Neutral Citation Number: [2021] EWHC 1620 (Admin)

Case No: CO/3404/2021

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

Date: 14th June 2021

Before :
MR JUSTICE FORDHAM
- -

Between :

STUART BINNS & ASSOCIATES	**Claimant**
- and -	
FINANCIAL OMBUDSMAN SERVICE	**Defendant**
- and -	
ANGELA ELLIOTT	**Interested party**

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Anthony Speaight QC (instructed by direct access) for the Claimant
Gethin Thomas (instructed by Financial Ombudsman Service) for the Defendant

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Hearing date: 14.6.21
Judgment as delivered in open court at the hearing
- -

Approved Judgment

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

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing

MR JUSTICE FORDHAM :

Mode of hearing

1. This is a renewed application for permission for judicial review after a refusal on the papers by HHJ Gosnell. The mode of hearing was by BT conference call. Both counsel confirmed their satisfaction that that mode of hearing involved no prejudice to the interests of their clients. I agree. I also satisfied that the open justice principle has been secured. The case and its start time were published in the Court's cause list. Also published was an email address which any member of the press or public could use if they wished to observe this public hearing. The hearing has been recorded. I will produce an approved written version of the ruling that I am now giving, which will then, I hope, assist the parties as well as be available for release in the public domain. I am quite satisfied, in the circumstances of the pandemic, that the mode of hearing was justified and appropriate. BT conference call rather than Microsoft Teams was a preference of one of the parties and the Court was able appropriately to accommodate that choice.

Background

2. This is a case about a complaint which was made to the Defendant in December 2015, and which was, in due course, upheld by a determination of the Defendant in July 2020. The background is that transfers of certain pension funds to certain unregulated collective investment schemes took place in September 2002, at a time when the Claimant was the adviser to Mr John Elliott. It is Mr Elliott's widow who, on his death, became the sole beneficiary of his pension arrangements and has continued the conduct of the complaint that was made in December 2015. She is an interested party in these judicial review proceedings but has not participated. In January 2008 one of the funds namely a fund in a scheme called ACE (Active Commercial Estate) was suspended and subsequently attributed a nil value. A verbal complaint was raised in October 2010 and acknowledged by response from the Claimant's Mr Ward in November 2010. A formal complaint was subsequently made by solicitors acting for Mr Elliott in February 2013. What had happened in the summer of 2007 was that the Claimant had introduced Mr Elliott to Seven Investment Management (SIM). There are a number of written communications, to which it will be necessary to return, as to the context of SIM coming on the scene. At the end of December 2007 custody of the ACE assets was finally transferred to SIM. The following month, as I have explained, the ACE fund was suspended.

Key scheme provisions

3. Relevant for the present purposes, and at the heart of the scheme operated by the Defendant, are provisions governing limitation and provisions governing determination of the merits of a complaint. So far as limitation is concerned Schedule 17 paragraph 13(1) to the Financial Services and Markets Act 2000 required the FCA to "make rules providing that a complaint is not to be entertained unless … the complainant has referred it under the ombudsman scheme before the applicable time limit (determined in accordance with the rules) has expired". Paragraph 13(1)(b) and (2) go on to make provision for cases in which there is agreement and cases where there is a basis for an extension of time in circumstances specified by the FCA rules. The key FCA rule is DISP2 paragraph 2.8.2. It provides:

> ***The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:***
>
> ***(1) more than 6 months after the date on which the respondent sent the complainant its final response… ; or***
>
> ***(2) more than:***
>
> ***(a) six years after the event complained of; or (if later)***
>
> ***(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that [they] had cause for complaint;***
>
> ***unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received…"***

So far as determination of the merits is concerned, section 228(2) of the 2000 Act provides:

> ***A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case.***

That test, describing in his oral submissions by Mr Speaight QC as the 'overarching' test, and a test 'without boundaries', is reflected in rule 3.6.1 of DISP3 where the same language appears.

The impugned decision

4. The decision of the Defendant in the present case – favourable to Mrs Elliott and adverse to the Claimant – was preceded, in accordance with the procedures under the scheme, by a sequence: an exchange of prior position documents on the part of the Defendant and representations on the part of the parties. At various stages the Claimant was represented by Counsel, but not at that stage by Mr Speaight QC. A provisional decision was issued on 31 January 2020 and, following further representations, the final decision on 1 July 2020. The final decision sets out the background and then addresses the four key topics that had arisen in the present case. The first concerned 'jurisdiction to consider the complaint': that is to say, the application of the rules on limitation. The second concerned 'suitability of the investment advice in 2002'. The third concerned the question of 'when SIM had assumed responsibility for Mr Elliott's investments'. The fourth topic concerned 'fair compensation'. Without making any concession so far as concerns the merits, the Claimant and Mr Speaight QC focus for the purposes of the claim for judicial review on topics 1 and 3, together with general submissions about the application of the fairness and reasonableness test in all the circumstances.

The application today

5. Mr Speaight QC rightly emphasises for the purposes of today that all he needs to establish is that there is an arguable case for judicial review, whether on one or more of the grounds put forward, together with permission to amend where that is needed. He rightly reminds me that that threshold of arguability is a relatively modest one. There are two grounds for judicial review.

Ground 1

6. Ground 1 is subdivided into 3 sub-grounds. They each relate to limitation and delay considerations and how those considerations play out in the circumstances of the present case. So far as the application of rule 2.8.2 is concerned, it is common ground that rule 2.8.2 paragraph (1) did not serve to exclude the complaint. That is because the Defendant concluded - in a manner open to her - that the Claimant had never provided a compliant final response. It is also common ground that rule 2.8.2 paragraph (2) (a) and (b) could not assist Mr (and subsequently Mrs) Elliott since those time limits have not been met, and that therefore the critical question turns on the application in the present case of the proviso to paragraph 2.8.2(2) (the phrase beginning with the words "unless the complainant referred…").

Ground 1A

7. Ground 1A, in essence as I saw it, really comes to this. Applying the proviso to rule 2.8.2(2) – on which the Claimant submits the Court has an objective function this being a question going to jurisdiction (relying on R (Chancery (UK) LLP) v FOS [2015] EWHC 407 (Admin) at paragraphs 66 to 67 in particular) – the Defendant in this case lacked jurisdiction and the complaint was out of time. That is because although the definition of complaint (in the FCA Handbook) includes an "oral" complaint, and although it is accepted that there was an oral (verbal) complaint on 21 October 2010, there is a material distinction between that verbal complaint and the complaint subsequently made to the Defendant on 4 December 2015. They were not the same complaint. Crucially, that is because the verbal complaint in October 2010 was about "failed investment" of the ACE fund in January 2008. It was not a complaint about "suitability of advice" given in around September 2002. Since the complaint made verbally was not, in substance, the same as the one subsequently advanced to the Defendant, the proviso is not satisfied and the complaint should have been rejected on grounds of lack of jurisdiction. Even if not an objective question for this court, judicial review is appropriate given the absence of any finding or sustainable finding that the substantively relevant complaint had been raised verbally in October 2010.

Permission to amend the JR grounds

8. Ground 1A is a ground for which permission to amend in my judgment would be needed. It is a ground aligned to the first ground which Mr Wood himself pleaded when the judicial review proceedings were commenced. But Mr Speaight QC, in my judgment, has rightly recognised that it is a refinement for which it is appropriate to have asked the Court for permission to amend. The same is true, in my judgment, of Grounds 1B and 1C. Mr Thomas for the Defendant opposes permission to amend. One basis of that opposition is that, he submits, the new refinements do not identify any properly arguable ground for judicial review. If that is the case then of course permission for judicial review would itself not be granted. But Mr Thomas also submits that permission to amend should be refused in any event. He says that there has been a prejudicial lapse of time between the filing of the claim for judicial review on 22 September 2020 and the refinement by Mr Speaight QC of the grounds. He points out that that refinement only took place after permission had been considered by the paper judge. He submits that there is no excuse for that delay, or for the decision not to instruct counsel from the outset so far as judicial review is concerned.

He also submits that there is prejudice to the Defendant from an inability, with a fair opportunity, to deal with the refined amended grounds. The Administrative Court Judicial Review Guide says of amendment of grounds before the Court considers permission that the Court "retains a discretion … and will often be guided by the prejudice that would be caused to the other parties or to good administration" (paragraph 6.10.2). I accept Mr Thomas's submissions that the ambit of the Court's discretion and judgment extends to the sorts of features on which he has relied. He has however failed to persuade me that it would be inappropriate to grant permission to amend in this case. On the contrary, I am quite satisfied – in the particular circumstances of the present case – that it is appropriate in the interests of justice, as well as promoting the public interest, that Mr Speaight QC should be able to put forward the refinements which he properly identified as needing the Court's permission. They are points which are closely aligned to the substance of the pre-existing grounds for judicial review which had been put forward. In my judgment, there is no prejudice to the Defendant and there has been ample opportunity to respond to the substance: both in writing (in a skeleton argument) and today orally through Mr Thomas's submissions. Whether any ground should be granted permission for judicial review is another matter. But I will address each of the grounds put forward on their legal merits. Permission to amend is granted.

Discussion of Ground 1A

9. In my judgment, Ground 1A is not an arguable ground for judicial review of the impugned decision. The Defendant expressly addressed the application of the proviso. She made an express finding that the same substantive concerns had been raised verbally in October 2010 as were then the subject of the complaint subsequently advanced. She rejected the analysis that the concerns raised verbally had related to the "failed investment" in 2008 and not the "unsuitability of the advice" in 2002. She found that there is clear evidence that the "same concerns", about the suitability of the initial 2002 recommendation, had been raised. In my judgment, looking at the materials, that conclusion was plainly justified; indeed plainly correct.

10. The letter of acknowledgement which was written by the Claimant's Mr Ward on 3 November 2010 recorded that what had been raised verbally had concerned various features of events including that the Claimant had "recommended investments … which had failed". I accept Mr Thomas's submission that, beyond argument, that was referable to the relevant features of a complaint (as defined in the FCA Handbook glossary) as being concerned with (i) an allegation of failure of provision of a financial service and (ii) an allegation of financial loss. The service was 2002 and the recommendation; the financial loss was 2008 and the failure of the fund. The rest of that letter, beyond reasonable argument, demonstrates that that was the substance of the complaint being made. The letter records that the verbal complaint had been "that we had 'erred' by recommending it to you in 2002". The body of the letter described a discussion in 2002 and what was said to have been "a full analysis'. It contains the description of the investment as having been "a suitable investment for your circumstances and health". It contains a description of the Claimant as having taken steps to "match your objective by introducing you to suitable institutions". In my judgment it is clear, reading that letter, that it is a letter recognising that the substance of what had been raised included the 'suitability of the advice' given in 2002.

11. There is another problem. I do not accept that the judgment on the question of the ambit of the complaint made in October 2010 engages an objective question for the reviewing Court to decide for itself. In the Chancery UK case, on which the Claimant relies, Ouseley J set out an analysis of paragraph 66 and 67 of the approach of the judicial review Court to a jurisdictional question of whether there had been a regulated activity. He did so having set out (at paragraph 62) that in a case by the name of R (Bankole) v FOS [2012] EWHC 3555 (Admin) this Court has concluded that evaluative judgments in conclusions as to whether the complaint was out of time were matters for the Defendant as primary decision-maker subject only to review on conventional judicial review grounds. That approach had been approved in subsequent authority: see paragraph 63 of Chancery UK. Nothing in the judgment in Chancery UK, in my judgment, involved any qualification to it. Indeed, recognition that the characterisation of a "complaint" was a judgmental question for the Defendant to evaluate, subject to conventional judicial review, was recognised by the same judge (Ouseley J) as decided the Chancery UK case, 3 years later in R (Tenetconnect Services Ltd) v FOS [2018] EWHC 459 (Admin) at paragraph 47. In the present case nothing turns on any of this because, even if the appropriate standard were a 'correctness' review standard, for the reasons I have explained, I am quite satisfied – beyond argument – that the Defendant's evaluation in the present case was clearly correct.

Grounds 1B and 1C

12. Ground 1B and 1C proceed on the premise that Ground 1A does not succeed. The essence of these grounds, as I saw them, is as follows. Even if the complaint was lawfully recognised not to fall foul of the rules on limitation, it was nevertheless necessary – in order to arrive at a lawful decision in the present case on the merits applying the 'overarching test' of fairness and reasonableness for the Defendant to address in the decision two topics. The topic (featuring in Ground 1B) is the way in which the considerations raised in the context of the delay objection engaged the overarching fairness and reasonableness test. Here, the argument is that points relating to the dilatory way in which the complaint was advanced, points arising out of the correspondence and what had been said about treating the matter as closed, and points as to the prejudicial consequences so far as insurance cover was concerned, even if not capable of supporting a rejection on limitation grounds, were all matters which ought to have featured in an assessment of what was fair and reasonable on the merits. That is especially so when those matters concerned culpability on the part of the complainant. All of this constitutes, as Mr Speaight QC put it in his submissions today, a relevant consideration that needed to be addressed and was not addressed in the decision. So, that is the essence of Ground 1B.

13. Ground 1C is that, even if Ground 1B is wrong, what needed to be addressed in the decision was a recognition of how the common law and statutory limitation periods would apply if a court were considering the complaint as a claim. What is said is that the Defendant was obliged to give a reasoned basis for departing from the law on limitation. On that point reliance is placed on the principle articulated by the Court of Appeal in R (Heather Moor & Edgecomb Ltd) v FOS [2008] EWCA Civ 642 [2008] the Bus LR 1486 in particular at paragraph 49. There, the Court of Appeal describes the need for the Defendant, if departing from "the relevant law", to "say so in [their] decision and explain why". So, that is the essence of Ground 1C, which again

involves – in effect –identifying a relevant consideration which needed to be addressed. So far as Ground 1B is concerned, reliance is placed in particular on a permission decision in the case of R (Bamber) v FOS [2009] EWCA Civ 593, a case in which consideration was given to the difference between the delay rules applied by the Defendant and common law and statutory limitation, and in which reference was made to the potential for points to engage the merits jurisdiction (see in particular paragraph 27).

Citing a permission decision

14. Mr Speaight QC, rightly, recognises that Bamber is a permission decision and did not press that case as one on which he could appropriately rely, given the absence of a certification within the judgment. Mr Thomas took no point on that and, in my judgment, he was right not to do so. At the permission stage in a judicial review, speaking for myself and at least in the circumstances of the present case, if there were a 'gold nugget' of real value to be found in a permission decision of the Court of Appeal I would be anxious to consider it. The Bamber case was, in my judgment, properly put in the bundle of materials for this hearing.

Discussion of Grounds 1B and 1C

15. In my judgment, neither Ground 1B nor Ground 1C constitutes a reasonably arguable ground for judicial review in the present case. In my judgment, there is no realistic prospect that this Court, at a substantive hearing, would intervene on either of these grounds. The position, in my judgment, is as follows. In the first place, the FCA rules contain the applicable time limit and the specified circumstances for an extension of time. The provision made is clear careful and elaborate. That provision reflects Parliament's mandate to the FCA in Schedule 17 paragraph 30, requiring that delay be dealt with through provision in rules. Those, lawful, rules – albeit that they do not track the statutory or common law of limitation – provide the legal framework for the consideration of delay. All of that is the clear and principled starting point.

16. In my judgment, in a case where the Defendant has faithfully applied lawful rules relating to delay considerations, she was not – at least on the facts and in the circumstances of the present case – required separately to give a reasoned justification for a departure from the law as to limitation. Neither the Heather Moor case, nor any subsequent case applying that I was shown, identifies a need to do so. The focus of the Heather Moor principle relates to the substance of the case and the Defendant's 'departure' from substantive principles which a court would apply; not a 'departure' from considerations relating to limitation. The Bamber case does not in my judgment even arguably support the claim made here: the considerations which the Court of Appeal in that case recognised as being, in principle, capable of carrying forward to consideration of the merits were particular points relating to "retrospectivity". Bamber was a case in which the advice which was the subject of the complaint had preceded the statutory scheme setting up the ombudsman mechanism and its rules. What had been raised before the Court in Bamber included concerns as to "retrospective" application of substantive principle. That is what the Court of Appeal was addressing at paragraph 27. In the present case the advice given was in 2002; the ombudsman scheme (including its shape so far as concerns relevant substantive matters) had been brought into effect in June 2001. No "retrospectivity" point arises. Indeed, in the Bamber judgment – as Mr Thomas points out – the Court at paragraph 25 emphasised

that the rules applicable by the ombudsman to limitation did not involve the application of the common law or statutory limitation principles. In my judgment it is unarguable that, as the Claimant seeks to contend on Ground 1C, that the Defendant is required under the Heather Moor principle to identify the common law or statutory limitation analysis that would be applied by a court and then give a reasoned justification for 'departing' from it. Putting the point another way, faithful application of the rules that do apply in the context of the Defendant's jurisdiction so far as limitation is concerned, themselves constitute the 'reasoned justification'.

17. I turn to Ground 1B. The prism for merits determination of 'fairness and reasonableness in all the circumstances of the case' is a paradigm of a question for evaluative judgment entrusted to the Defendant. That, as the authorities emphasise, is reinforced by the provision made by Parliament and the FCA rules that it is in the Defendant's "opinion". Nothing in the rules or guidance authorities supports the proposition that delay considerations re-enter the analysis of the merits determination. I would accept that, in principle, in an individual case, it is possible that such features could re-enter the analysis. I would also accept that, in principle, such a consideration could be so clear-cut as to constitute a legal relevancy that the Defendant is required as a matter of public law duty to address. As the authorities explain, the starting point, so far as relevant considerations are concerned, is that it is for the public authority to evaluate what is relevant. There is also an exercise of latitude and judgment so far as concerns reasons given, when considering legal adequacy of reasons. In my judgment, it is not arguable that the Defendant – in the present case – was required, as a matter of public law obligation, to address all the considerations relating to delay and prejudice that had been raised in the context of limitation when she came to make her determination on the factual merits aspect of the case. I accept Mr Thomas's submission that the Defendant had all the circumstances of the case well in mind. It was, beyond argument, well within her judgment to focus on the matters that she did in considering the substantive merits.

18. That last point is reinforced, in my judgment, by this fact. The position taken by the Claimant itself, during the Defendant's process, a process in which the Claimant was represented by Counsel, involved making submissions on limitation and delay. It also involved making submissions on the substantive merits. In my judgment, it is not irrelevant – in a case such as the present – that, when one considers the submissions that were put forward, the argument was not made that the same considerations as arising in the context of delay and limitation should serve to inform the Defendant's consideration of the substantive merits by reference to what was 'fair and reasonable'. I put to Mr Speaight QC whether that point had been raised in the representations and he accepted that it was not to be found within them. That is of relevance in considering whether there were here points so obvious that no reasonable decision-maker could have done other than explicitly address them in the substantive merits part of the decision. This reinforces the conclusion that I have reached, both as to legal 'relevancy' and also the related question of adequacy of reasons, so far as concerns Ground 1B.

Ground 2

19. I turn to deal with the substantive ground: Ground 2. Its essence is as follows, as I see it. The decision of the Defendant on the substantive merits is arguably vitiated so far as concerns the topic of SIM 'assuming responsibility'. This featured in the

Defendant's analysis from the perspective, in particular, of causation and loss. The Defendant concluded that it was 'fair and reasonable in all the circumstances' for responsibility in full to lie with the Claimant, notwithstanding the events of the summer and autumn of 2007. In particular, the Defendant concluded that given the transfer of assets into the custody of SIM only took place at the end of December 2007 and the ACE fund was suspended in January 2008, there was insufficient time for SIM to 'assess suitability' of the ACE fund as an investment for Mr Elliott. That conclusion is fundamentally flawed, and arguably irrational or unreasonable. That is essentially for this reason. In a detailed letter dated 7 August 2007 SIM had written to the Claimant's Mr Ward in terms which made clear: that SIM would not need any further 'assessment' of Mr Elliott's needs or of suitability; that it would not need to conduct any further meeting. That is because SIM was in a position to – and through that letter did – give its 'assessment' as to what was 'appropriate'. That letter contained a 'strong recommendation' to 'invest the core of Mr Elliott's money' in a 'new balanced strategy'. In describing 'Mr Elliott's money' the letter referred to the overall amount of £550,000. That was a figure in which the ACE fund was included. The letter expressly stated that the position would be reviewed a year later, in July 2008. The position on the contemporaneous documents, documents to whose substance the Defendant in other parts of her proposed and final decisions referred, was that the 'assessment' had already taken place. The advice had already been given. All that would be needed was implementation. SIM may not have had time for 'meetings' and 'assessments' and 'decisions as to suitability'. But it certainly had time to implement a transaction in order to bring into effect what it had already set out in that letter.

20. I have already explained that I give permission to amend to rely on this ground as refined by Mr Speaight QC. However, in my judgment, as with the other grounds for judicial review, this is not an arguable ground for impugning and overturning the Defendant's determination in this case. With the considerable assistance of Mr Speaight QC and Mr Thomas, I have been able to come to a very clear conclusion. In my judgment, there is no realistic prospect that this Court, at a substantive hearing, would grant judicial review on this ground. Although Ground 2 has been refined by Mr Speaight QC in his amendments, the substance is aligned to what had already been pleaded. I am in no way bound by what was said by HHJ Gosnell on the papers, in refusing permission for judicial review. I am in a different position. But I have, independently, reached the same conclusion that HHJ Gosnell arrived at on the papers.

21. This ground is a challenge to substantive decision-making conclusions involving a 'judgmental latitude' on the part of the Defendant as the primary decision-maker. The Defendant clearly considered all the relevant materials and submissions that were made to her. She considered all the contemporaneous documents, including the 7 August 2008 letter on which particular reliance is placed. The Defendant's evaluative conclusion – in circumstances where, as is accepted, she unassailably found that the Claimant continued to be Mr Elliott's financial adviser – was this. She found that the 'managed out portfolio', which the ACE fund in particular constituted, would be appropriate for 'assessment' by SIM of 'suitability', but that the circumstances relating to the timing of the transfer of assets into SIM's custody, in the event, prevented the 'assessment of suitability' that would have been needed.

22. In my judgment, what – in particular – puts that conclusion within the bracket of one which was, beyond argument, open to the Defendant acting reasonably are the express terms of the 7 August 2007 letter. It is true that that letter set out a 'strong recommendation' of an investment of 'Mr Elliott's money' into a 'balanced strategy'. It is also true that letter referred to 'a proposal' regarding such a 'balanced strategy portfolio'. Further, Mr Speaight QC is right that the letter went on to describe a 'review in July 2008'. But, in my judgment, none of that undermines as reasonable the view clearly formed by the Defendant that there would have needed to be an 'assessment' and a 'decision' (and not merely 'implementation'). The force of the position recognised by the Defendant, by reference to the terms of the letter to which she expressly referred, came revealingly into focus when the Court was (at the hearing today) provided with a fully-legible copy of the document, to which all of the parties already had access. At the foot of the first page of the letter of 7 August 2007, but unfortunately emasculated by somebody's scanner or photocopier in the preparation of the materials for this hearing, was the following statement:

> ***No final decision needs to be made until we invest the money. However, for the purposes of this proposal, I will use a 'Balanced' strategy as the example.***

Once this statement is seen, there is no difficulty in seeing the basis – having regard to all the circumstances – on which the Defendant came to the conclusion that she did: that this was a case in which an evaluative 'decision' still needed to be made.

23. As Mr Thomas points out, the Defendant had before her a host of relevant materials including the complete sequence of contemporaneous documents which I have been able to review with both Counsel's assistance. She also had the evidence emanating from SIM itself, as to what it said would have needed to take place. Judicial review is not a 'correctness' jurisdiction providing, in effect, an appeal from the substantive merits of the Defendant's evaluation of the facts and circumstances and what in the Defendant's 'opinion' is the correct 'determination by reference to what is fair and reasonable in all the circumstances'. Judicial review is a circumscribed supervisory jurisdiction. Although the threshold for today is the relatively low one of 'arguability', I nevertheless need to focus on whether there is an arguable ground for judicial review applying the legal standards that the supervisory court on judicial review would apply. Looking at this case and all the circumstances of this case, having regard to the contemporaneous documents, and in the light of the approach articulated by the relevant authorities (as to judicial review of substantive determinations by the Defendant), there is in my judgment no realistic prospect that this Court would overturn the determination of the Defendant by reference to the complaints made in relation to Ground 2.

Conclusion

24. For all those reasons, while I grant the application for permission to amend the grounds, I refuse the application for permission for judicial review.

Costs

25. So far as concerns costs, there is no need for this Court to make any order. The Judge, on the papers, granted the Defendant the costs of £2,710.00 of preparing the acknowledgement of service but made provision, in the usual way, for the Claimant to

identify any challenge to that on any renewal. There has been no challenge to that because Mr Speaight QC sensibly and correctly recognises that that, in principle, is an order properly made and which would stand if permission were refused by this Court. Had it been the case that the amendments of the Claimant's grounds had led to amended summary grounds of resistance, I can see that there could have been an application to this Court for further costs so far as amended summary grounds were concerned. Mr Thomas does not make any application for costs. In my judgment, he is sensible not to do so, given the way in which the substances of the refined grounds was addressed through a skeleton argument and through his oral submissions. In all the circumstances, and for those reasons, it is not necessary or appropriate for me to make any order relating to costs. The costs order previously made stands.

14.6.21