Neutral Citation Number: [2025] EWHC 155 (KB)

Case No: QB-2018-001055

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 January 2025

Before :

HHJ RICHARD ROBERTS
Sitting as a Judge of the High Court

- -

Between :

IBUKUN ADEBOWALE ADEGBOYEGA	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -
- -

Mr Zainul Jafferji of Counsel and Mr Sheraaz Hingora of Counsel (instructed by **Lawfare Solicitors**) for the **Claimant**
Mr Bilal Rawat of Counsel (instructed by **the Government Legal Department**) for the **Defendant**

Hearing date: 16 December 2024

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ RICHARD ROBERTS

HIS HONOUR JUDGE RICHARD ROBERTS :

Contents

Introduction

1. On 15 September 2024, I handed down judgment in this case. I directed at paragraph 305 of my judgment[1] that the parties file an agreed draft order, or in the absence of an agreed draft order, skeleton arguments in relation to:

    i) Interest on the Defendant's damages;

    ii) The Claimant's solicitor showing cause as to why they should not be liable for 75% of the Defendant's costs of and incidental to the hearing on 1 February 2023;

    iii) Costs of the claim;

    iv) Payment on account of costs, pursuant to CPR 44.2(8).

2. Mr Jafferji and Mr Hingora of Counsel appear on behalf of the Claimant. I am grateful to them for their skeleton argument, dated 14 October 2024[2], and their draft order. Mr Rawat of Counsel appears on behalf of the Defendant. I am grateful to him for his skeleton argument, dated 14 October 2024[3], and his draft order.

3. There are the following bundles of documents before the Court:

    i) Claimant's bundle of documents of 1,343 pages;

    ii) Claimant's supplementary bundle of documents of 152 pages;

    iii) Defendant's bundle of documents of 432 pages;

[1] Claimant's bundle, 46-144
[2] Claimant's bundle, 21-45
[3] Claimant's bundle, 1-20

iv) An authorities bundle of 296 pages.

4. At paragraph 10 of my judgment, I permitted the Defendant to respond to the Claimant's letter, dated 8 July 2024, showing cause as to why the Claimant should not be liable for 75% of the Defendant's costs of and incidental to the hearing on 1 February 2023. The Defendant has served a letter dated 30 September 2024[4].

List of issues

5. There are the following issues before the Court:

i) For what periods and at what rates should the Claimant receive interest on his damages?

ii) Should the Claimant receive 100% (as the Claimant contends) or 75% (as the Defendant contends) of the costs of the claim?

iii) Should the costs be awarded on a standard or indemnity basis?

iv) The amount of a payment on account of costs, pursuant to CPR 44.2(8).

v) Should the Claimant's solicitors pay 75% of the Defendant's costs of and incidental to the hearing on 1 February 2023?

vi) Whether I should hear an application for permission to appeal the order of Christopher Kennedy KC, sitting as a Judge of the High Court, on 12 June 2024.

Date from which damages are payable

6. In my judgment at paragraph 300 I set out my awards of damages as follows:

[4] Defendant's bundle, 51-55

i)	Unlawful detention:		
	a)	Compensatory (basic)	£35,000
	b)	Exemplary	£25,000
	c)	Aggravated	£15,000
ii)	Trespass to the person		£250
iii)	Article 3 ECHR		£26,000
iv)	Post-Traumatic Stress Disorder		£25,000
v)	Cost of CBT treatment for PTSD		£4,000
vi)	Loss of EEA rights:		
	a)	Loss of earnings	£38,955
	b)	Exemplary	£30,000
	c)	Aggravated	£ nil
vii)	Interest on loss of earnings		£4,790.24
viii)	Article 8 ECHR		£ nil
			£203,995.24
	Less interim payments		- £57,500
			£146,495.24

7. I included interest on loss of earnings in my judgment because the period for which interest was payable and the rate of interest were specified in the order of Christopher Kennedy KC, sitting as a Judge of the High Court, dated 12 June 2024. His order provides[5]:

> "2. The Claimant's claim for earnings shall be limited to the loss pleaded set out at paragraph 19 in his 2018 schedule being £38,955.00 together with interest at the full special account rate from the midpoint of the loss, to be determined by the trial judge if it cannot be agreed."

8. CPR 40.11 provides that[6],

> "A party must comply with a judgement or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless-
>
> (a) the judgement or order specifies a different date for compliance, including specific payment by instalments."

9. It was common ground at the hearing on 16 December 2024 that the Defendant had not paid the judgment sum. The Defendant offered no explanation for this failure.

10. I therefore find that the Claimant is entitled to receive interest on the judgment sum of £146,495.24 at the judgment rate of 8% from 14 days after the date of the judgment, namely from 29 September 2024.

[5] Defendant's bundle, 399
[6] Civil Procedure vol. 1, p. 1306

Interest on general damages for personal injuries

11. In the Particulars of Claim, dated 10 May 2018, it is said[7],

> "68. Further, the claimant claims interest under section 69 of the County Courts Act 1984 on such damages as the court may award as follows:
>
> i. On general damages at the rate of 2% per annum from the date of service of these proceedings ..."

12. At paragraph 244 of my judgment I awarded the Claimant general damages for pain, suffering and loss of amenities of £25,000 for post-traumatic stress disorder caused by his unlawful detention by the Defendant.

Parties' submissions

13. Mr Jafferji and Mr Hingora say in their skeleton argument at paragraph 18,

> "7) Personal injury: the Court has carefully considered the Claimant's psychiatric injury and awarded £25,000 for pain, suffering and loss of amenities. The claimant submits that this should be calculated from the date of initial detention [28 April 2017] and to date of judgement. This should attract pre-judgement interest for the reasons set out at §17 of this skeleton argument."

14. Mr Rawat says in his skeleton argument at paragraph 5,

[7] Core bundle, 32

> "The defendant contends for a starting date of 14 March 2019, that being the date at which Mr Justice Martin Spencer gave permission to add a claim for personal injury."

Law

15. In *Wright v. British Railways Board* (H.L.(E.)) [1983] Lord Diplock said at 778F-G

> "In *Jefford v Gee* the court laid down two guidelines as to interest to be awarded on damages for non-economic loss. The first was: that the period for which interest should be awarded was one beginning on the date of service of the writ and ending on the date of judgment. The second was: that the rate of interest should be the same as that which is payable on money paid into court which is placed on short term investment account, i.e., the short term investment account rate.
>
> The guideline as to the date from which interest should be awarded has been followed ever since. It has not been questioned in the instant appeal."

His Lordship continued at 785F-786A,

> "As regards the fixing of the conventional rate of interest to be applied to the conventional figure at which damages for non-economic loss have been assessed, the rate of 2 per cent, adopted and recommended as a guideline by the Court of Appeal in *Birkett v. Hayes* [1982] 1 W.L.R. 816 covered a period during which inflation was proceeding at a very rapid rate.

> As I have already said, I see no ground that would justify this House in holding that guideline to have been wrong, or to overrule the trial judge's application of it to the instant case. Although the rate of inflation has slowed, at least temporarily, since the period in respect of which the 2 per cent guideline in *Birkett v. Hayes* was laid down, no one yet knows what the long term future of the phenomenon of inflation will be; and the guideline, if it is to serve its purpose in promoting predictability and so facilitating settlements and eliminating the expense of regularly calling expert economic evidence at trials of personal injury actions, should continue to be followed for the time being, at any rate, until the long term trend of future inflation has become predictable with much more confidence."

16. In *Lawrence v Chief Constable of Staffordshire* [2000] WL 823964 Lord Justice May said,

> "7 In *Birkett v. Hayes*, this court decided that, since an award of general damages was calculated taking into account the effect of inflation during the period from the date of service of the writ until the date of trial, interest awarded on those damages to compensate the plaintiff for being kept out of the capital sum during that period should be low to avoid injustice to the defendant by over-compensating the plaintiff; and that the appropriate guideline rate for this interest should be 2%.
>
> …

> 27 For these reasons, I consider that the case for changing the guideline rate of interest on general damages is not made out."

Decision on interest on general damages for personal injuries

17. I find that it is settled law that interest should be awarded on general damages for pain, suffering and loss of amenities at the rate of 2%.

18. I reject Mr Rawat's submission that interest on general damages should run from 14 March 2019 on the basis that Martin Spencer J gave permission to add a claim for personal injury on that date. Contrary to Mr Rawat's submission, I find that a claim for personal injury was included in the Particulars of Claim, dated 10 May 2018, where it is said,

> "Personal Injury
>
> 48. As a direct result of the false imprisonment of the Claimant by the Defendant, and the breaches of EU law associated with the false imprisonment, the Claimant has suffered personal injury as set out in the report of Dr Rozmin Halari, a Consultant Clinical Psychologist. The following psychiatric injury has been diagnosed to have been caused by the false imprisonment of the Claimant by the Defendant:
>
> i) Post Traumatic Stress Disorder
>
> ii) Anxiety
>
> iii) Stress

> 49. The Claimant is currently taking prescription medication, and continues to suffer from severe consequences that are having an ongoing impact upon his daily life as set out in Dr Halari's report."

19. Martin Spencer J said in his order following a hearing on 14 March 2019[8],

> "2. The Appellant has permission to plead the matters set out in the list of issues dated 25 January 2018 and to add additional claims alleging trespass to the person and breach of Article 3 ECHR.
>
> 3. The particulars of claim dated 10 May 2018 will stand in full as the Appellant's pleaded case."

20. I find that interest on general damages for post-traumatic stress disorder should accrue from the date of service of the Particulars of Claim, namely 10 May 2018. Interest at 2% on £25,000 from 10 May 2018 to 28 January 2025 amounts to £3,361.64.

Interest on CBT treatment

21. At paragraph 250 of my judgment, I have awarded the Claimant 16 sessions of Cognitive Behavioural Therapy (CBT) treatment at £250 per session.

22. Bearing in mind that I have awarded the cost of CBT as of 12 June 2024 and the Claimant has not yet received CBT, I find as a matter of discretion that the Claimant is not entitled to interest on his award of £4,000 for CBT treatment.

[8] Order dated 28 March 2019, drawn on 29 March 2019 – Trial core bundle, 75

Interest on general damages for trespass to the person

Parties' submissions

23. Mr Jafferji and Mr Hingora submit in their skeleton argument,

> "17. … 4) The purpose of awarding interest is to compensate the claimant for the time during which they were deprived of money that was rightfully theirs. From the date of the unlawful act or breach, the claimant has been denied access to funds they should have had, leading to financial disadvantage.
>
> …
>
> 18. … 6) Trespass to the person: The Court has carefully considered this award and awarded the Claimant £250.00. The Claimant submits that he is due interest on this award of damage from the date of 5 June 2017 (the date of the event) to judgement date for the reasons set out at §17 of this skeleton argument."

24. Mr Rawat submits in his skeleton argument at paragraph 16,

> "Interest on damages for trespass to the person
>
> 16. The Court has made a finding that the Claimant has deliberately exaggerated his account of the events of 5 June 2017 (Judgment §156, 158). The Court accepted the Defendant's submission that the appropriate award was £250. That submission relied on awards in other cases (adjusted for inflation) which were figures given at judgment and without

> interest. The same approach, the Defendant submits, should apply here. Even if that were not the position, the Defendant submits that the Claimant should not be allowed to benefit from his conduct through an award of interest (as to this aspect of the Claimant's conduct see below)."

Decision as to interest on general damages for trespass to the person

25. Damages for trespass to the person are general damages and therefore are subject to the guidance which I have referred to at paragraphs 15 and 16 above.

26. In my judgment at paragraphs 156 and 157, I found that the Claimant had deliberately exaggerated the trespass upon him. However, I said at paragraph 158 of my judgment,

> "Although the Claimant's exaggeration significantly reduces his credibility and the weight I can place on his evidence, I accept that the six officers rushing into his cell and three surrounding his bed in personal protective equipment, one of which was carrying a shield and standing very close to the Claimant to prevent the Claimant from moving, was unjustified because it was disproportionate, unnecessary and inappropriate. I accept that the officers' personal protective equipment and shield made the experience menacing and distressing."

27. I accepted Mr Rawat's submission that the Claimant should receive damages of £250 for trespass to the person.

28. I reject Mr Rawat's submissions that:

i) The Claimant's exaggeration should disentitle him to recovering any interest. I find that the Claimant should receive interest on the damages for trespass to the person to which I have found he is entitled.

ii) The interest should be calculated from the date of the order of Martin Spencer J giving permission to add a claim for trespass to the person, namely 14 March 2019. Martin Spencer J said in his order that the Particulars of Claim dated 10 May 2018 would stand in full as the Appellant's pleaded case. The Particulars of Claim, dated 10 May 2018, includes a claim for trespass to the person at paragraphs 50 and 66[9].

iii) The Claimant should receive no interest on damages for trespass to the person because the awards to which Mr Rawat referred the Court were updated for inflation. In *Birkett v Hayes* it was expressly acknowledged that the claimant was only receiving interest at 2% because the damages were updated for inflation to the date of the trial. I repeat paragraph 16 above.

29. I conclude that the Claimant is entitled to interest on the general damages of £250 at 2% from 10 May 2018 to 28 January 2025. The interest owing is £33.62.

Interest on damages awarded under Article 3 ECHR

30. At paragraph 198 of my judgment, I awarded the Claimant £26,000 for breach of Article 3 of the ECHR.

[9] Trial core bundle, 25 and 32

Parties' submissions

31. Mr Jafferji and Mr Hingora submit in their skeleton argument at paragraph 18,

> "5) Article 3 ECHR: the Court carefully considered this award at §§169-198 of the Judgement. It was clear that this was an exceptional case and awarded the Claimant £26,000. These damages reflect the circumstances and violations of the Claimant's rights during his detention. The Claimant submits that pre-judgement interest should naturally flow from this. In *Szafranski v Poland* the Court considered it appropriate at §§47 that default interest rate should be based on the marginal lending rate of the European central bank, which in that case was 3%. The Claimant submits that the Court has discretion to award interest at a higher rate and should do so given the lengthy and protracted nature of these proceedings."

32. Mr Rawat says in his skeleton argument,

> "21. Article 41 [of the ECHR] states:
>
> If the [European Court of Human Rights] finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.
>
> 22. The reference to "principles" is "not confined to articulated statements of principle. … The focus is rather upon how the court

applies article 41" (per Lord Reed in R (Sturnham) v Parole Board for England and Wales [2013] 2 AC 254 at §31). One must therefore look to the Practice Direction on Just Satisfaction Claims (issued by the President of the [European] Court of Human Rights in accordance with Rule 32 of the Rules of Court on 28 March 2007 and amended on 9 June 2022). The only reference to interest on awards in that practice direction is at paragraph 27 which states:

> 27. The Court will of its own motion set a time-limit for any payments that may need to be made, which will normally be three months from the date on which its judgment becomes final and binding. The Court will also order default interest to be paid in the event that that time-limit is exceeded, normally at a simple rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

23. The result is that an award of damages is an award for just satisfaction as at the date of the judgment. This explains why in Szafranski v Poland, a case concerning prison conditions and Article 3 (and relied on by the Claimant), the Strasbourg Court awarded only default interest (see AB/95-95 §42-47). It also explains why in DSD, which the Court approached as helpful guidance (Judgment §197), no award of interest was made."

Decision as to interest on damages awarded under the Human Rights Act

33. Both parties rely on the case of *Szafranski v Poland ECHR* 17249/12[10]. This case dealt with the payment of default interest if the sum of €1,800 was not paid by the respondent State within three months of its judgment becoming final and binding. It does not deal with the question of whether interest is payable pre-judgment.

34. I have not been referred by Mr Jafferji and Mr Hingora to any European or domestic law or academic authority to support a claim for interest pre-judgment on an award under Article 3 of the ECHR. I conclude that the Claimant has not shown that any interest is awardable pre-judgment for breach of Article 3 of the ECHR.

Interest on basic damages for wrongful detention

35. At paragraph 122 of my judgment, I awarded the Claimant £35,000 for basic damages for wrongful detention.

36. In his amended Judicial Review Grounds, dated 10 October 2017[11], at paragraph 26 the Claimant claimed damages inter alia for breaches of his rights under EU law and wrongful detention.

Parties' submissions

37. Mr Jafferji and Mr Hingora say in their skeleton argument at paragraph 18,

> "1) Unlawful detention – basic compensatory: The claimant submits that interest on the damages for unlawful detention should be awarded from the date of detention (28 April 2017)

[1010] Joint authorities bundle, 84-95
[11] Supplementary bundle in trial, 376

> to the date of payment. The Court has awarded £35,000 basic compensatory damages to the Claimant. The Claimant received £22,500 as an interim payment on 28 September 2022 for basic compensatory damages. It is clear that the Court has been very careful in its approach when assessing damages and to ensure there is no double counting (see §§118-122). This should attract pre-judgement interest for the reasons set out at §17 of this skeleton argument."

38. Mr Rawat says in his skeleton argument,

> "8. The decision of the Court of Appeal in *Rees v Commissioner of Police of the Metropolis* [2021] EWCA Civ 49 was mentioned during the trial. There the Court of Appeal said that the better approach in cases concerning false imprisonment was to fix an award both to reflect intervening inflation and that the award is being made as at the date of judgment. The Court of Appeal was referred to two cases (*AXD* and *Diop*) where interest was awarded but noted that in *AXD*, it was unclear if the issue was debated and in *Diop*, that the point also was not argued (*Rees* §34-48). At paragraph 47, Davis LJ, with whom the rest of the panel agreed said:
>
> > 47. In my view, therefore, having regard in particular to the approach taken as to interest as applied in Saunders v Edwards and then extended in Holtham to cases of wrongful arrest and false imprisonment, the better course for judges in cases of

this kind will usually be to fix an award of damages both to reflect intervening inflation (having regard to the Thompson criteria) and then also to reflect the fact that the award of damages is being calculated by assessing the situation up to and as at the date of judgment. If that is done there will then be no call for an award of interest under s.35A of the 1981 Act. On the footing that a judge does proceed on that basis then I consider, all the same, that it would be good practice for him or her expressly to state, albeit briefly, that that is indeed the position being adopted.

9. The 'comparable cases' to which this Court was referred by both parties as quantum reports to which it could have regard were all cases, adjusted for inflation, where there was no separate award for interest. The Judgment at more than one paragraph observes the need to avoid double-counting. The Court was also aware of the need to have regard to the totality of damages. The Defendant submits that, consistent with the approach in Rees, the award of £35,000 (Judgment §122) is an award made as of the date of judgment and so should not attract pre-judgment interest.

10. If the Court rejects that primary submission because it had decided not to adopt the course preferred by the Court of Appeal, then the Defendant submits that the appropriate rate is 2% per annum (see AXD v Home Office at §53 [AB/1029]) as from 10 October 2017 (when the Claimant's amended grounds for

judicial review first indicated that he sought damages for false imprisonment). That gives a figure of:

(a) £3476.99 to 28 September 2022 (when the Claimant received £22,500 as in interim payment) and;

(b) £490.61 to date of judgment (being interest on the outstanding £12,500)."

Decision as to interest on basic damages for wrongful detention

39. In *Rees v Commissioner of Police of the Metropolis* [2021] EWCA Civ 49, the Court of Appeal said that the better approach was to fix an award of damages for wrongful detention to reflect both:

i) Intervening inflation; and

ii) The fact that the award of damages is being calculated up to and as at the date of judgment, i.e. the claimant is being kept out of their money.

40. At trial I was addressed by Counsel as to the first limb, inflation, but not as to the second, namely that my award should take into account the delay in the Claimant receiving damages for wrongful detention. In considering "comparable cases", the parties updated those cases for inflation but did not address me as to increasing the award to take into account that it was only at the date of the interim payment, five years after his release, that the Claimant's right to damages for unlawful detention was vindicated and that as at December 2024, seven years after his release, that right has still not been fully vindicated. In the present case, the Claimant was released from unlawful detention on 24 July 2017. He did not receive an interim payment of £22,500

until 28 September 2022 and as at 16 December 2024, more than seven years after his release, has still not received the balance owing of £12,500.

41. I accept Mr Rawat's secondary submission at paragraph 10 of his skeleton argument that if awarded, interest should run from 10 October 2017:

i)	2% on £35,000 from 10.10.17 - 28.09.22	£3,478.90
ii)	2% on £12,500 from 29.09.22 – 28.01.25	£583.56
		£4,062.46

Interest on aggravated damages for wrongful detention

42. At paragraph 134 of my judgment I awarded the Claimant £15,000 for aggravated damages for wrongful detention.

Parties' submissions

43. Mr Jafferji and Mr Hingora submit in their skeleton argument at paragraph 18,

> "2. Unlawful detention – Aggravated damages: The claimant submits that interest on the damages for unlawful detention should be awarded from the date of detention (28 April 2017) to the date of payment. The Court has been very careful in its approach to avoid double counting (see §§129-133) and awarded £15,000 (see §134). This should attract pre-judgement interest for the reasons set out at §17 of this skeleton argument."

44. Mr Rawat submits in his skeleton argument,

> "11. Aggravated damages are a form of compensatory damages. The Defendant submits that the principle in *Rees* must apply to aggravated damages and accordingly, for the same reasons given above, no additional award of interest is required.
>
> 12. Again if the Court is against that primary submission, then the Defendant submits that the appropriate rate is 2% per annum running from 28 March 2019, when the Claimant first had permission to plead aggravated damages."

Decision as to interest on aggravated damages for wrongful detention

45. Aggravated damages are a form of compensatory damages.

46. I find that the interest runs from the same date as the interest on the basic award for wrongful detention, namely 10 October 2017, when the Claimant claimed damages for wrongful detention at paragraph 26 of his amended Judicial Review Grounds.

47. 2% on £15,000 from 10 October 2017 to 28 January 2025 is £2,191.23.

Interest on exemplary damages for wrongful detention

48. At paragraph 142 of my judgment, I awarded the Claimant £25,000 for exemplary damages for wrongful detention.

Parties' submissions

49. Mr Jafferji and Mr Hingora submit in their skeleton argument at paragraph 18,

> "3) Unlawful detention - Exemplary damages: These damages are not intended to compensate the Claimant and instead are to

> punish. The court has awarded £25,000 in exemplary damages for unlawful detention. This should attract pre-judgement interest for the reasons set out at §17 of this skeleton argument."

50. Mr Rawat says in his skeleton argument,

> "13. As the Court rightly notes, exemplary damages are not intended to compensate but to punish (Judgment §135ff). The Court of Appeal in giving guidance on exemplary damages recognised that these are a windfall for a claimant (Thompson v Commissioner of Police [1998] QB 498 at 517A and 518A [AB/171-172]). Subsequent courts have taken account of that guidance (see *Muuse v SSHD* [2009] EWHC 1886 (QB) §64 [AB/339]; *Mohidin & Ors v Commissioner of Police for the Metropolis* [2015] EWHC 2740 (QB) §364 [AB/962]; *E v Home Office* [2010] (9CL01651) §20 [AB/1352] (*Maarouf v SSHD* [2020] (E00CL226) (unreported) §19 [AB/1367]; *Stewart v The Home Office* (H41YJ317) 30 March 2023 §37 [AB/1379].
>
> 14. As a matter of principle, it logically follows that an award of exemplary damages is one made as at the date of judgment and therefore should not attract pre-judgment interest."

Decision as to interest on exemplary damages for wrongful detention

51. I accept Mr Rawat's submission that there should be no pre-judgment interest on the exemplary damages because exemplary damages are not intended to compensate but to punish.

Interest on exemplary damages for breach of EEA Rights

52. At paragraph 289 of my judgment, I awarded the Claimant exemplary damages of £30,000 for breach of his EEA rights.

Parties' submissions

53. Mr Jafferji and Mr Hingora say in their skeleton argument at paragraph 18,

> "4) Breach of EU law rights – exemplary damages: These damages are not intended to compensate the Claimant and instead are to punish. The Court has been very careful in its approach to avoid double counting. The Claimant submits that this should be calculated from the date of breach of his EU law rights to the date of judgement. The defendant's breach of the claimant's EEA rights is a particularly serious matter. This breach, which occurred in 2015, deprived the claimant of his ability to reside and work in the UK, causing substantial economic and personal hardship. Interest must be applied to the damages awarded for this breach to ensure the claimant is put back for the extended period during which he was unlawfully deprived of his EEA rights. This should attract pre-judgement interest for the reasons set out at §17 of this skeleton argument."

54. Mr Rawat says in his skeleton argument,

> "15. The Court in considering this head of damage has applied the principles applicable to an award of exemplary

> damages in English law (Judgment §261-262). Accordingly, the Defendant repeats the points made above in relation to interest on exemplary damages for wrongful detention. There is no reason in principle to treat the two heads of damage differently. The Court will note that in *Santos v SSHD* [2016] EWHC 609 (Admin), Lang J considered whether the award for loss of earnings could attract interest but did not ask that question of the award of exemplary damages [AB/1015 §161]."

Decision as to interest on exemplary damages for breach of EEA rights

55. I find that the Claimant is not entitled to interest on his exemplary damages for breach of EEA rights because exemplary damages are not intended to compensate, but to punish.

Summary of interest awards

56. I summarise the awards of interest as of 28 January 2025 as follows:

i)	Interest on general damages for personal injuries	£3,361.64
ii)	Interest on damages for CBT	£ nil
iii)	Interest on general damages for trespass to the person	£33.62
iv)	Interest on Article 3 ECHR damages	£ nil
v)	Interest on basic damages for wrongful detention	£4,062.46
vi)	Interest on aggravated damages	

	for wrongful detention	£2,191.23
vii)	Interest on exemplary damages for wrongful detention	£ nil
viii)	Interest on exemplary damages for breach of EU law rights	£ nil
		£9,648.95

Costs of the proceedings

Parties' submissions

57. Mr Jafferji submits that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, pursuant to CPR 44.2(2). He submits that the Claimant is the successful party. The Claimant has been awarded substantial damages amounting to £203,995.24, and therefore the Claimant should receive 100% of the costs of the action.

58. The Defendant submits that the Claimant should only receive 75% of the costs on the basis that there are additional matters arising from the way the Claimant has conducted the litigation, which bear upon the Court's exercise of its discretion under CPR 44.2(4) and (5). The Defendant points to the following:

    i) From the beginning, the Claimant did not comply with procedural rules.

    ii) The Court found that the Claimant deliberately exaggerated his evidence relating to a trespass to his person while at Brook House.

Decision as to costs of the proceedings

59. At paragraph 30(a) of his skeleton argument, Mr Rawat says that the Claimant failed to serve a hearing bundle and sent the wrong skeleton argument and documents for a case management hearing before Master Thornett on 9 April 2018. However, these failures were dealt with by Master Thornett in making no order for costs[12].

60. At paragraph 30(b) of his skeleton argument, Mr Rawat complains that the Claimant was ten days in late in complying with a direction made at that CMC to file his statements of case by 1 May 2018. However, Mr Rawat does not allege that this breach caused the Defendant any loss.

61. At paragraph 30(c) of his skeleton argument, Mr Rawat submits that when the claim was struck out by Master Thornett, the Claimant had added additional claims. Mr Rawat does not submit that the adding of these additional claims caused any loss. At a hearing on 14 March 2019, Martin Spencer J allowed the Claimant's appeal and gave the Claimant permission to add the additional claims alleging trespass to the person and breach of Article 3 ECHR[13] and ordered costs in the case. The Defendant should not have applied to strike the claim out and should have consented to the additional claims being added. It is the Defendant's conduct which has unnecessarily increased the costs of these proceedings.

62. At paragraph 30(d), of his skeleton argument, Mr Rawat submits that no hearing bundle was provided when the trial was originally listed for 2 June 2020. I find that this point has no substance, bearing in mind that the Defendant conceded for the first time at the trial on 2 June 2020 that the Claimant was entitled to substantial damages for unlawful

[12] Defendant's bundle, 93
[13] Trial core bundle, 75

detention and damages for breach of his EEA rights. The trial was adjourned at the request of both parties, to explore settlement or await the outcome of the Brook House Inquiry. It was not argued by Mr Rawat, nor could it be, that the lack of trial bundle caused any increase in costs.

63. At paragraph 31 of his skeleton argument, Mr Rawat makes complaint regarding the Claimant's approach to show cause. I deal with this at paragraphs 104-134 below and so it would be double counting to take it into account here as well.

64. At paragraphs 32-36 of his skeleton argument, Mr Rawat submits that the Claimant has not updated his cost budget. However, he does not submit that this has caused any additional costs.

65. At paragraphs 37-38 of his skeleton argument, Mr Rawat refers to the Claimant's late disclosure of fresh evidence. I dealt with this on the second and third days of trial, and ordered:

> "3. The Claimant has permission to rely upon the videos of a Police incident on 1 July 2023 and updated medical records.
>
> 4. There be no order for costs in relation to the Claimant's application to rely upon the videos of a Police incident on 1 July 2023 and the updated medical records.
>
> 5. Permission to the Claimant and the Defendant to rely upon addendum medical reports limited to:
>
> i) The Police incident on 1 July 2023;
>
> ii) The up-dated medical records.

> 6. The costs of and occasioned by the addendum medical reports be costs in the case.
>
> 7. Permission to the Defendant to rely upon a Police report and accompanying witness statement from PC Betteridge, dated 1 July 2023
>
> 8. There be no order for costs in relation to the Defendant's application notice, dated 17 June 2024."

66. In short, I dealt with the costs consequences of the late disclosure of fresh evidence by both parties, and it would be double counting to take this into account again here.

67. At paragraphs 39-50 of his skeleton argument, Mr Rawat makes complaint that the Claimant was given permission to put forward a figure for damages in relation to the breach of his Article 3 rights and wrongly included fresh heads of claim without permission. I dismissed those fresh heads of claim and I find that the dismissal of them did not involve any significant amount of time.

68. I find that the points raised by Mr Rawat involve double counting in that they have already been taken into account by the Court.

69. Further, I find that the Claimant could make complaint about much of the Defendant's conduct. For example, the Defendant spent half a day arguing that the Brook House Inquiry report was not admissible in evidence. I found this argument to be unprincipled and contradictory, bearing in mind that the Defendant had applied for the claim to be

stayed pending the publication of the Brook House Inquiry report on the grounds that it went directly to the points in issue in the case[14].

70. I did not find that all of the Claimant's evidence to the Brook House Inquiry was exaggerated. I accepted all the evidence which he gave to the Brook House Inquiry and to this Court except for his witness statement in relation to a trespass to the person by detention officers. The Claimant did not exaggerate the trespass upon him in his oral evidence before me. I said at paragraph 158 of my judgment,

> "Although the Claimant's exaggeration significantly reduces his credibility and the weight I can place on his evidence, I accept that the six officers rushing into his cell and three surrounding his bed in personal protective equipment, one of which was carrying a shield and standing very close to the Claimant to prevent the Claimant from moving, was unjustified because it was disproportionate, unnecessary and inappropriate. I accept that the officers' personal protective equipment and shield made the experience menacing and distressing."

71. I awarded the Claimant what I considered to be the correct value of the trespass to the person upon him, namely £250. In addition, I awarded him £25,000 in respect of psychiatric injury, namely Post Traumatic Stress Disorder caused by his unlawful detention at Brook House.

72. I find that, having considered the circumstances of this case and my findings in the liability and damages trial, it would not be just, reasonable or proportionate to reduce

[14] Trial core bundle, 60. The order of Stewart J, dated 1 June 2020, states, "Upon the Defendant having made an application dated 31 January 2020 to stay the proceedings pending the conclusion of the [Brook House] Inquiry"

the Claimant's costs because of his exaggeration of the trespass upon him in his witness statement.

73. I conclude that costs are not determined on the basis of winning every single point raised but should be judged on the basis of who is the "successful party". In this case, the Claimant set out to obtain damages for:

i) Basic, aggravated and exemplary damages for unlawful detention;

ii) Breach of Article 3 ECHR;

iii) Loss of EEA rights, in terms of loss of earnings and exemplary damages;

iv) Trespass to the person;

v) Personal injuries;

vi) CBT treatment.

74. The Claimant has successfully obtained substantial damages of £199,205, together with interest of £15,188.09. Therefore, I conclude as a matter of discretion that the Claimant should receive 100% of the costs of and occasioned by the Judicial Review proceedings and the assessment of damages hearing.

Indemnity costs

Parties' submissions

75. Mr Jafferji and Mr Hingora submit in their skeleton argument,

> "29. The Claimant submits that it is right for costs to follow the event. The Claimant respectfully submits that costs in this matter

should be awarded on the indemnity basis due to the conduct of the defendant in these proceedings. Costs on the indemnity basis are discretionary. The discretion has been described in the following terms *Balmoral Group Ltd v Borealis (UK) Ltd (Indemnity Costs)* [2006] EWHC 2531 (Comm):

> "The discretion is a wide one to be determined in the light of all the circumstances of the case. To award costs against an unsuccessful party on an indemnity scale is a departure from the norm. There must, therefore, be something - whether it be the conduct of the claimant or the circumstances of the case - which takes the case outside the norm. It is not necessary that the claimant should be guilty of dishonesty or moral blame. Unreasonableness in the conduct of the proceedings and the raising of particular allegations, or in the manner of raising them may suffice. So may the pursuit of a speculative claim involving a high risk of failure or the making of allegations of dishonesty that turn out to be misconceived, or the conduct of an extensive publicity campaign designed to drive the other party to settlement. The making of a grossly exaggerated claim may also be a ground for indemnity costs."

30. There is no single test for the award. However, a party seeking indemnity costs must be able to point to conduct of the other party which it outside the norm, to (*Kiam v MGN Ltd (Costs)* [2002] EWCA Civ 66), or to "some conduct or some

> circumstance which takes the case out of the norm" (*Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hamer Aspden & Johnson (Costs)* [2002] EWCA Civ 879)."

76. Mr Rawat opposes indemnity costs and says that costs should be awarded on a standard basis.

Decision as to indemnity costs

77. When I sent the parties my draft judgment following the assessment of damages hearing, I stated that my provisional view was that the Defendant should pay the Claimant's costs of and occasioned by the claim on a standard basis. At that stage, the parties had not made submissions on costs.

78. I have found in my judgment in the assessment of damages trial that the Defendant and its solicitors have throughout these proceedings made untrue and misleading statements and acted oppressively. I accept Mr Jafferji's submission that the Defendant's conduct takes this case outside the norm and the Claimant is entitled to indemnity costs for the following reasons.

Defendant knew from outset that Claimant was entitled to remain in the UK pursuant to EEA Regulations 2006

79. The Defendant had all information necessary to conclude at the very outset that the Claimant was the spouse of an EU national and was entitled to remain in the UK pursuant to EEA Regulations 2006:

i) In the GCID note dated 27 January 2016, it is said that the Defendant was satisfied that the Claimant's wife was working, having seen photographs of her wage slips and spoken to her employer on the telephone.

ii) By a letter dated 14 November 2016, the Defendant was provided with a letter from the Claimant's wife's employer confirming her ongoing employment with the company since July 2015.

iii) In her email dated 16 January 2018, Rachel Green, SEO Team Manager, says,

> "The Defendant therefore should have considered the documents that had been sent over before detaining the Claimant. […] I do not think that there were any good reasons for rejecting those documents. No reasons were in fact given in the 12th May 2017 letter. […] There was evidence that the spouse was working." (my emphasis)

Defendant conducted litigation in high-handed and oppressive manner

80. In my judgment on liability and quantum, I said,

> "132. I find that the Defendant has conducted the litigation in a high-handed and oppressive manner:
>
> i) The Defendant opposed the Claimant's bail application on 13 June 2017 and made misleading submissions (see paragraph 71 above) which led to the Claimant's bail being refused.
>
> ii) On 25 January 2018, the hearing of the substantive Judicial Review came before HHJ Coe KC, sitting as a Deputy High

Court Judge. At that hearing, the Defendant informed the Claimant's legal representatives that the illegality of the Claimant's detention was conceded and that was reflected in the Learned Judge's order. However, the Defendant stated that the Defendant would only pay the Claimant nominal damages. There was no basis for the Defendant not paying substantial damages. The Defendant maintained this position until the day before the final hearing on 1 June 2020, when the Defendant conceded before Stewart J that the Claimant was entitled in principle to substantive damages for unlawful detention and for breach of EEA law.

iii) Even then, the Defendant refused to make any interim payment, despite the fact that the Claimant required an interim payment to pay for treatment for post-traumatic stress disorder caused by his unlawful detention at Brook House, as he stated at paragraph 17 of his witness statement in support of his application for an interim payment, dated 20 April 2021[15]. In an email dated 5 March 2020 from the Claimant's solicitor to the Defendant, it is said[16],

'It is of course open to your client to make an interim payment on the false imprisonment/EU law claim and I would suggest that

[15] 85-91 at 89
[16] Correspondence between the parties regarding the relevance of the Brook House Inquiry, 17

> the Santos case is a clear basis upon which a realistic interim payment could be made.'
>
> Following a contested hearing, the Court ordered that the Defendant make an interim payment of £22,500 in respect of the claim for unlawful detention and £35,000 in respect of the claim for breach of EEA rights."

Defendant's failure to engage with Claimant's solicitors' repeated letters explaining clearly that the Claimant was lawfully in the UK as the spouse of an EU national

81. The Claimant's previous solicitors wrote to the Defendant setting out very clearly that the Claimant was not an overstayer and was entitled to remain in the UK pursuant to the EEA Regulations, by letters dated 14 November 2016 and 3 May 2017, and telephone calls on 4 May 2017 and 9 May 2017. In the letter dated 14 November 2016, they said,

> "We herewith enclose the following to aid you in your consideration of our client's matter:
>
> - 1 x copy of our client's spouse's Romanian National Identity Card.
> - 1 x letter from our client's spouse's employer confirming her ongoing employment with the company since July 2015.
> - 1 x copy of our client's and his spouse's marriage certificate from Cyprus.

- 1 x copy of our client and his spouse's marriage registration in Romania.

We respectfully trust that the Secretary of State will be familiar with the CJEU's judgement in the case of Diatta - Case 267/83, which is authority for the proposition that it is not necessary for the family member of an EEA national and the EEA family member to live together for the non-EEA family member to enjoy a derived right of residence."

82. The Defendant did not engage with the Claimant's solicitors cogent and evidence-based representations that the Claimant was lawfully in the UK as the spouse of an EU national, instead maintaining that he was an overstayer and detaining him until 24 July 2017.

Bail application on 13 June 2017

83. The Defendant's bail summary, which it presented to the FTT, states[17],

"REASONS FOR OPPOSING BAIL

1. The applicant's last period of leave in the UK expired on 19/11/15. The applicant has remained in the UK since this time and has been unlawfully present for two years. It is submitted this is a very significant period of time which represents a very high level of disregard for immigration law, and further, that this

[17] Trial core bundle, 651-652

conduct is not consistent with someone now likely to comply with bail conditions.

2. The applicant's representative contacted the Home Office on 20/09/16 after the applicant had been served a RED.0001 by post informing him of his status as an overstayer. The representative stated that their client should not have been served this document as a spouse of an EEA national exercising treaty rights. Section 3C of the Immigration Act 1971 provides for the conditions of existing leave to be deemed to continue while an in-time application for a variation of leave is being processed. However, an EEA residence card application is not an application for a "variation of leave" as such and therefore does not extend leave. The applicant's leave therefore expired ... and they have been unlawfully present since this date.

3. The applicant has reported monthly between 30/09/16 and 28/04/17 missing two events. Whilst it is noted the applicant has demonstrated relative compliance with reporting conditions to date, it is submitted that having been detained the applicant is now aware the Home Office intends to enforce removal, and it is submitted this lessens incentive to the applicant to continue to report if granted release at this time.

4. The applicant was served with a RED.0001 by post on 31/08/16 and a RED.0004 fresh as an overstayer. The applicant had no valid leave and was notified of their liability to removal,

> but failed to take any steps to depart the UK as required, and remained unlawfully present for a period of a further year. It is submitted the applicant's continued unlawful presence coupled with their failure to take any steps to regularise their status indicates a high level of disregard for immigration law."

84. In my judgment, I said,

> "72. I find these representations were untrue and misleading. The Defendant had cogent evidence that the Claimant was entitled to remain in the UK pursuant to the EEA Regulations 2006, as Rachel Green, SEO Team Manager accepted in her email dated 16 January 2018. The Defendant had been provided with evidence showing that the Claimant was entitled to remain in the UK pursuant to his EEA rights by the Claimant's solicitor's letter dated 14 November 2016[18].
>
> 73. On 13 June 2017, the Claimant's bail application was refused by Judge of the First Tier Tribunal Scott Baker. He said[19],
>
> > "7. Despite the Home Office having advised the applicant that original ID document were required from his spouse no documents have been produced to date. There was evidence before me that the couple had married in Cyprus but there was

[18] Material referred to in Claimant's closing submissions, 7-9
[19] Trial core bundle, 657

no evidence of any kind to indicate that his spouse was in the UK exercising treaty rights."

74. It is plain from Judge Scott Baker's decision that in order to prevent the Claimant from obtaining bail, the Defendant made representations before him which were untrue and misleading.

75. The Defendant's submission to the Judge that the Home Office told the Claimant that original ID documents were required from his wife and none were provided was untrue:

i) The Defendant admits that it must have seen the Claimant's wife's original ID. In an entry dated 22 February 2018, the GCID note states[20],

"CRS shows the applicant entered the UK [on 13 June 2015, accompanied by his wife] as the spouse of an EEA national. So we must have seen the sponsor's original ID at one point."

ii) In its letter dated 28 October 2016[21], the Defendant requested a photocopy of the Claimant's wife's EEA national passport and/or identity card. By a letter dated 14 November 2016, the Claimant's solicitors provided a photocopy of the Claimant's wife's Romanian national identity card[22].

[20] Trial core bundle, 554
[21] Material referred to in Claimant's closing submissions, 6
[22] Material referred to in Claimant's closing submissions, 7-9

iii) In an email dated 16 January 2018, Rachel Green, SEO Team Manager, stated:

"With regard to the Claimant's ID, it is questionable as to whether the Defendant was entitled to demand an original copy of the ID card given that she had previously accepted his ID, but in any event that is not what she said. She asked for a copy of his ID card, and that was provided. She did not ever say that the application was being refused because only a copy of the ID card had been provided. Given that she had asked for a copy, if she were dissatisfied with that one might expect her to go back to the claimant and ask for an original."

76. The Defendant's submission to Judge Scott Baker that there was no evidence of any kind to indicate that the Claimant's spouse was in the UK exercising treaty rights was, to its knowledge, untrue:

i) In the GCID note dated 27 January 2016, it is said that the Defendant was satisfied that the Claimant's wife was working, having seen photographs of her wage slips and spoken to her employer on the telephone[23].

ii) By a letter dated 14 November 2016, the Defendant was provided with a letter from the Claimant's wife's employer

[23] 549

> confirming her ongoing employment with the company since July 2015.
>
> iii) In her email dated 16 January 2018, Rachel Green, SEO Team Manager, says,
>
> "The Defendant therefore should have considered the documents that had been sent over before detaining the Claimant. […] I do not think that there were any good reasons for rejecting those documents. No reasons were in fact given in the 12th May 2017 letter. […] There was evidence that the spouse was working"."

Decision of Robin Purchas KC, dated 18 July 2017

85. On the basis of the Defendant's untrue statements that the Claimant was an overstayer, Robin Purchas KC refused the Claimant's application for permission to proceed with his judicial review claim on the papers. Robin Purchas reasoned, inter alia, that the Claimant was an overstayer after 27 January 2016 when his EEA residence card application was refused, and that the fact that the Claimant was no longer residing with his spouse was relevant to whether he benefitted from an automatic right of residence. I comment that the Learned Judge was misled because, contrary to the Defendant's submissions, the Claimant was not an overstayer and whether he was residing with his spouse was irrelevant. By an order dated 5 September 2017 (and drawn on 18 September 2017)[24], Dinah Rose KC, sitting as a Deputy High Court Judge granted the Claimant permission to proceed with the judicial review claim and to file and serve amended judicial review grounds.

[24] Supplemental bundle, 367-368

Defendant's admission of liability for unlawful detention and breach of Claimant's EEA rights

86. On 25 January 2018, at the substantive hearing of the Claimant's judicial review claim the Defendant admitted for the first time that the Claimant's detention was illegal. The Defendant said that it would only pay the Claimant nominal damages. There was no basis whatsoever for the Defendant saying it would only pay nominal damages and this is another example of the Defendant's oppressive and high-handed conduct.

87. The claim was listed for trial on 2 June 2020. On 1 June 2020, the Defendant conceded that the Claimant was entitled to substantial damages for unlawful detention and damages for breach of his EEA rights.

Defendant's refusal to grant Residence Card on 16 May 2018

88. On 16 May 2018, the Defendant refused the Claimant's application for a residence card. As I said at paragraph 92 of my judgment,

> "The reasons for refusing to issue an EEA residence card were all untrue. The Defendant had seen an ID card for the Claimant's wife and did have evidence that the Claimant's wife was exercising treaty rights by working in the UK."

Brook House Inquiry report

89. In my judgment, I said,

> "105. I find that the Defendant's position on the Brook House Inquiry has been contradictory and unprincipled. In an email from the Defendant to the Claimant's solicitor, dated 28 January 2020, the Defendant wrote,

> ‘We note that your client makes a claim pursuant to Article 3 of the ECHR in his Particulars of Claim. Therefore, the findings of the Inquiry are directly relevant to your client’s Article 3 claim.
>
> In that light, our client has instructed us to seek to stay your client’s claim behind the Inquiry.’
>
> 106. The Defendant applied for a stay of proceedings on the grounds that the claim could not be resolved until the Brook House Inquiry report was available because the report was directly relevant to the Claimant’s Article 3 claim: in the Defendant’s application notice, dated 31 January 2020, it is said,
>
> ‘(c) The Inquiry will investigate matters and make findings that will very likely bear directly on the Claimant’s Article 3 claim;’
>
> 107. However, at the hearing of this trial, Mr Rawat vigorously opposed the admission of the Brook House Inquiry report, and even went as far as submitting that the Court could not consider the report de bene esse when considering its admissibility. No reason was put forward for the Defendant’s volte face from its previous position that the trial should be adjourned because the report’s findings would very likely be ‘directly relevant to your client’s Article 3 claims’. Further, and more significantly, the Defendant accepted the broad thrust of the recommendations made by the Brook House Inquiry.”

Payment on account of costs

90. CPR 44.3(8) provides:

> "Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so."

91. The Claimant's solicitors have served one costs budget, dated 20 June 2018[25]. In this budget, they claim £128,712.72, viz:

i) Incurred costs of £67,523.80

ii) Estimated costs of £57,440

iii) Budget drafting of £1,249.64

iv) Budget process of £2,499.28.

92. The Defendant served a costs budget, dated 6 May 2018[26], claiming £28,651, viz:

i) Incurred costs of £4,011

ii) Estimated costs of £24,640.

93. The Defendant has served an up-dated costs budget, dated 28 November 2022[27], in which it claims £172,347.25, viz:

i) Incurred costs of £91,634.25

ii) Estimated costs of £80,713.

[25] Claimant's bundle, 104-112
[26] Claimant's bundle, 114-120
[27] Claimant's bundle, 451-457

94. The Defendant's up-dated costs budget states in the expert phase[28], "The Defendant will serve an amended budget if it becomes necessary to instruct expert". In fact, the Claimant and the Defendant both instructed Consultant Psychiatrists. The Defendant instructed Dr Das and the Claimant Professor Elliott, and both experts gave oral evidence at the liability and quantum trial.

95. The Defendant's trial phase was cost budgeted on the assumption of a 2.5-day trial. In fact, the trial has taken five days: 12, 13, 14 and 17 June 2024 and 16 December 2024.

Claimant's submissions

96. Mr Jafferji and Mr Hingora seek a payment on account of costs in the sum of £150,000. They submit that in the light of a significant increase in work between 20 June 2018 and 2024, it is reasonable to anticipate that the Claimant's total costs will exceed the Claimant's costs budget, dated 20 June 2018, which claimed £128,712.72. This costs budget was predicated on a trial lasting three days. The budget did not take into account, for example:

    i) The adjournment of the substantive judicial review hearing on 25 January 2018 as a result of the Defendant admitting the illegality of the Claimant's detention at Brook House while at the same time saying it would only pay the Claimant nominal damages.

    ii) The adjournment of the trial on 2 June 2020, after the Defendant conceded on 1 June 2020 that the Claimant was entitled to substantial damages for unlawful detention and damages for breach of his EEA rights.

[28] Claimant's bundle, 454

iii) The expert evidence from Consultant Psychiatrists relied upon by both parties, which necessitated reports, supplementary reports, joint statements and their attendance to give evidence at the trial on liability and quantum.

iv) The video evidence of the Claimant's arrest and being breathalysed at the Police Station on 1 July 2023, and the expert evidence on this.

v) The striking out of the claim by Master Thornett on 12 July 2018.

vi) The appeal before Martin Spencer J on 14 March 2019, in which the order of Master Thornett was set aside and the claim reinstated.

vii) The costs case management hearing before Master Leslie on 5 July 2019.

viii) The interim payment hearing before Master Brown on 6 May 2022.

ix) The contested hearing before Master Brown for an interim payment on 1 September 2022, in which the Claimant was represented by Ms Stephanie Harrison KC and Mr Jafferji. The Claimant was awarded an interim payment of £22,500 on account of basic damages for false imprisonment, £35,000 on account of basic damages for breach of EU law rights and £25,000 on account of costs.

x) The case management hearing before Master Brown on 21 December 2022.

xi) The admission of the Brook House Inquiry report, which consisted of 710 pages.

xii) The trial taking five days.

Defendant's submissions

97. Mr Rawat submits that a reasonable payment on account of costs is £62,990.48, being 90% of the budgeted costs and 50% of the estimated costs as set out in the Claimant's approved costs budget. The Claimant has already received payments on account of costs totalling £33,500, and Mr Rawat therefore submits that the Claimant should receive a payment on account of costs of £29,490.48.

Decision on payment on account of costs

98. I find that it is plain that the Claimant's costs will very significantly exceed the budget dated 20 June 2018, bearing in mind that the budget did not take into account the matters set out in paragraph 96 above. In assessing the payment on account of costs, it is plain that the costs will far exceed the Claimant's budget, dated 20 June 2018. The Defendant's costs budget dated 28 November 2022 totals £172,347.25 and does not take into account the matters in paragraph 96 above.

99. Although there is no up-to-date costs budget from the Claimant, I have no doubt that the Claimant's costs are likely to be in excess of £250,000. The Claimant's costs are to be assessed on an indemnity basis.

100. I bear in mind the guidance in Civil Procedure 2024, volume 1, paragraph 44.2.12 (pages 1384-1386).

101. I find that having regard to all the circumstances of this case, including the fact that it has been defended in an extremely aggressive manner with every possible point being taken, a reasonable sum on account of costs is £150,000.

102. I bear in mind that the Claimant has already received on account of costs £33,500, viz:

i) £25,000 on 27 September 2022

ii) £7,000 on 2 January 2023

iii) £1,500 on 17 March 2023.

103. I therefore award £116,500 on account of costs.

Claimant's solicitors to show cause why they should not pay 75% of costs of and incidental to the hearing on 1 February 2023

104. The Defendant made an application dated 31 January 2020 to stay the proceedings pending the conclusion of the Brook House Inquiry. By an order dated 1 June 2020, Stewart J stayed the claim pending the conclusion of the Brook House Inquiry[29].

105. By a notice of application dated 10 January 2022 (and sealed by the Court on 10 February 2022), the Claimant sought[30],

> "An order lifting the stay on the matter to the extent of determining the Claimant's application dated 21st April 2021 for interim payment."

106. By an order dated 6 May 2022, Master Brown ordered[31],

> "UPON the Brook House Inquiry having concluded its evidence taking stage and upon the Claimant having indicated that the current estimated date for publication of the report of the Brook House Inquiry is November 2022.

[29] Trial core bundle, 60
[30] Supplementary bundle, 10-13 at 10
[31] 62-63

> AND UPON it appearing that no application for an interim payment has yet been issued,
>
> BY CONSENT it is ordered
>
> 1. The stay imposed by Order of Mr Justice Stewart dated 1 June 2020 to enable *inter alia* the parties to await the outcome of the Brook House Inquiry now be lifted.
>
> 2. If no application for an interim payment has yet been made, the Claimant is to make such an application by 4pm on 13 May 2022; alternatively, the Claimant must ascertain by 4pm on 13 May 2022 that the application has been made to the Court and the fee paid so that the Court can now issue the application. In the event of such an application having been issued by 4pm on 13 May 2022 it is to be listed with a (current) time estimate of one day on completion of a Masters Appointment Form.
>
> …
>
> 4. Costs reserved."

107. The Claimant's previous solicitors had carried out work for an interim payment application but had not made an application to the Court. On 13 May 2022 the Claimant's current solicitors filed an application for an interim payment, which was heard on 1 September 2022.

108. By an order dated 1 September 2022, Master Brown ordered[32],

> "UPON hearing counsel Ms Stephanie Harrison QC and Mr Zainul Jafferji for the Claimant and Mr Bilal Rawat for the Defendant on an application filed on 13 May 2022 for interim payment of damages and costs.
>
> IT IS ORDERED:
>
> 1. The Defendant is to make an interim payment to the Claimant in the sum of £22,500 on account of basic damages for false imprisonment. The payment is to be made by 22 September 2022.
>
> 2. The Defendant is to make an interim payment to the Claimant in the sum of £35,000 on account of basic damages for breach of his EU law rights. The payment is to be made by 22 September 2022.
>
> 3. The Defendant is to make an interim payment of costs to the Claimant in the sum of £25,000. The payment is to be made by 22 September 2022.
>
> 4. The Defendant is to pay the Claimant's costs of the said application. In the event that such costs are not agreed between the parties, then they will be summarily assessed at the next CMC.

[32] 64-65

> 5. Subject to any further order, liability for the costs of the hearing on 6 May 2022 will be decided at the next CMC hearing unless agreed between the parties.
>
> 6. The Claimant to file and serve a separate schedule of costs in respect of each application [interim payment and lifting of stay] which is the subject of paragraphs 4 and 5 of this Order by 15 September 2022."

109. The Claimant's solicitors submit that on 6 September 2022, an email was sent to the Claimant's previous solicitors, followed by a telephone call, in which the Claimant's solicitors say the previous solicitors were fully appraised of the matter. The Claimant's previous solicitors were advised to provide their statement of costs by 8 September 2022.

110. On 8 September 2022, the Claimant's previous solicitors were advised by email that the parties had agreed to extend the date for the schedule of costs to 15 September 2022.

111. On 15 September 2022, the Claimant's current solicitors waited for the previous solicitors' statement of costs until 15:58, when the Claimant's current solicitors filed at Court and served on the Defendant their statement of costs. The Claimant's previous solicitors emailed their statement of costs on the same day at 16:34. These costs were discussed with the Claimant, who disagreed with them, considering them highly inflated and raising concerns about some of the items in the breakdown of the spreadsheet. The Claimant's solicitors say that the Claimant objected to filing the statement of costs because he disputed the extent of the work carried out by his previous solicitors on the interim payment application.

112. On 15 September 2022 at 17:44, the Claimant's solicitors sent an email to the Court, saying:

> "We have just received the schedule of costs from the Claimant's previous representatives, though it was firstly requested on 6th September and then on 8th September. The schedule of costs needed to be discussed with the Claimant and counsel before it is filed.
>
> We, therefore, request the Court to allow us to file the schedule of costs by 4pm, Tuesday, 20th September. You would appreciate that the Claimant or his current solicitors have no role to play in the current delay."

113. On 20 September 2022, the Court was advised that the Claimant and his previous solicitors were in discussion. The Claimant's present solicitors asked his previous solicitors to amend their statement of costs as it was not approved by the Claimant.

114. On 22 September 2022, the Claimant's solicitors sent a further email to the Claimant's previous solicitors.

115. By an email dated 29 September 2022[33], the Claimant's solicitors advised the Defendant's solicitors that they were still awaiting a statement of costs from the Claimant's previous solicitors, which would be filed as soon as it was received.

116. On 6 October 2022, the Claimant's solicitors sent an email to the Claimant[34], saying,

[33] Defendant's bundle, 61
[34] Supplementary bundle, 90

> "Please note, there is a real risk that Burton may claim their costs from you in the event that it is not claimed. We cannot file and serve without your instructions.
>
> We have discussed this matter in detail, and I understand Zainul has also advised you on this. So, you are fully aware of the implications of filing their statement of costs.
>
> I would, therefore, request you confirm your instructions as a matter of urgency."

117. On 23 November 2022, the Claimant's solicitors sent an email to the GLD Cost Lawyer[35], Archana Thiripuran, advising her that they were still awaiting a statement of costs from the Claimant's previous solicitors and would forward it upon receipt.

118. By an email dated 20 December 2022[36] from the Claimant's solicitors to Master Brown and copied to the Defendant's solicitors and Mr Rawat, they said,

> "The Claimant requests that you summarily assess the Claimant's costs for the interim payment application on papers, as these costs have not been agreed upon. This was envisaged at point 4 of your order dated 30 September 2022. There ought to be no further delay in these costs being assessed and paid. As far as point 5 of your order is concerned, the issue of liability for the costs of the hearing on 6 May 2022, that will have to be left until 12 June 2023."

[35] Supplementary bundle, 89
[36] Defendant's bundle, 64

119. At the time of the hearing before Master Brown on 1 February 2023, the Claimant had not agreed the costs of his previous solicitors. The Claimant's solicitors say that at the hearing, Counsel for the Claimant stated that the Defendant and the Court had already been informed that the Claimant's previous solicitors' costs had not been agreed by the Claimant.

120. At the hearing on 1 February 2023, Master Brown made an order (which was sealed on 24 February 2023) in the following terms[37]:

> "UPON hearing Counsel for the Claimant, Zainul Jafferji and Counsel for the Defendant, Bilal Rawat at a hearing on 1 February 2023,
>
> AND UPON the hearing having been listed for summary assessment and determination of costs issues in respect of (a) the Claimant's costs of an application to lift a stay of these proceedings heard on 6 May 2022 ('the first application') and (b) the Claimant's costs of an application for an interim payment heard on 1 September 2022 ('the second application').
>
> AND UPON the Court finding that it did not have all the information necessary to undertake a summary assessment of the costs of the first and second application and being concerned that there were costs that might be claimed by previous solicitors of the Claimant which had not properly been brought into account

[37] 71-72

by the Claimant's current solicitors (with possibly significant consequences for the Claimant),

AND UPON the Court finding that in the absence of such information it was not able to proceed to summarily assess the costs as intended and that a significant proportion of the costs of and incidental to the hearing of today had therefore been wasted,

AND UPON the Court raising the question as to whether any order for costs should be made against the Claimant's current solicitors for such wasted costs.

IT IS ORDERED :-

The first application

1. The Defendant pay 50% of the costs of the first application, to be subject to detailed assessment if not agreed; the remaining costs to be in the case.

2. Within 21 days of the date of this order, the Defendant is to make a payment on account in respect of the costs of the first application in the sum of £1,500.

The second application

3. The Claimant's costs of and incidental to the second application to be subject to detailed assessment if not agreed.

Cost of and associated with the hearing on 1 February 2023

> 4. a. 75% of these costs are reserved on the basis that, and subject to further order (including any order that may be made at the CCMC scheduled for 12 June 2023), within 21 days of the determination of these proceedings, the Claimant / the Claimant's solicitors are to show cause in writing as to why they should not be liable for 75% of the Defendant's costs of and incidental to the hearing of 1 February 2023 and the Claimant's solicitors will be joined to the proceedings for this purpose. For the avoidance of doubt the Court does intend to give consideration to the correct order to be made as to these costs at the hearing on 12 June 2023.
>
> b. This issue as to the payment of these costs is reserved to Master Brown subject to further order.
>
> 5. The remaining 25% of the costs of and associated with the hearing on 1 February 2023 hearing are costs in the case.
>
> Dated: 24th February 2023"

121. On 3 August 2023, the Claimant's solicitors served their Bill of Costs on the Defendant, including the costs of the Claimant's previous solicitors.

122. By an order dated 3 October 2023 (drawn on 4 October 2023), Master Brown ordered[38],

> "1. Paragraph 4 of the Order dated 24 February 2023 is amended so that the Claimant's solicitors are to show cause in writing as to why they should not be liable for 75% of the

[38] 73

> Defendant's costs of and incidental to the hearing of 1 February 2023 to be served by 4pm no later than 7 clear days before the first date of the trial, and filed with the Court at the conclusion of the Court's determination on liability and quantum. The issue of wasted costs from 1 February 2023 to be dealt with by the trial judge at the end of the trial."

Claimant's solicitors' submissions

123. The Claimant's solicitors sent a show cause letter to the Court, dated 8 July 2024[39]. This letter forms the basis of the Claimant's solicitors' submissions, together with the skeleton argument of Mr Jafferji and Mr Hingora[40] at paragraphs 40 – 56.

124. In short, the Claimant's solicitors contend that they did everything they could to agree the costs of the Claimant's previous solicitors and kept the Court and the Defendant's solicitors informed of the steps they were taking, and as a consequence, they should not bear any costs.

125. Mr Jafferji says that the Claimant's current solicitors made reasonable efforts to obtain a costs schedule from the Claimant's previous solicitors in relation to the interim payment application. These efforts began as early as 6 September 2022, when the Claimant's solicitors asked the previous solicitors to provide a detailed breakdown of their costs. Despite follow up requests, the previous solicitors only provided their schedule of costs on 15 September 2022, which was the day that Master Brown had ordered that the Claimant should file and serve his schedule of costs. The Claimant's solicitors notified the Court on 15 September 2022 (see paragraph 112 above) that they

[39] Claimant's bundle, 1327-1330
[40] Claimant's bundle, 21-45 at 43-45

had just received the schedule of costs from the previous solicitors and requested an extension of time to file the costs schedule to 4pm on 20 September 2022.

126. The Claimant's solicitors say that the Claimant raised concerns about the figures presented by his former solicitors and despite their attempts to resolve these concerns, the Claimant did not agree the costs claimed by his previous solicitors. As a consequence, it was not possible to serve and file a schedule of costs. They refer to an email to the Claimant, dated 6 October 2022 (see paragraph 116 above) saying that they cannot file and serve the costs schedule without his instructions and requesting that the Claimant confirm his instructions as a matter of urgency.

127. The Claimant's solicitors say they did not seek to hide the issue that the Claimant did not agree the costs of his former solicitors, and they kept the Defendant and Court informed. They point to an email to the Defendant on 23 November 2022 (see paragraph 117 above) and an email to the Court, copied to the Defendant and Mr Rawat, on 20 December 2022 (see paragraph 118 above).

Defendant's submissions

128. The Defendant's submissions are contained in a letter from the Defendant's solicitors, dated 30 September 2024[41], and in paragraphs 24-26 of Mr Rawat's skeleton argument[42]. Mr Rawat submits that Master Brown's order of 1 February 2023[43] involved a finding that costs had been wasted. Mr Rawat says that the sole question for this Court is whether any liability for such wasted costs should fall on the Claimant's current solicitors. Mr Rawat submits that the Court does not need to consider and should

[41] Defendant's bundle, 51-55
[42] Claimant's bundle, 6-8
[43] 71-7

give no weight to unevidenced recollections of what happened at the hearing on 1 February 2023. The Claimant's solicitors have had 17 months to "show cause" and put all relevant matters before the Court. He says that the Claimant's solicitors could have taken "obvious steps" before the hearing of 1 February 2023 to avoid the risk which crystalised at that hearing. Mr Rawat submits that the Court was entitled to infer from the Claimant's solicitors email dated 20 December 2022 to Master Brown, asking him to summarily assess the costs on the papers, that the Claimant considered that the Court required no further information to do so.

Decision as to whether Claimant's solicitors should pay 75% of the Defendant's costs of and incidental to the hearing on 1 February 2023

129. I have considered the three-stage test in *Ridehalgh v Horsefield* [1994] Ch 205 CA:

i) Had the legal representative of whom complaint was made acted improperly, unreasonably or negligently?

ii) If so, did such conduct cause the applicant to incur unnecessary costs?

iii) If so, was it, in all the circumstances, just to order the legal representative to compensate the applicant for the whole or part of the relevant costs?

130. I accept that the Claimant's solicitors were in a difficult position because the Claimant did not agree his previous solicitors' costs in respect of the interim payment application. However, by at least November/December 2022, it was apparent that the Claimant was not going to agree the costs of his previous solicitors. Attempts had been made to agree those costs since mid-September 2022. The Claimant's solicitors sent an email to Master Brown on 20 December 2022, asking him to summarily assess the Claimant's costs for an interim payment on the papers. This was a misconceived request because

the Claimant's costs of the interim payment application could not be summarily assessed without the costs of the Claimant's previous solicitors being included and the Claimant did not agree those costs.

131. I find that the Claimant's solicitors were negligent in not informing the Court and the Defendant prior to the hearing on 1 February 2023 that the costs of the interim payment application could not be summarily assessed because the Claimant did not agree the previous solicitors' costs. The Claimant's solicitors should have informed the Court and the Defendant in good time prior to the hearing on 1 February 2023 that they could not invite the Court to summarily assess the costs of the Claimant's interim payment application but would invite the Court to make an order for costs in the Claimant's favour subject to detailed assessment and request a payment on account of costs based on the Claimant's present solicitors' costs. Instead, the Claimant's solicitors continued, wrongly, to seek a summary assessment of their costs of the interim payment application and this inevitably led to a proportion of the costs of the hearing on 1 February 2023 being wasted.

132. I find that the negligence of the Claimant's solicitors did, as Master Brown found, cause a significant proportion, which he assessed at 75%, of the costs of and incidental to the hearing on 1 February 2023 to be wasted. As Master Brown said in a recital to his order dated 1 February 2023,

> "AND UPON the Court finding that in the absence of such information it was not able to proceed to summarily assess the costs as intended and that a significant proportion of the costs of and incidental to the hearing of today had therefore been wasted
> "

133. I find that in all the circumstances it would be just to order the Claimant's solicitors to pay 75% of the Defendant's costs of and incidental to the hearing on 1 February 2023.

134. I order that the Claimant's solicitors do pay 75% of the costs of the hearing on 1 February 2023 on a standard basis, such costs be subject to a detailed assessment if not agreed.

Permission to appeal the order of Christopher Kennedy KC, sitting as a Judge of the High Court on 12 June 2024

135. On the morning of the first day of the trial, 12 June 2024, the Claimant made an application for permission to rely upon an amended schedule of loss, dated 5 June 2024, and witness statements, dated 23 June 2017, 20 December 2019 and 20 April 2021. This application was heard by Christopher Kennedy KC, sitting as a Judge of the High Court, who refused the Claimant's application to amend his schedule of loss. The Defendant has included in its bundle a transcript of the argument before Christopher Kennedy KC on 12 June 2024[44] and a transcript of his ex tempore judgment[45]. The Claimant wishes to appeal this decision.

136. The Claimant asks that I hear the application for permission to appeal the order of Christopher Kennedy KC, sitting as a Judge of the High Court.

137. An appeal from a High Court Judge (which includes a Deputy) must be made to the Court of Appeal[46]. Therefore, I cannot hear the application for permission to appeal.

[44] Defendant's bundle, 361-391
[45] Defendant's bundle, 392-397
[46] See Practice Direction 52A, table A – Civil Procedure vol. 1, p. 1899

Summary of decisions

138. I summarise my decisions as follows:

i) The judgment sum of £146,495.24 (£203,995.24 less the interim payment of £57,500), as payable at 29 September 2024, is to be paid by 4pm on 11 February 2025.

ii) Interest is payable on the judgment sum of £146,495.24 at 8% from 29 September 2024 to the date of payment.

iii) The Claimant is entitled to interest on his damages in the total sum of £9,648.95, to be paid by 4pm on 11 February 2025.

iv) In default of payment of the interest of £9,648.95 by 4pm on 11 February 2025, Judgment Act interest at 8% is payable.

v) The Defendant do pay 100% of the costs of and occasioned by the judicial review proceedings and the trial on 12, 13, 14 and 17 June 2024 and 16 December 2024 on an indemnity basis. Such costs to be subject to a detailed assessment if not agreed.

vi) The Defendant do make a payment on account of costs to the Claimant's solicitors of £116,500 by 4pm on 11 February 2025, pursuant to CPR 44.2(8).

vii) The Claimant's solicitors do pay 75% of the costs of the hearing on 1 February 2023 on a standard basis, the amount of such costs to be subject to a detailed assessment if not agreed.