application was made.
16. On 9 November 2022, Mr Hasan sent Ms McCusker an email stating that he had instructions to issue proceedings for judicial review (Ms McCusker having previously communicated with the Claimants’ solicitors by email). Further emails were exchanged with Ms McCusker on 15, 16 and 17 November 2022.
17. On 21 November 2022, Mr Peter Almond of HMRC wrote to Mr Hasan stating that he was dealing with the proposed application for judicial review. Mr Hasan replied to Mr Almond on 22 November 2022.
18. On 9 December 2022, the Claimants’ application for judicial review was filed with the Administrative Court.
19. On 15 December 2022, the Claimants’ solicitors sent by email a letter addressed to “FAO Anne Louise McCusker HMRC Solicitors Officers and Legal Services”, addressed to “Dear Sirs”, attaching a courtesy bundle of the filed claim prior to issue. The letter stated, “we await a copy of the sealed claim form and will serve the same upon you once we receive the same.” The email was arguably ambiguous as to whether “you” was a reference to service on HMRC – the more natural construction – or on Ms McCusker personally. While Mr Bowers KC criticised HMRC for not replying to this email (i) the letter stated that the Claimants would be serving their sealed claim form, and HMRC was entitled to wait for this to occur; (ii) I accept that neither Ms McCusker nor Mr Almond (who was also aware of the 15 December 2022 email) understood that service would only be effected by the Claimants by email; and (iii) Ms McCusker was away from 16 December 2022.
20. On 19 December 2022, the Claimants’ claim form was sealed by the court.
21. The sealed claim form was sent to Ms McCusker by email on 21 December 2022. Ms McCusker (who works in the Croydon office, Mr Almond working in the Bristol office) was on holiday from 16 to 28 December 2022. I accept Mr Almond’s evidence that (i) Ms McCusker thought that proceedings would be served on Mr Almond as the individual at HMRC dealing with the proposed judicial review proceedings, and so did not understand on her return to work that there was any need for her to engage with the 21 December email; (ii) Mr Almond was not aware of the 21 December email to Ms McCusker until 5 January 2023 when he returned to work and raised the issue of whether proceedings had in fact been served; and (iii) he did not understand from the email of 15 December 2022 that the Claimants intended to serve only by email. He enquired as to whether there had been service by post, checking the position with two offices, and was informed that there had not.
22. On 9 January 2023, Mr Almond invited the Claimants to withdraw the case on the basis that the proceedings had not been properly served because HMRC had not agreed to accept service by email.
23. A copy of the skeleton argument was provided to the Claimants for the first time when HMRC acknowledged service of the judicial review proceedings and served Summary

Grounds of Defence on 12 January 2023. Ms McMahon has stated that it was in the course of preparing this document that Mr Fletcher, instructed counsel, pointed to the inconsistency between the application form and the skeleton argument, which had not been identified during HMRC's checking processes. It has since been confirmed that this occurred in a conference on 10 January 2023.

24. The Summary Grounds initially took the point that proceedings had not been validly served because the sealed claim form had been sent by email and were out of time, and also challenged the application on the merits. Importantly, HMRC's response itself acknowledged, unprompted, that the skeleton argument had advanced the application by reference to the s.353(5) Access Conditions, and the application form by reference to the s.353(3) Access Conditions, and sought to argue that the substance of the application form indicated to the Judge that he was being invited to consider the s.353(3) Access Conditions.
25. On 19 January 2023, the Claimants filed their Reply to HMRC's Summary Grounds of Defence and an application to amend their grounds to raise the issue of the inconsistency between the application form and the skeleton argument so far as the access conditions were concerned. Amended Grounds were provided to HMRC on 27 February 2023.
26. HMRC provided the Claimants with an unredacted copy of the application form on 27 March 2023.
27. On 4 May 2023, HHJ Davies made an order recording that HMRC had confirmed it was not pursuing the validity of service issue, and (by consent) granting the Claimants' permission to file and serve an amended Statement of Facts and Grounds.
28. On 26 May 2023, the Claimants filed their amended Statement of Facts and Grounds for Judicial Review which introduced a new ground of challenge, based on the inconsistency as to the access conditions relied upon as between the application form and the skeleton argument.
29. On 8 June 2023, HMRC filed an amended Summary Grounds of Defence withdrawing the service complaint, but maintaining HMRC's opposition to the application for judicial review including on the new ground.
30. On 23 June 2023, in their Reply to the amended Summary Grounds of Defence, the Claimants invited HMRC to concede the challenge to the legality of the search warrants.
31. On 15 September 2023, HHJ Davies granted the Claimants permission to file and serve an amended Reply (an application to which HMRC did not object).
32. Permission to seek judicial review was granted by HHJ Davies on 29 January 2024, with some carefully chosen observations on the reasons for granting permission.
33. The claim for judicial review was conceded by HMRC on 19 April 2024.
34. On 19 July 2024, HMRC issued a s.59 application in the Crown Court. HMRC also applied without notice for a restraint order against the First Claimant on the basis that there was a risk that assets would be dissipated. The First Claimant indicated on 26

September 2024 that he would apply to set the restraint order aside, but no such application has as yet been made.

35. On 12 August 2024, the Claimants applied to amend their Claim Form to seek the relief sought at this hearing and disclosure relating to that issue. By letters dated 21 and 23 August 2024, HMRC opposed both those applications. Permission to amend was granted, and the application for disclosure was refused.
36. On 27 September 2024, Ms McMahon filed a witness statement with the court unreservedly apologising for the inconvenience which the proceedings had occasioned and for the failure to identify the inconsistency between the application form and the skeleton argument. Ms Khan also filed a witness statement apologising for the failure to provide the skeleton argument in October 2022.

### **The applicable legal principles**

37. It is accepted that the relief which normally follows a successful challenge to a search warrant will not preclude the investigating authority applying to the Crown Court under s.59 CIPA for permission to retain material seized when executing the unlawful warrant.
38. Section 59(6) of the CIPA provides that “On any application under this section, the appropriate judicial authority may authorise the retention of any property which ... has been seized in exercise, or purported exercise, of a relevant power of seizure, and would otherwise fall to be returned, if that authority is satisfied that the retention of the property is justified on grounds falling within subsection (7).” Those grounds are “that (if the property were returned) it would immediately become appropriate (a) to issue, on the application of the person who is in possession of the property at the time of the application under this section, a warrant in pursuance of which, or of the exercise of which, it would be lawful to seize the property; or (b) to make an order under” various statutory provisions under which the property would fall to be delivered up or produced to the person making the application for retention.
39. However, the Administrative Court does not always leave open the possibility of a s.59 application in cases where a search was effected unlawfully. In *R (Santos-Coelho) v NCA* [2024] EWHC 875 (Admin), [23]-[24], a Divisional Court comprising Dingemans LJ and Henshaw J summarised the position as follows:

“The purpose of section 59 of the CIPA 2001 has been explained in *Chatwani* at paragraph 139. Parliament has provided a second chance to law enforcement agencies who have seized material pursuant to unlawful search warrants. The Crown Court has a discretion to authorise the retention of the material seized, despite the unlawfulness of the search, if were the material to be returned, it would be immediately appropriate to issue a warrant under which it would be lawful to seize the property. In this sense section 59 permits a law enforcement agency to take advantage of its own wrong in unlawfully seizing the materials, by having a second go for the equivalent of a search warrant while retaining the unlawfully seized materials. The Crown Court then has to consider whether it would grant a (notional) application for a warrant. It is right to say that in *Chatwani* itself, that the normal course was not taken because of egregious failures on the part of the National Crime Agency.

The fact that the discretion is vested in the Crown Court, has been said to be a powerful reason for the High Court to exercise restraint when considering whether to order the return of the unlawfully seized materials to the claimant before the making of the application under section 59 of the CIPA 2001. However, as Mr Bird properly accepts, on finding that documents were seized by an agency as the result of an unlawful search the decision to grant relief is a matter for the court's discretion. Therefore, despite an application under section being the norm, there may be circumstances in which it is appropriate for this court to deny an agency any benefit from its wrongdoing by ordering the return or destruction of such material.”

40. I was referred to a number of cases in which the court had considered whether or not to make an order requiring the agency who had effected the unlawful search to return the material seized.
41. In *R (Kouyoumjian & Kouyoumjian) v Hammersmith Magistrates' Court* [2014] EWHC 4028 (Admin, the Divisional Court (Aikens LJ and Mitting J) addressed the issue of whether the Administrative Court should make an unconditional order for the return of items seized by the Metropolitan Police in an unlawful search:
  - i) At [34]-[35], the Court identified as relevant factors (i) whether the court had been misled; (ii) what the reasons were for any misleading information; (iii) any conduct during the course of the proceedings brought to set aside the warrant and its execution; and (iv) the basis on which the relevant authority sought to retain the seized material.
  - ii) At [36]-[37], the Court found that there had been no bad faith by the relevant authority, but that the facts were nonetheless very disturbing, with the warrants being sought for the purpose of the investigation of drugs offences, but the investigation within a very short time “fundamentally shifting” to another type of offending, which shift had only been explained at a very late stage during the hearing before the Divisional Court, with the Divisional Court being misled as to the true position up to that point.
  - iii) At [40]-[42], Aikens LJ stated that when it is accepted that search warrants were obtained unlawfully and were not executed lawfully, the prima facie position is that all material that was seized as a result of those unlawful search warrants should be returned, and that in all the circumstances of the case it was not appropriate to grant the Metropolitan Police the opportunity to make a s.59 application to the Crown Court (no sufficient reason to depart from that prima facie position having been established).
  - iv) At [43], Mitting J said that an order for unconditional delivery up was appropriate because the Metropolitan Police had failed in its duty of candour in failing to explain “why precisely the apparent radical change of target has occurred”.
42. In *R (Chatwani and others) v NCA* [2015] EWHC 1283 (Admin), the Divisional Court (Davis LJ and Hickinbottom J) summarised the proper approach at [136]-[141]:
  - i) The fact that Parliament has countenanced the retention of documents seized as the result of an unlawful search and set out a procedure for enabling the issue of

retention to be determined by a Crown Court judge was an important factor to be taken into account when the Administrative Court is asked to order that such documents be returned without such a procedure, and a powerful reason for restraint.

- ii) There may be circumstances in which it is appropriate for the Administrative Court to deny an agency any benefit from its wrongdoing – including the benefit of having the seized material (and work product from it) available for the pursuit of a section 59 application.
  - iii) On a s.59 application, the Crown Court will be astute to examine the circumstances surrounding the illegal seizure, and any suggestion of bad faith, or even that the agency has adopted a less than rigorous and scrupulous approach to drawing up and executing the initial warrant, will weigh heavily against the exercise of the court's discretion in favour of authorising retention.
  - iv) The Administrative Court will exercise restraint in ordering the return of documents obtained through an unlawful search. Parliament has assigned responsibility for determining issues of retention to the Crown Court; and the Crown Court will have the advantage of being able to consider the documents seized, which the Administrative Court will not.
  - v) There may be circumstances in which it is appropriate to deny the agency of all benefit of the illegal search, irrespective of the nature and content of the documents seized. Those circumstances are likely to focus on the agency's own conduct. If it has acted in bad faith, that is likely to be a compelling reason for not allowing it to retain any benefit from the exercise.
  - vi) However, bad faith is not a prerequisite: the agency's conduct in obtaining and/or executing the warrant or their subsequent conduct may drive this court to give the subjects of the warrants relief to deny the agency of all benefit of the unlawful search. The circumstances in which the court is likely to make such a finding will be rare.
  - vii) On the facts of that case, although the NCA officers had not acted in bad faith, they had acted “with patent and egregious disregard for, or indifference to, the constitutional safeguards within the statutory scheme within which they were operating”, with ignorance at inspector level of the fundamentals of the scheme being operated and with no systemic checks to ensure warrants were not issued without even consideration of the relevant requirements. The errors were grave, and went to the very root of the statutory scheme. It was not a case in which it could be said that, had due disclosure been given to properly informed magistrates, they would inevitably have issued the warrants in any event.
43. Finally, in *R (Brook and others) v Preston Crown Court* [2018] EWHC 2024 (Admin), [71]-[72] Leggatt LJ and Soole J had to consider whether to make an unconditional order for delivery up of the seized material:
- i) Leggatt LJ noted that the Lancashire Police had not acted in bad faith, but there had been “a regrettable number of failings in the way that the application was conducted which began at the very outset with the failure to set out in the written application



a proper basis for making it, followed then by the failure to document at the time what was said at the oral hearing.” This had led in turn to the misdescription of the critical document. Further the warrant was too widely drawn.

- ii) While those matters standing alone would not have made it appropriate to deny Lancashire Police the benefit of the opportunity to seek s.59 relief, there had been repeated refusals during the judicial review proceedings to disclose notes of the discussion which formed the basis of the application, which was not consistent with the duty of candour. That failing was compounded by the fact that, when eventually disclosed, it became apparent that the document had been persistently misdescribed.

### **Analysis and conclusion**

- 44. In this case, I am satisfied that there has been no bad faith nor conduct of a sufficiently serious or pervasive a kind (or as it sometimes put, “egregious” conduct) as to justify the court making a rare order precluding an application by HMRC under s.59 CJPA.
- 45. The first point taken by Mr Bowers KC related to the Claimants’ first ground of challenge, suggesting that there were no reasonable grounds for suspecting that the Claimants had committed a money laundering offence. For this purpose, Mr Bowers KC confined his focus to the material at paragraph 4.4 of the Statement of Facts and Grounds for Judicial Review, and in particular the suggestion that there was no banking evidence to support the assertion that the proceeds of crime were being laundered through the UK banking system or large sums were being transferred abroad. So far as this point is concerned:
  - i) It has not been necessary to consider this issue because HMRC conceded the second ground of challenge, and in these circumstances, the issue has not been properly ventilated before the court.
  - ii) For present purposes, I will simply note that having regard to the detailed information set out in the application form over some 16 pages, I do not feel able to conclude that either this part of the application, or HMRC’s response to ground 1 at paragraphs 53 to 62 of the Summary Grounds of Defence, are obviously weak or non-responsive. Mr Bowers KC accepted that unless the court was able to form a clear view on a relatively brief review of the material, this point could not be relied upon in a context in which the judicial review challenge had been conceded on another ground, and the only remaining issue was one of relief.
  - iii) Indeed, in their Statement of Facts and Grounds for Judicial Review, the Claimants realistically accepted that the material relied upon in the application form to establish the reasonable grounds for suspicion was “superficially persuasive”.
- 46. I accept that the inconsistency between the application form and the skeleton argument so far as access conditions are concerned was a serious failing, but it was the result of an innocent error, and cannot fairly be characterised as egregious:
  - i) This was not a case in which a misleading picture was presented to the Judge on the application, but, in effect, an incoherent one.

- ii) The skeleton argument was filed in an effort to assist the court. While the mismatch between the skeleton and the application form was thoroughly unsatisfactory, particularly for an important application of this kind, it was not intentional and did not represent an attempt to secure any form of advantage, nor could it have done so.
  - iii) On the contrary, a number of steps were taken within HMRC to ensure the material placed before the court was accurate and adequate, but those efforts were obviously deficient in the review of the skeleton argument in the context of the application as a whole.
  - iv) The difficulty appears to have stemmed in part from the fact that the application form had been prepared independently of the skeleton argument for the earlier application, and was not re-reviewed by the SOLS criminal advisory team when they were asked by Ms McMahon for input into the skeleton argument.
47. The failure to disclose the skeleton at the same time as the redacted application form in response to the Claimants' request is also to be criticised. The skeleton clearly fell within the scope of the material requested. However, for reasons I have explained, it fell to Ms Khan to respond to the request, and she did not understand that it was appropriate to provide a document such as a skeleton argument in response to the request. It is accepted that the omission did not result from any attempt to conceal the inconsistency (of which the individuals handling requests for disclosure were not yet aware). Once the issue was identified, on 10 January 2023, the skeleton argument was provided within 2 days, and the inconsistency appropriately flagged by HMRC in its own Summary Grounds of Defence filed at the point of its first substantive engagement in these proceedings.
48. I am not persuaded that the service point taken by HMRC was not reasonably open to it, and in any event, this criticism is very far removed from the complaint about the material placed before the Judge on the search warrant application. In particular:
- i) While it is not necessary to decide who was right on the service issue, the general rule is that specific authorisation to serve by email is required: CPR PD 6A para. 4.1(2)(b) (service can be affected on "an e-mail address or e-mail addresses set out on the writing paper of the solicitor acting for the party to be served but only where it is stated that the e-mail address or e-mail addresses may be used for service").
  - ii) It has been noted by high authority that "rules of court must identify some formal step which can be treated as making [the defendant] aware of [proceedings] ... because a bright line rule is necessary in order to determine the exact point from which time runs for the taking of further steps" and a party who takes a valid service point is not "playing technical games" (*Barton v Wright Hassell LLP* [2012] UKSC 12, [16], [22]).
  - iii) It is clear that the taking of the service point was in no way part of an attempt to prevent the Claimants becoming aware of the mismatch between the application form and skeleton argument (of which HMRC only became aware after raising the service issue).
  - iv) The point was withdrawn by HMRC of its own motion in June 2023 because the Crown Court had acknowledged service, but would not take an active part in

defending the proceedings, which made HMRC's participation on the merits essential.

49. The complaint made in writing (but not developed orally) that a PII application was intimated but not pursued is a minor complaint, and the Claimants have failed to identify any material prejudice from the fact that an unredacted version of the application form was not provided until March 2023. Nor was the concern over the originally redacted parts of the application form (whether justified or not) of a piece with the Claimants' central complaint.
50. I am unable to conclude that HMRC acted unreasonably in not conceding the judicial review application in mid-2023 rather than April 2024:
- i) I am entitled to infer that it acted on legal advice in advancing the points made in the Summary Grounds of Defence served on 12 January 2023 and settled by counsel.
  - ii) In their reply to that document,, the Claimants went no further than to submit that Ground 2 was "at the very least arguable".
  - iii) In particular, HMRC was seeking to argue that the application form itself identified a sufficient factual and legal basis for the search warrants, such that the court could refuse leave under s.31(3C) and (3D) of the Senior Courts Act 1981 ("when considering whether to grant leave to make an application for judicial review, the High Court may ... consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred", and "if, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.")
  - iv) When HHJ Stephen Davies granted permission to seek judicial review on 29 January 2024, and given the terms in which he did so, the claim was conceded on 19 April 2024. It was a month before HMRC received that ruling, and it was then necessary to take advice and obtain approval to act on that advice.
51. Finally, to address another point taken in writing but not developed orally, I am not persuaded that the s.59 application issued by HMRC and the restraint order obtained by the CPS in July 2024 were for the purpose of applying pressure on the Claimants or inhibiting them from pursuing this application.
52. In summary, the Claimants are able to point to serious errors relating to the materials filed with the Crown Court when the search warrants were applied for, and later in failing to provide the skeleton argument in October 2022. The first resulted from a failure to ensure consistency between the application form and the skeleton despite significant attempts to confirm the accuracy of those documents independently. The second arose from a misunderstanding by someone who was not legally qualified as to what documents it was appropriate to provide in response to the Claimants' requirements rather than any strategic purpose, and was rectified at the very outset of the challenge proceedings. These were unconnected errors involving different HMRC personnel. The attempts to bolster these points with various criticisms of a kind often encountered in litigation, including in the Administrative Court, were over-stated and take matters no further.

53. Having regard to the overall position, there is no sufficient basis for depriving HMRC of the opportunity otherwise afforded by s.59 of the CIPA to apply to the Crown Court for permission to retain the Seized Items.