Neutral Citation Number: [2021] EWHC 1865 (Admin)

Case No: CO/3966/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/07/2021

Before:

LADY JUSTICE ANDREWS and MR JUSTICE SWIFT

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Between:

HER MAJESTY'S ATTORNEY GENERAL FOR ENGLAND AND WALES	**Claimant**
- and -	
PAUL MILLINDER	**Defendant**

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- -

MR JONATHAN LEWIS (instructed by the Government Legal Department)
for the Claimant
MR PAUL MILLINDER (represented himself)

Hearing date: 30 March 2021

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Approved Judgment

MR JUSTICE SWIFT:

A. Introduction

1. Her Majesty's Attorney General for England and Wales applies for an all proceedings order under section 42 of the Senior Courts Act 1981 ("the 1981 Act"). The material part of section 42 of the 1981 Act is as follows:

> "**42.—Restriction of vexatious legal proceedings.**
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> (1) If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without any reasonable ground—
>
> (a) instituted vexatious civil proceedings, whether in the High Court or the family court or any inferior court, and whether against the same person or against different persons; or
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> (b) made vexatious applications in any civil proceedings, whether in the High Court or the family court or any inferior court, and whether instituted by him or another,
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> or
>
> (c) instituted vexatious prosecutions (whether against the same person or different persons),
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> the court may, after hearing that person or giving him an opportunity of being heard, make a civil proceedings order, a criminal proceedings order or an all proceedings order.
>
> (1A) In this section—
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> *"civil proceedings order"* means an order that—
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> (a) no civil proceedings shall without the leave of the High Court be instituted in any court by the person against whom the order is made;
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> (b) any civil proceedings instituted by him in any court before the making of the order shall not be continued by him without the leave of the High Court; and
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> (c) no application (other than one for leave under this section) shall be made by him, in any civil proceedings instituted in any court by any person, without the leave of the High Court;
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> *"criminal proceedings order"* means an order that—

> (a) no information shall be laid before a justice of the peace by the person against whom the order is made without the leave of the High Court; and
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> (b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and
>
> *"all proceedings order"* means an order which has the combined effect of the two other orders.
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> (2) An order under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
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> (3) Leave for the institution or continuance of, or for the making of an application in, any civil proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the proceedings or application are not an abuse of the process of the court in question and that there are reasonable grounds for the proceedings or application.
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> (3A) Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.
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> (4) No appeal shall lie from a decision of the High Court refusing leave required by virtue of this section.
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> (5) A copy of any order made under subsection (1) shall be published in the London Gazette."

An all proceedings order prevents the person concerned both from bringing or continuing any civil proceedings without the leave of the High Court, and from initiating any criminal proceedings (whether by information or bill of indictment) without the leave of the High Court.

2. There is no dispute before this court on the principles relevant when determining an application made under section 42. One or more of the conditions listed at section 42(1)(a) must be met. In *Attorney General v Baker* [2001] FLR 759 Lord Bingham CJ described the notion of vexatiousness:

> "Vexatious is a familiar term in legal parlance. The hallmark of a vexatiousness proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is

> to subject the defendant to inconvenience, harassment and expense out of all portion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."

3. In *Attorney General v Covey* [2001] EWCA Civ 254 Lord Woolf CJ emphasised that when considering whether the conditions for making an order were met it was necessary "to look at the whole picture" and consider the cumulative effect of the activities relied on "both against the individuals drawn into the proceedings and on the administration of justice generally".

4. If any of the conditions at section 42(1)(a) – (c) is met the court then has a discretion whether or not to make an order as requested. Any form of order is a serious step; a balance must be struck between the respondent's prima facie right to invoke the jurisdiction of the court and the need to protect the rights of others not to be faced with abusive and ill-founded claims. In *Attorney General v Jones* [1990] 1 WLR 859 Staughton LJ put the matter in the following way (at page 865 C-D).

> "The power to restrain someone from commencing or continuing legal proceedings is no doubt a drastic restriction of his civil rights, and is still a restriction if it is subject to the grant of leave by a High Court Judge. But there must come a time when it is right to exercise that power, for a least two reasons. First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection; secondly the resources of the judicial system are barely sufficient to afford justice without unreasonable delay to those who do have genuine grievances, and should not be squandered on those who do not."

(1) The June 2018 Extended Civil Restraint Order, and the November 2020 General Civil Restraint Order

5. The Respondent, Paul Millinder, has been the subject of an extended civil restraint order ("ECRO"). ECRO's are made pursuant the Court's power at CPR3.11 and Practice Direction 3C; they may be made where the Court is satisfied that a person has "persistently issued claims or made applications that are totally without merit". In this context too, "persistent" requires consideration of all relevant circumstances, but situations where the litigant makes repeated attempts to re-litigate matters are classic examples of relevant persistent behaviour. A working description of a claim "totally without merit" is provided by Males LJ in his judgment in *Sartipy v Tigris Industries Inc.* [2019] 1 WLR 5892 at paragraph 27.

> "27. A claim or application is totally without merit if it is bound to fail in the sense that there is no rational basis on which it could succeed … It need not be abusive, made in bad faith, or supported by false evidence or documents in order to totally without merit, but if it is, that will reinforce the case for a civil restraint order."

6. On 28 June 2018 HHJ Pelling QC made an ECRO against Mr Millinder: see his judgment on that day in claim CR-2017-140 ("the 2018 ECRO"). The order was for the maximum two-year period permitted by Practice Direction 3C. The order was made on the basis of Mr Millinder's conduct in legal proceedings that (put very generally), arose out of unsuccessful commercial dealings between Middlesbrough Football and Athletic Company (1986) Ltd. ("MFC") and two companies controlled by Mr Millinder (Empowering Wind Ltd and Earth Energy Investments LLP). Judge Pelling concluded that Mr Millinder had made three totally without merit applications: an application made on 30 March 2018 determined by Mr Justice Snowden on 16 May 2018; an application made on 1 March 2018 determined by Judge Pelling himself; and an application made on 29 March 2018 also determined by Judge Pelling (see respectively, Judge Pelling's judgment at paragraphs 7-9, 11-14, and 15-18). Judge Pelling then considered a series of intemperate emails sent by Mr Millinder between 7 June 2018 and 28 June 2018 to lawyers acting for MFC: see his judgment between paragraphs 22-31. These emails variously contained unsubstantiated allocations of fraud, dishonesty and criminal behaviour, threats of criminal proceedings, and general personal abuse. Taking all these matters into account Judge Pelling's conclusion was as follows:

> "37. In all those circumstances I accept the submission that Mr Millinder has consistently refused to take no for an answer resulting in repetitious applications which go over the same ground again and again in order to advance claims that Mr Millinder is convinced are bound to succeed. I accept too that this has resulted in [MFC] incurring significant legal expense that it would have otherwise avoided and use of public resources that would not have otherwise been needed for these proceedings. Mr Millinder has disclosed no insight into the vexatious nature of this activity. On the contrary, in the course of his submissions, he very fairly said that it is precisely what he intended to continue as he has in the past.
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> 38. In those circumstances, I accept the submission that it is highly likely that further applications will be issued in the future designed to secure the ability of Mr Millinder to bring the claim he maintains is available to Earth Energy or its subsidiary, against [MFC]. It is likely, having regard to the correspondence that has passed before that if, and to the extent these further applications fail, there will be further unpleasant correspondence addressed to those who are doing their best to ensure that these various applications are dealt with in accordance with relevant legal principle. I am entirely satisfied, in the circumstances of this case, that the time has now come to put in place a filter that limits Mr Millinder to making applications that he can demonstrate are realistically arguable by making an Extended Civil Restraint Order. I propose to make one therefore which will identify the Judge to whom applications are to be made before they can be issued as being Mr Justice Arnold with the reserve Judge being Mr Justice Norris."

7. On 30 September 2018 Mr Millinder applied to set aside the ECRO. That application was heard on 22 January 2019 by Sir Geoffrey Vos, then Chancellor of the High Court ("the Chancellor"). In a judgment handed down on 8 February 2019 ([2019] EWHC 226 (Ch) [2019] 1 WLR 3709), the Chancellor refused the application. In his judgment the Chancellor went to great lengths to set out the history of the business dealings between MFC and Mr Millinder's companies and the litigation that followed: see the judgment between paragraphs 11 and 65. He then went on to explain the reasons why further applications in respect of decisions taken in the course of that litigation could serve no legitimate purpose: see the judgment at paragraphs 104 to 128 under the heading *"A critical examination of the chronological events"*. The Chancellor recognised that what Mr Millinder wanted was a court determination of whether MFC had acted in breach of contract or had any claim against either of his companies. In his judgment the Chancellor explained very clearly and simply why the opportunity for any such court determination was now long passed. In addition to the extended explanation in the *"Critical Examination"* section of the judgment, the Chancellor also summarised the position in this way (at paragraphs 97 to 103 of his judgment):

> "**Three misunderstandings**
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> 97. This raises the first central problem that faces Mr Millinder. Mr Millinder has at times undoubtedly failed to understand that the claims that he has sought to advance and resist on behalf of his companies could only be pursued or resisted whilst he remained in control of those companies. Once the companies had been wound up, all he could do was challenge the windings up. Once that route had been exhausted, all he could do was to place the existing (or a new) liquidator in funds to pursue his companies' claims against Middlesbrough. If he was unable to do that, his routes of possible challenge were exhausted. These are some of the most important consequences of availing oneself, as an individual, of the benefits of trading through limited liability companies in the first place. In short, Mr Millinder is not and was never one and the same legal entity as either Empowering Wind MFC or Earth Energy. His actions lead me to believe that this may have been one of his central misunderstandings.
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> 98. The new claim epitomises this problem. Mr Millinder has issued in his own name a claim for damages that can only be brought by either Empowering Wind MFC or Earth Energy. He cannot now claim to represent either of those companies, since they are both in compulsory winding up and are legally represented only by their liquidators. His attempt to replace that liquidator has failed and has not been appealed.
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> 99. That brings me to the second of Mr Millinder's apparent misunderstandings. Mr Millinder's conduct leads me to believe that he has thought all along that it is or was open to him or his companies, as an alternative to appealing orders of the court, to apply (sometimes repeatedly) to different judges in

the same court that made those orders, to set them aside. I asked him about this in oral argument, and he said that he had never appealed the orders because the court had not addressed "the preliminary considerations, so there was really nothing much to appeal".

100. As I have already made clear, the circumstances in which a court can set aside or even investigate, the correctness of orders, save in the context of properly constituted appeals, are very strictly limited. Our courts rightly set great store by the finality of the orders that are made after argument. The options for taking two bites at the cherry are limited indeed.

101. This second misunderstanding may, I suspect, have given rise to some of Mr Millinder's more extravagant fraud and conspiracy allegations, on the basis, as he sees it, that fraud unravels all (see *Lazarus Estates v Beasley* [1965] 1 QB 702 per Lord Denning MR). But, as I explained to Mr Millinder in the course of oral argument, fraud needs to be strictly proved in these courts. It cannot simply be assumed because it has been asserted. Mr Millinder's repeated practice has been to allege fraud against Middlesbrough and others, on the basis of what he perceives they knew or ought to have realised. But that is not an approach that the court can accept. Fraud can only be established after a detailed consideration of oral and written evidence at a trial at which those accused of fraud have the opportunity fairly to present their case.

102. That leads directly to what I see as Mr Millinder's third fundamental misunderstanding. That is that one can or properly should make allegations of fraud or conspiracy against anyone, let alone professionals, civil servants and judicial office holders, without a sound evidential basis for those allegations. I would want to emphasise that, however tempting it may seem to do so, the practice of making wild allegations of dishonesty against everyone involved in a case, as Mr Millinder has done here, is much to be deprecated. Mr Millinder seemed to accept in oral argument that he may have overplayed his hand.

103. I can say at once that I have been through all the papers in this case in meticulous detail, and I have seen no evidence of any kind for any of the allegations of fraud, conspiracy or misdealing that Mr Millinder has made. He has made these allegations when he became frustrated by his seeming inability to find a forum in which he would vindicate what he saw as his companies' irrebuttable claims. He should not have done so, nor should he have threatened any of these professionals or public servants as he has sought to do. I hope that, once he has read and digested this judgment, he will understand why this behaviour has been inappropriate. I hope also that it will hereafter cease."

8. The 2018 ECRO expired 28 June 2020. On 13 November 2020 Fancourt J made a General Civil Restraint Order ("the 2020 GCRO"), also for a period of two years, to expire on 11 November 2022. By paragraph 4.1 of Practice Direction 3C a GCRO may be made where a party "persists in issuing claims or applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate". While the effect of an ECRO is limited to proceedings "concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made", a GCRO applies to any civil claim or application the party subject to the GCRO may wish to issue. The circumstances in which a GCRO may be appropriate have been considered in a number of judgments. At paragraph 14 of his judgment in *Chief Constable of Avon and Somerset v Gray* [2019] EWCA Civ 1675 Irwin LJ cited with approval the following passage from the judgment of the first instance judge in that litigation:

> "The test for imposing a GCRO is stated by paragraph 4.1 of PD 3C to be that "the party against whom the order is made persists on issuing claims or making applications which are totally without merit, *in circumstances where an extended civil restraint order would not be sufficient or appropriate*". In *R(Kumar) v Secretary of State for Constitutional Affairs* [2007] 1 WLR 536 at paragraph 60 the Court of Appeal said that this language:
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> > "… is apt to cover a situation in which one of these litigants adopts a scatter gun approach to litigation on a number of different grievances without necessarily exhibiting such an obsessive approach to a single topic that an extended civil restraint order can appropriately be made against him/her"."

9. The circumstances leading to Fancourt J's decision and the reasons for it are explained in reasons given by Mr Justice Snowden when he refused an application by Mr Millinder to set aside Fancourt J's order.

> "**Events leading up to the GCRO**
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> 32. On 12 April Nugee J was appointed first designated Judge under the ECRO in place of Arnold J. Commencing on that date, Mr Millinder sent Nugee J or his clerk a total of 85 emails containing a wide variety of request, demands and materials. All of these were read and listed and those that could count as applications were comprehensively considered and rejected by Nugee J in a ruling on 18 June 2019.
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> 33. After the ECRO expired on 28 June 2019, Mr Millinder made an application dated 20 July 2020 to set aside all previous orders that had been made. Nugee J dismissed this application on 4 August 2020 and determined that it was totally without merit.

34. Mr Millinder then issued a claim in the Queen's Bench Division on 7 August 2020 alleging "interference with the proper admiration of justice" and "breach of judicial and official duties" against a number of judges (including the Chancellor, Nugee J and HHJ Pelling QC), the Lord Chancellor and various government officials, lawyers and court staff. The claim was stayed by Master Yoxall.

35. On 24 August 2020 Murray J dismissed Mr Millinder's application to set aside the stay and certified the application as totally without merit. Murray J also struck out the claim in its entirety and certified the claim as being totally without merit. There was no appeal against those decisions or certification.

36. In early October 2020 Mr Millinder resumed his offensive against Middlesbrough FC, serving it with a statutory demand based upon the same allegations of debt that had been made and comprehensively dismissed in the earlier proceedings. Middlesbrough FC sought and on 23 October 2020 obtained from Mann J an interim injunction to restrain presentation of a partition by Mr Millinder. Middlesbrough FC also issued an application for a new extended civil restraint order against Mr Millinder. In response, Mr Millinder sought to set aside Mann J's order for alleged fraudulent non-disclosure, as well as applying to set aside the Arnold J Order of 9 January 2017 and the Consent Order made by Norris J on 16 January 2017.

37. On 6 November 2020, Fancourt J granted Middlesbrough FC a permanent injunction against the presentation of a petition on the basis the alleged debt on which Mr Millinder relied was subject to a genuine dispute and that the petition would be an abuse of process. He also rejected Mr Millinder's challenge to Mann J's order of 23 October 2020.

38. Fancourt J also dismissed the application to set aside the orders from 2017 as totally without merit, but adjourned the application for a new civil restraint order: see [2020] EWHC 3159 (Ch). That adjourned application was listed to be heard on 11 November 2020.

39. The day before the application for a new civil restraint order was due to be heard, 10 November 2020, Mr Millinder made an application to set aside Fancourt J's order of 6 November 2020."

Fancourt J makes the GCRO

40. On 11 November 2020, Fancourt J heard argument and gave a detailed judgment deciding to impose the GCRO on the

grounds that Mr Millinder had persistently made applications that were totally without merit: see [2020] EWHC 3202 (Ch).

41. At paragraph 15 of his judgment, Fancourt J summarised what he understood to be Mr Millinder's two essential contentions as regards the orders that had been made and the applications that had been certified as totally without merit,

> "First, that all the orders were made as part of a corrupt conspiracy involving the Judges in question in an attempt to defraud Mr Millinder and/or his companies and favour [MFC]. Second, on the basis that the basis of the underlying case that his companies originally sought and now he seeks to advance did have merit in terms of the contractual dispute and therefore any application made by him in that regard cannot have been made totally without merit".

42. As to the second ground, Fancourt J held (at paragraph 16-17) that unless or until the various orders and "totally without merit" certifications of other Judges were set aside he was bound by them since they were matters of record, and that it was inappropriate to seek to go behind such orders and certifications. That was obviously correct. Mr Millinder had not sought to appeal any of the earlier decisions of Murray J or Fancourt J.

43. On the first ground, and addressing the question of persistence in issuing applications that were totally without merit, Fancourt J held (at paragraph 17) that it was clear that Mr Millinder had continued persistently to make applications that are totally without merit. Again, that conclusion was obviously correct.

44. Fancourt J then went on to consider, in his discretion, whether to make a civil restraint order. He decided that it was, stating, at paragraphs 21-25,

> "21. As I have already said, I am quite satisfied that there is a need to restrain Mr Millinder and accordingly at least an Extended Civil Restraint Order is required in order to prevent a substantial waste of the court's time, both judges' time and judges' clerks' time and the time of the court staff in dealing with applications that have no merit; and also to prevent any Respondents from such applications [and] incurring very substantial costs in dealing with them.
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> 22. I also bear in mind when assessing the need for the Civil Restraint Order the nature of the applications that Mr Millinder makes and the abusive and threatening nature of the correspondence that he conducts, and outrageous

> allegations of judicial impropriety (and impropriety on behalf of [MFC's] lawyers) that he routinely makes. The applications are burdened by extremely large exhibits of documents (indeed, a whole database on a website, which Mr Millinder expects to be read), and lengthy argumentative witness statements and written arguments, which require a considerable time to attempt to digest and understand. The applications that are made therefore impose a very substantial burden on anyone – respondent or judge – that has to deal with them.
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> 23. Since the hearing on 6 November 2020, there has be a torrent of vitriolic and threatening correspondence emanating from Mr Millinder and indeed repeated to a substantial degree in his skeleton argument in connection with this application. This is unjustifiable but for present purposes it is the irrational approach taken that underscores the likelihood of further meritless applications being made, at length.
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> 24. It is very clear to me that Mr Millinder genuinely believes himself (or his companies, or both) to have been treated unjustly and that he is entitled to a remedy. It is evident that he will seek to pursue it at almost all costs. He will do so by seeking to re-open all the matters that have previously been canvassed in hearings and decisions from 2015 onwards.
>
> 25. I have no doubt that he will seek by means reasonably available to him to continue to have such matters heard by the courts. There is currently outstanding an application that Mr Millinder seeks to have heard by the Master of the Rolls, alleging conspiracy and contempt of court against all those who have previously been involved in hearings. In my judgment it is not appropriate that Mr Millinder should continue to be able to issue claims and make applications without restriction, because the applications that he persistently makes are entirely without merit. If any application he wishes to make is a reasonable application that has some prospect of success then a designated judge will give permission for it to be perused."

10. What is clear from this, is that the careful and thorough explanation by the Chancellor in his judgment on the 2018 ECRO had had no impact on Mr Millinder at all. He had continued to issue proceedings seeking to revisit all orders previously made against him or his companies, and had gone on to issue applications alleging that the judges who had considered the earlier applications (including Judge Pelling and the Chancellor) had acted in "breach of judicial and official duties". In short, far from moderating his behaviour, Mr Millinder had done precisely the opposite.

11. I have set out the above history at some length before addressing the application now made by the Attorney General and presently before the court, because all this provides important context in which to consider this application.

(2) The Attorney General's application under section 42 of the 1981 Act.

12. The Attorney General's application is premised on a range of material. *First*, the matters I have already set out above: the proceedings considered by Judge Pelling and by the Chancellor, and the matters considered by Snowden J when refusing the application to set aside the 2020 GCRO that Fancourt J had made.

13. *Next*, the Attorney General relies on attempts by Mr Millinder to prosecute a number of persons involved in the civil proceedings. This pattern of behaviour commenced in late 2018. In a decision dated 22 November 2018, District Judge Fanning, sitting at Kirklees Magistrates' Court, refused an application made by Mr Millinder to issue summonses against Anthony Hannon and Ulick Staunton. Mr Hannon was the liquidator of Earth Energy Investments and Empowering Wind; Mr Staunton was counsel for MFC (including in the proceedings before Judge Pelling in July 2018).

14. District Judge Fanning refused the application. In the course of his decision he noted that Mr Millinder had failed to disclose the existence of the 2018 ECRO; he described the application as "nothing other than a collateral attack against the civil litigation process". At paragraph 11 of his decision District Judge Fanning said this:

> "Even though I am satisfied that the proposed prosecution falls at the first hurdle [on the facts, no evidence of dishonesty], if I am wrong about that I have no doubt that the sole motive in pursuing proceedings in the criminal courts has nothing whatsoever to do with protecting the public interest, and everything to do with attempting to right a civil wrong (as he sees it) by pursuing two individuals against whom Mr Millinder has a fixated and (given the findings to date of the High Court) unjustified malevolence. He is precluded from pursuing them in the civil courts as a result of the ECRO and so he chooses to pursue them in the criminal courts. That is to misuse the criminal process – especially where there is (on my assessment) no prima facia criminal case. If his application to have the ECRO set aside succeeds, then he can seek to use the civil courts to adjudicate on what is a civil dispute."

15. On 29 November 2018 District Judge Fanning gave his decision on an application pursuant to section 19 of the Prosecution of Offences Act 1985 that Mr Millinder pay the costs of the proceedings. The threshold for an award of costs in such proceedings is high; the court must be satisfied that the party against whom the order is sought has made "an unnecessary or improper act or omission". District Judge Fanning concluded that standard was met and ordered Mr Millinder to pay costs. At paragraph 12 of his decision on this occasion, the judge said this:

> "Mr Millinder is not merely misguided. He is intent on harming Mr Hannon and Mr Staunton in their professional capacity. That he sought warrants of arrest, not merely the grant of a

> summons, is an indicator of that. The act of seeking the issue of summonses in the circumstances as I found them to be is an improper act. I am satisfied that I can and should make an award of costs against either or both Litigio LLP and Mr Millinder under section 19 of the Prosecution of Offences Act 1985."

16. Further applications for summonses (10 in all) were considered by District Judge Fanning in a decision given on 13 February 2020. The applications before the judge were as follows:

> (1) *Dated 15 May 2019 and 2 November 2019*: seeking the summons and arrest of ICCJ Jones, a judge who had dealt with an application in March 2018 in the proceedings between MFC and Earth Energy.
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> (2) *Dated 2 November 2019*: an application seeking the summons for arrest and prosecution of Anthony Hannon, the receiver for Earth Energy and Empowering Wind.
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> (3) *Dated 15 August 2018 and 2 November 2019*: seeking the summons and arrest and prosecution of Thomas Ulick Staunton, counsel who had acted for MFC.
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> (4) *Dated 2 November 2019*: for the arrest and prosecution of MFC, and Womble Bond Dickinson (UK) LLP, solicitors instructed by MFC.
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> (5) *Dated 2 November 2019*: seeking the summons for arrest and prosecution of Nicholas Briggs, the Chief Registrar of the High Court; Judge Pelling; Mr Justice Arnold; Mr Justice Nugee; and the Chancellor (Sir Geoffrey Vos).

17. District Judge Fanning concluded that given there was no evidence of dishonest conduct by any of those against whom summonses were sought, there could be no prospect of a successful prosecution of any of them. At paragraphs 10-13 of his decision District Judge Fanning said this:

> "10. The present applications as against Messrs. Hannon and Staunton are regurgitated re-hashes of everything that has gone before. Nothing has changed. The applicant ought to know that. The pursuit of Messrs. Staunton and Hannon by the applicant is malicious. I refuse to grant summonses against either of them.
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> 11. As against Hugh Jones, nothing is disclosed at all in his [Mr Millinder's] application dated 2 November 2019. If he has submitted a separate application dated 15 May 2019 then it has not found its way to me. If it exists at all, it is buried in a plethora of emails, statements, documents and further applications submitted by the applicant - all of which obfuscate rather than clarify.

> 12. As against Middlesbrough Football and Athletic Company (1986) Ltd and Womble Bond Dickinson, the suggestion of criminality is fanciful. Again, the applicant's allegations are bound up within his failed litigation in the civil courts. There is no evidence of criminality as against either of these bodies.
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> 13. As against each of the remaining targets of the applicant's ire – they are all judges who have at some stage been engaged in their judicial capacity in the civil proceedings in which the applicant was the losing party, or found to be no party at all. The suggestion of criminality in the part of any one of them is again fanciful. If the applicant was aggrieved at the decision of any of them, the proper avenue was appeal. I refuse to grant summonses against any one of them."

18. Overall, District Judge Fanning concluded that the applications were "wholly without merit, malicious and vexatious". He concluded his decision with these observations:

> "16. Finally, if I have been blunt in my determination of these applications, and robust in my language, then that is deliberately so. HMCTS staff feel harassed and intimidated by the applicant's conduct towards them, and overwhelmed by the volume of material submitted by him which he demands their response. In my view the applicant should not be entitled to submit unmeritorious applications such as these on a repeated basis. The civil courts have refused him the opportunity to do so. I would hope that the High Court would consider the applicant's attempts to evoke the criminal law where the civil law is not available to him as an abuse that ought not to be encouraged."

19. *Lastly*, the Attorney General relies on Mr Millinder's conduct when dealing with the court. A representative description is given by Snowden J in his reasons for refusing Mr Millinder's application to set aside the 2020 GCRO made by Fancourt J:

> "59. In that regard I should add that, consistent to what appears to be Mr Millinder's chosen *modus operandi*, after receiving the Application, myself and my clerk have been subject to a large number of emails from Mr Millinder or his proxies, many of which were largely duplicative of earlier communications. By my count, Mr Millinder has sent me and my clerk about 30 such emails at about the rate of one a day. They are wide ranging in content and include numerous attachments that Mr Millinder apparently wished me to read. They also repeat Mr Millinder's unfounded allegations of conspiracy, fraud and corruption, indicate that proceedings have been or will be commenced against various judges (including myself) and others in the UK and abroad, and have become increasingly wild, abusive and threatening.

60. To give just one example I set out an email sent to myself and my clerk at 5am on Wednesday 10 February 2021:

> "Further to my submission, I want to add that you, Snowden J and the rest of your cohorts, the white-collar criminals pretending to be "honourable" judges are nothing other than a total disgrace, the lowest of the low, morally bankrupt traitors and enemies of the people who go to work only defraud innocent parties who seek justice in "courts", assisting fellow criminals in using the court to defraud whilst providing impunity to the fraudsters.
>
> You can take your false instruments restraining orders, your legal fiction and your human rights abuse and enjoy while you still can, I am not playing your games any longer. The corrupt court is unfit for purpose, you and the rest of the fake judges are one and the same as the principal offenders. Karma is coming to work its course.
>
> I have reviewed all of the applications I made, they will be used as evidence in the overseas indictment I have filed. Enough of your nonsense, enjoy playing judge whilst you still can with your spin of deceit and spoliation of evidence, I am coming to take each and every single one of you out and put you in prison where you belong. Your games will be exposed internationally.
>
> Carry on evading the emails (they are all tracked so I have gathered the intel). You have been instructed by the corrupt [Attorney General's Office] to do this. The conniving administrative staff who work to support you in stealing people's assets, ruining people's lives against the public interest at the expense of the taxpayer are just as bad, morally bankrupt quislings. You are no judge, you have breached your oath many times over you are just another lawyer, a clog turning the wheels of the systemic corruption, part of the racketeering enterprise there to use the facade of insolvency law to defraud.
>
> Go and do what you want with the application, justice delayed, justice denied. I do know the entire reasons Fancourt made the false instrument in the first place is so you can continue perverting the course of justice, which is why the first false instrument ECRO was created by the other parasite criminal Pelling. That is why Fancourt put you behind it. You can all go to hell you bunch of cowardly, predatory, vile quislings.
>
> We are making a documentary to expose this cesspool and you will feature in it. Take the application, roll it and stick

> it in a dark place, I cannot trust any of you to do justice, you insult the name of justice."
>
> 61. As other Judges have remarked, with remarkable temperance, such emails do not advance Mr Millinder's cause. As Fancourt J and Miles J also rightly observed, such emails require time to read which could and should be given to the cases of other litigants who use these courts. Whatever Mr Millinder may or may not believe as to the rights and wrongs of his case, his campaign of vitriol and threats is wholly inappropriate and simply serves to reinforce the correctness of Fancourt J's decision to make a GCRO."

20. Mr Millinder's conduct when preparing his response to the Attorney General's Application has been cut from the same cloth. On 1 March 2021 he sent an email to me that included the following:

> "Mr Justice Swift,
>
> I note you are the Government's "go to corrupter" within the UK injustice system, the "the executioner" who bows to orders given by the corrupt establishment.
>
> The maxim; Nemo judex in causa sua applies (I shall not be a judge of my own cause). You have been factored in to do what the rest of these criminals have been doing, defrauding behind the façade of justice and then concealing the fraud with false instrument restraining orders, that is your strategy, perverting the cause of justice.
>
> I place you on notice. I contest jurisdiction, the UK's courts and the establishment is utterly corrupt and my rights to a fair unbiased trial is compromised. The case has been brought overseas and my attorney has made some observations.
>
> This will all be fully exposed. The ship is already sinking, so what I will say to you is "chose your side", but in fact, you have already chosen, it, you are there to execute orders, making the false instrument all proceedings restraint order to pervert the course of justice, providing impunity to fellow criminals."

On 22 March 2021 I received a further email from "Mohammad Khan". The content of the email makes it clear either that "Mohammad Khan" is an alias used by Mr Millinder, or that Mr Millinder wrote the email and then procured Mr Khan to send it. This email included the following:

> "I made directions, the directions to further the Court's overriding objective to do justice and to try the multiple offences that have been concealed. The directions have not been forthcoming. It is clear the intent is to steamroller ahead and conceal the offences with your false instrument restraint

orders. That is the strategy, as clearly demonstrated by Fancourt, the other criminal purported judge who defrauded me of £1.17 million whilst assisting the offenders (perverting the course of justice) and doing precisely that whilst failing to first deal with the recusal application I made against him because he defrauded me. All orders from then on are void, as are all orders from the start, both civil and criminal, for there has been a fraud upon the court driven by political interference with our judiciary. Therefore, the pre-determined hearing rigged before Swift is just a waste of time and is, in any event, void from the outset. The impartiality of justice is non existent.

Listen to the 3 minute recording between York Magistrates and I … It is somewhat revealing. Burnett, a close associate of Fanning, instructed Fanning to prevent justice being served on the offenders, that is the reason for the "transfer out" from York, where I commenced the prosecution, to Kirklees (out of circuit) for disposal before Fanning and now the idiotic corrupt clowns in the Government Legal Department have replicated the same void order x 6 over to make it look like there are multiple applications that have been founded to be "TWM" when in truth and reality there are none. The Court of Appeal judgment in *Wasif v Secretary of State for Home Department 2016* determines that none of my applications can possibly be "TWM". The criminals disguised as judges have been maliciously and unjustly certifying as so, because this is how the corrupt establishment provide impunity to fellow members of their cabal. A form of concealment of the frauds they have been concealing from the outset.

You have been made abundantly well aware of the indictable only offences that have been committed. You have been made aware that Nugee has committed fraud around the assignment and that Vos has perverted the course of justice, failing to try what has never been tried and then lying about the £256,269.89 false liability used to unlawfully forfeit the Lease, causing me huge losses. You are aware that the law makes the assignments valid and that the purported £25k petition debt is a nullity and ceased to exist from the outset on all grounds.

Moreover, you know as well as I do that an alleged debt that is subject to challenge by order of a High Court Judge (as it was just one week prior to Staunton's perjury and fraud by false representation), is not and cannot possibly be a petition debt. The position is absolutely incontrovertible. You know therefore that my cross claim in the sum of £770,000, the assigned investments plus standard interest cannot be disputed.

The court has been defrauding me and assisting the offenders and now you want to continue concealing it with your false instrument "all proceedings restraint order" to prevent justice

being served on the perpetrators. You know, only too well therefore that the proofs of debt used to keep the claim beyond my reach are all fraudulent and you know that my case is proven. What is without merit exactly?

I am not going to mince my words any more, all responsible can go to hell the lot of you vile, immoral oath breaking, unconstitutional dishonest cowards of common purpose. How dare you defraud me in the name of justice and then seek to conceal your wrongdoings in this way. We have the GLD lying in evidence, replicating the same void order made by Fanning x 6 when it ceases to exist from the outset. You parasites do like founding something on nothing and committing fraud upon fraud in the name of law and "justice". You are a disgrace to humanity and an insult to the name of law and justice.

I am not playing your games in a system that is unfit for purpose and lawless. I am not “dancing to the tune” of criminals in public and judicial office who all collude together, defeating the principles of justice and the law to provide impunity to fellow criminals. I am getting a mandatory order in the superior court to injunct the criminal, Ellis QC MP, and the GLD, his footsoldiers, who have been instructed by Buckland to embark upon this entirely illegal cause of action to continue assisting the offenders, as he has been doing since his own role as Solicitor General. Nugee and Arnold, the two conspirers have been promoted to Lord Justices of appeal for following their orders, so you wanted me to go into the Court of Appeal so they can continue assisting the offenders. The entire system is finished.

You put the aptly named “Swift” in place, the former chief counsel to the treasury in the application brought by the treasury (who is known to be biased and favour any application made by the corrupt establishment), so he can swiftly conceal all the fraud and make an all proceedings restraint order to prevent my right to a fair trial and assist the offenders by perverting the course of justice. As I said, the principal of nemo judex in causa sua applies. My right to a fair trial does not exist in the UK's corrupt courts controlled by dishonest freemason kleptocrats who have been providing impunity to fellow brethren because Buckland is connected with Bloom, they went to Uni together. I am going to deal with you all from overseas.

You have a duty to stop the criminality and outright human rights abuse being inflicted upon me right now. I expect you, GLD and you, Swift J, to act lawfully and do it, for if you do not, you will join the rest of these criminals in prison. Your game plan is busted and all responsible are finished so wake up and get with the program you dishonest bunch of inter-

> colluding parasites. I will not mince my words, I speak the truth, I am honest, I know the law. I will not stand for your bullshit. I will not stand for being defrauded in the name of justice by criminals playing judge when they are one and the same as the principal offenders.
>
> You know that my case is proven because no money has ever been owed to Middlesbrough FC and that they unlawfully forfeited the Lease. You therefore know that none of my applications can possibly be "TWM" and that part of the protracted fraud by criminals in judicial office has been to conceal the fraud by evading all my evidence from the outset (actual bias) and maliciously and unjustly certifying as "TWM" to originate false instrument restraint orders to conceal prevent justice being served on the offenders and to prevent me from getting justice and having tried the issues that have never been tried. ”

21. At the beginning of the hearing of this application Lady Justice Andrews asked Mr Millinder whether he objected on grounds of bias (whether actual or apparent) to my sitting as part of the court that would determine the Attorney General’s application. Notwithstanding his prior emails Mr Millinder readily stated he had no objection and was happy to proceed. To my mind this sequence of events only serves to demonstrate the conclusion already reached by other judges: that Mr Millinder’s email barrages are not simply in the category of misguided communications of a litigant in person, but rather that they are a specific tactic which he deploys either to harass or in the hope that he may browbeat the recipients.

(3) Mr Millinder’s response to the section 42 application

22. Mr Millinder represented himself at the hearing. He relied on three skeleton arguments, one dealing with matters of fact (dated 24 March 2021), another with case law (also dated 24 March 2021), and a third described as a “short response” document (dated 26 March 2021). The focus of each of these documents was the proceedings between Mr Millinder’s companies and MFC. Similarly, Mr Millinder’s oral submissions concerned almost entirely explanation of why decisions taken in those proceedings were wrong. I suspect these submissions were little different to those made on previous occasions to Judge Pelling and to the Chancellor. Mr Millinder continues to contend now, as he did in those earlier hearings, that the issue in the underlying proceedings – whether the proofs of debt made by MFC against Empowering Wind were legitimate – remains unresolved and still needs to be resolved. At the hearing of this application Mr Millinder placed particular reliance on the judgment in *Re Fraser, ex parte Central Bank of London* (1892) 2 QB 633 in support of the proposition that in bankruptcy proceedings it could not be any form of abuse of process to apply to set aside an order previously made if that order had been made the basis of a false liability. On this basis Mr Millinder repeated the contention made to Judge Pelling and the Chancellor that he can properly continue to make applications to set aside any order made against him or his companies to date, on as many occasions as he chooses (presumably for as long as it takes for him to obtain the result he wants).

23. So far as concerns the applications to commence criminal proceedings, Mr Millinder denies that such applications have been made persistently or vexatiously. He submitted that District Judge Fanning's decision of February 2019 was "ultra vires" because he was disqualified from deciding the applications before him. This is not further explained. Further, submitted Mr Millinder, District Judge Fanning ignored all the evidence against Mr Hannon and Mr Staunton and for that reason was wrong to conclude that the applications for these summonses were totally without merit.

B. Decision

(1) Service of the section 42 application

24. At the beginning of the hearing, the Court raised with Mr Lewis (counsel for the Attorney General) how the section 42 proceedings had been served on Mr Millinder. The information on the face of the Claim Form suggested that it had been served at a business address in Oxford Street, London on or after 29 October 2020 (the date on which the Claim Form was sealed by the Court). It appeared to the Court that it was unlikely that the Oxford Street address was or had been Mr Millinder's place of residence, that being the place identified for the service of proceedings by CPR 6.9(7).

25. At the hearing, Mr Millinder confirmed that the Oxford Street address was a business address, not his place of residence, and that he had lived outside the United Kingdom for some four years. However, Mr Millinder also accepted that he had had notice of the proceedings and said that he wanted the hearing to proceed. In these circumstances, the court invited the Attorney General to make an application under CPR 6.15 for an order that steps already taken should be treated as good service of proceedings. Mr Millinder gave no indication he would object to any such application. Rather he appeared to accept that this approach would be pragmatic in the circumstances of the case and would permit the hearing to proceed as planned.

26. On 31 March 2021, the Attorney General made the application under CPR 6.15 requesting orders (a) that he be permitted to rely upon the means of service already used as good service; and (b) that the Claim Form be deemed to have been served on 7 December 2020. The application was supported by a witness statement from Suheera Abdulkadir of the Government Legal Department. In that statement Ms Abdulkadir explained that the Claim Form had first been sent to the Oxford Street address by post, on 12 November 2020, but that when it became apparent that Mr Millinder had not filed an Acknowledgement of Service the proceedings were then sent to Mr Millinder by email on 7 December 2020. Mr Millinder had acknowledged receipt of that email.

27. On 1 April 2020 Mr Millinder responded to the Attorney General's application. This time he opposed the application, describing the section 42 proceedings as "irredeemably defective". The grounds of objection to the application are to the effect that the Solicitor General had decided to make the section 42 application against Mr Millinder on 20 May 2020, and that by failing to serve the proceedings until 7 December 2020 he had "deprived" Mr Millinder of the opportunity to challenge the 20 May 2020 decision by way of application for judicial review. Mr Millinder asserted that the reason why the proceedings were not served until 7 December was "solely to fetter my constitutional right" to issue such proceedings. Mr Millinder's response to the Attorney General's application then goes on to assert that by bringing

the section 42 proceedings the Attorney General and the Government Legal Department has relied on "void orders" because all the court orders made against Mr Millinder had been obtained by fraud and are void so that the decision to bring the section 42 proceedings amounts to the commission of an offence contrary to the Proceeds of Crime Act 2002 by each of the Attorney General, the Government Legal Department and counsel instructed by the Government Legal Department.

28. Having carefully considered the Attorney General's application and Mr Millinder's response to it I accept the explanation of events in Ms Abdulkadir's witness statement. Given that Mr Millinder had clear notice of the proceedings and has in fact fully participated in them, it is appropriate to make the order as requested. I do not accept Mr Millinder's assertion that the proceedings were not sent to him until December 2020 in pursuit of some improper purpose. That suggestion is wholly unfounded, and in any event is entirely irrelevant to any matter logically bearing upon the exercise by the court of its power under CPR 6.15. The further suggestion that the issue of the proceedings is or involves some form of criminality is vexatious.

(2) The substance of the section 42 application

29. I am entirely satisfied that the conditions for making an order stated at section 42(1) of the 1981 Act are met.

30. Mr Millinder has instituted vexatious civil proceedings. Claim QB-2020-2769 filed on 7 August 2020 and struck out by order of Mr Justice Murray on 25 August 2020 is the most recent example. Murray J concluded that the claim was an abuse of process and totally without merit. His reasons included the following:

> "(1) The claim is patently an abuse of process as it attempts to re-litigate matters and/or collaterally attack decisions in respective of those matters that have already been made by judges of the Chancery Division of this Court. The Claimant refuses to accept those decisions and has filed this claim after the expiry of an extended civil restraint order ("ECRO") originally made against him by HHJ Pelling QC on 28 June 2018, which expired on 28 June 2020.
>
> (2) The Defendants named in the Claim include the Lord Chancellor, the Lord Chief Justice, the Chancellor of the High Court and various other judges of the Chancery Division, court employees, the Ministry of Justice, HMCTS, the Insolvency Service, Alok Sharma as Minister for BEIS and various parties to whom the Claimant refers to as the "Principal Offenders", who were concerned in the underlying proceedings in the Chancery Division regarding which the Claimant feels aggrieved, including Middlesbrough Football and Athletic Company (1986) Ltd. ("MFAC") and individuals associated with MFAC and/or involved in the underlying proceedings.
>
> (3) Some of the background to the matter is set out in the judgment of Sir Geoffrey Vos C in *Middlesbrough Football and Athletic Co (1986) Ltd. v Earth Energy Investments LLP*

> [2019] EWHC 226 (Ch), [2019] 1 WLR 3709, in which the Chancellor gave his reasons for upholding the ECRO made against the Claimant by HHJ Pelling QC. That decision of Sir Geoffrey Vos C was apparently not appealed by the Claimant, but the Claimant continues to complain about it.
>
> (4) The Claim, which was filed on 7 August 2020, is supported by three affidavits, the first affidavit dated 5 August 2020 and running to 26 pages, a second affidavit of the same date running to 14 pages and a third affidavit dated 10 August 2020 and running to 84 pages. There are many strong scurrilous allegations made by the Claimant against various individuals, including senior judges and senior government officials, alleging gross human rights violations. The Defendants are guilty, according to the Claimant, of a "conspiracy to defraud on a grand scale and their frauds are proven beyond reasonable doubt in the Claimant's submissions in this case" (para 34 of the Claimant's third affidavit).
>
> (5) To give just one example of the absurd and abusive nature of this claim, the Claimant seeks as part of this claim an order from this Court (rather than the Court of Appeal) "quashing" orders made by Nugee J in the Chancery Division of this Court on 23 June 2020 and 4 August 2020 on the basis that they are "void ab initio" for reasons given in the Claimant's second affidavit.
>
> (6) The Claimant also seeks to bring committal proceedings against the various judges who have ruled against him on the basis that he has "proven beyond reasonable doubt" that each of them has knowingly and dishonestly interfered with the proper administration of justice and therefore has acted in contempt of court.
>
> …
>
> (13) If there was any substance in any of the Claimant's complaints about the decisions made in the relation to the underlying proceeding in the Chancellor Division, the Claimant's proper course was to appeal to the Court of Appeal. This Claim, as a collateral attack on the decisions made by various judges in proceedings in the Chancery Division, is wholly improper and an abuse of process. It is wholly without merit."

31. Mr Millinder has also issued vexatious applications in civil proceedings. Since 2017 he has issued 7 applications that have been marked as totally without merit. These are as follows:

> (1) On 1 March 2018 Mr Millinder issued an application to set aside an order of Nugee J dated 5 February 2018 (which had refused to set aside a

Consent Order dated 16 January 2017 made by Norris J). Nugee J's order on 5 February 2018 had been made in response to an application by Mr Millinder to set aside his own order of 30 January 2018 by which he had (already) refused to set aside the 16 January 2017 Consent Order. Judge Pelling concluded that the 1 March 2018 application was totally without merit (see his judgment of 26 June 2018 at paragraphs 13-14).

(2) On 26 March 2018 Mr Millinder made an application that ICCJ Jones should recuse himself from determining an application to reject MFC's proof of debt against Empowering Wind. The Judge dismissed this application as totally without merit.

(3) On 30 March 2018 Mr Millinder issued an application for an interim costs order against MFC. The application was dismissed by Snowden J on 16 May 2018. In his judgment of 26 June 2018 Judge Pelling concluded that the application was totally without merit (see the judgment at paragraph 9).

(4) Mr Millinder made an application to set aside the order made by ICCJ Jones on 26 March 2018 – following Judge Jones's decision not to recuse himself (see (2) above). This application was refused by Judge Pelling on 28 June 2018 and marked by him as totally without merit (see his judgment at paragraph 18).

(5) On 23 June 2018 Mr Millinder issued applications: (a) for damages on a cross undertaking given by MFC on 9 January 2017; (b) to set aside the order of ICCJ Jones of 28 March 2020 (again); and (c) to set aside an order made by ICCJ Barker on 28 March 2018. These applications were refused by Arnold J on 24 July 2018 and marked totally without merit.

(6) On 27 July 2020 (shortly after the expiration of the 2018 ECRO) Mr Millinder issued an application to set aside various earlier orders. This was refused by Nugee J on 4 August 2020 who adjudged it to be totally without merit.

(7) On 10 November 2020 Mr Millinder made an application to set aside an order of Fancourt J made on 6 November 2020. This was refused by Miles J on 27 November 2020 and determined to be totally without merit.

32. In addition, I take note of a claim and various applications made by Mr Millinder during the life of the 2018 ECRO. On 1 November 2018 he issued a claim against Gibson O'Neil Company alleging fraud and that the applications made to wind up Mr Millinder's companies had been made maliciously. On 26 November 2018 Mr Millinder made an application for proof of debts. Both this application and the claim were made without permission and were, for that reason, struck out. Mr Millinder sought permission to make further applications variously on 13 April 2019, 15 April 2019, 16 April 2019, 24 April 2019, 15 May 2019, 5 June 2019 and 7 June 2019. Nugee J considered all those applications on 18 June 2019. All were refused.

33. Even though these applications were dealt with summarily because of the terms of the 2018 ECRO, it is apparent that each application revisited matters arising out of the business dealing between Mr Millinder's companies and MFC, already addressed in

earlier proceedings. These applications, even though not formally adjudged to have been totally without merit, lend support to the contention that an order under section 42 of the 1981 Act is necessary to prevent Mr Millinder from making further vexatious claims and applications. This pattern of behaviour during the life of the 2018 ECRO together with the application and claim made after that ECRO had expired demonstrate Mr Millinder's continued fixation on what he considers to be injustices suffered by him and his companies in consequence of the actions of MFC and the various court decisions taken since 2017.

34. Mr Millinder has also sought to institute vexatious prosecutions against persons (parties, legal representatives, and judges) involved in the litigation between him and his companies and MFC. I have referred above to the applications for summonses and/or for the arrest of persons which were, on various occasions, considered by District Judge Fanning: the application of 29 May 2018 for a summons against Mr Hannon, Official Receiver; the application of 15 August 2018 for the summons arrest and prosecution of Mr Staunton, counsel for MFC; and the applications made on 2 November 2019 for summonses against Mr Hannon, Mr Staunton, ICCJ Jones, and Chief Registrar Briggs, Judge Pelling, Mr Justice Arnold, Mr Justice Nugee, and the Chancellor, as well as against MFC and its solicitors Womble Bond Dickinson (UK) LLP. All these applications were refused by District Judge Fanning because they had no foundation at all.

35. On 15 May 2019 Mr Millinder applied (again) for orders for the summons arrest and prosecution of ICCJ Jones. This application was refused by Deputy Chief Magistrate Ikram on 21 June 2019. On 19 March 2020 Mr Millinder made an application to York Magistrates for permission to pursue private prosecutions against those who were the subject of the 2 November 2019 applications, and in addition, District Judge Fanning, Deputy Chief Magistrate Ikram, Mark Daley (the legal advisor to York Magistrates) and Kate Shrimplin (a barrister employed by the Insolvency Service). This Court has no further information about those applications. Yet it is self-evident that they too are vexatious and yet further examples of Mr Millinder's general practice of seeking to pervert the processes of the court to further his obsession.

36. The remaining matter is whether, as a matter or discretion, an order should be made against Mr Millinder. Any order under section 42 is a serious step: see the passages referred to above in the judgments in *Attorney General v Covey* and *Attorney General v Jones*. Nevertheless, I consider the present case is one where the need for an all proceedings order is overwhelmingly clear. Mr Millinder's pursuit both of the matters litigated between his companies and MFC, and of various lawyers, judges and others who have played parts in those proceedings is incorrigible. Even though the merits of the course of conduct he had pursued (and now continues to pursue) was the subject of the most careful and thorough explanation in the judgment given by the Chancellor in February 2019, Mr Millinder continued to attempt to make applications and commence proceedings during the life of the 2018 ECRO revisiting the same matters. When the 2018 ECRO expired, those matters were then the subject of further applications and a new claim.

37. Mr Millinder's continued fixation was highlighted in the course of the hearing of this application. As I have explained, the larger part of Mr Millinder's submissions to this court were directed to showing he had acted correctly in making repeated applications to set aside the Consent Order made by Norris J on 16 January 2017. In support of

this proposition he relied on the judgment of the Court of Appeal in *Re Fraser*, and the judgment of Etherton J in *Dawodu v American Express Bank* (GLC/590/00, judgment 31 January 2001). In *Fraser* the Court of Appeal concluded that when considering whether or not to grant a receiving order against a judgment debtor, the Bankruptcy Court could go behind the judgment and enquire into the validity of the debt. In *Dawodu*, Etherton J applied that principle but stated the following:

> "My only qualification to the summary by Warner J is that the cases establish that what is required before the Court is prepared to investigate a judgment debt, in the absence of an outstanding appeal or an application to set it aside, is some fraud, collusion, or miscarriage of justice. The later phrase is of course capable of wide application according to the particular circumstances of the case. What in my judgment is required is that the court be shown something from which it can conclude that had there been a properly conducted judicial process it would have been found that nothing was in fact due to the Claimant. It is clear that in those circumstances the Court can enquire into the judgment and the judgment debt, even though the debtor himself has previously applied to have the judgment set aside, and even though that application has been refused and that refusal has been affirmed by the Court of Appeal - see *Re Fraser* …"

38. This makes it clear that the principle Mr Millinder seeks to rely on can have no application on the facts of this case. As was made abundantly clear in the judgment of the Chancellor, there is no evidence of fraud in this case. As inconvenient for Mr Millinder as that reality maybe, it cannot and does not change simply because he persists in his repetition of allegations that have been considered by the court and dismissed as unfounded. Nothing occurred in the course of the hearing of this application to suggest that Mr Millinder now accepts that further claims should not be made. Indeed, as I explain below, events following the hearing demonstrate the contrary.

39. In addition, since 2018 Mr Millinder has attempted to side-step the restraint on his access to the civil courts through liberal attempts to use criminal proceedings collaterally to attack those who have played any part in the civil litigation. This use of criminal process has been particularly cynical. I note in particular in the way Mr Millinder has sought to target lawyers who have acted for MFC, no doubt intending to cause them both personal and professional distress. Mr Millinder said nothing at the hearing to suggest he would now desist from abusing the Court's criminal process. In the course of his submissions Mr Millinder repeated his accusations that judges who had not agreed with submissions Mr Millinder had made, had "acted dishonestly". He went further, asserting he had a "right to prosecute the offenders". Taking account of what is said by Mr Millinder in his Skeleton Argument dated 19 March 2021, it is tolerably clear that this includes all those he has litigated against and all those who have played any part in that litigation, and in every successive application that Mr Millinder has made to date.

40. A further matter relevant to characterising Mr Millinder's conduct both as vexatious and as incorrigible is the scale and nature of his correspondence with the court prior to

and following the various applications he has made. This feature of Mr Millinder's behaviour has already been noted in earlier judgments: see, for example, in Judge Pelling's judgment at paragraphs 22 – 32 and 38 and in the Chancellor's judgment at paragraphs 64 and 70.

41. Mr Millinder's conduct in this regard has variously been described as "unnecessary", "unpleasant" and "intemperate". The scale and content of Mr Millinder's correspondence can be overwhelming, sometimes correspondence sent by him directly, on other occasions via email accounts in the name of proxies, or which use aliases, sometimes sent to judges, on other occasions to court staff. Both prior to and following the hearing of this application Mr Millinder has behaved in the same way. Such behaviour in disregard of any standard of courtesy or moderation is not acceptable in any correspondence; certainly not when that correspondence is directed to a court. In this respect also, Mr Millinder is persistent. His hectoring manner and tone is not simply the consequence of occasional lapses of judgment, it is a calculated course of action, no doubt intended to threaten and intimidate. In the premises, it further manifests Mr Millinder's vexatious mindset.

42. Drawing these matters together I am satisfied that an all proceedings order should be made. The course of conduct described in this judgment and in the earlier judgments to which I have referred amply warrants the conclusion that unless an all proceedings order is made Mr Millinder will continue to institute vexatious civil and criminal proceedings. The all-proceedings order will, for a period, overlap with the 2020 GCRO made by Fancourt J on 13 November 2020. That order is due to remain in force until 13 November 2022. In my view such overlapping provision is not problematic. Putting their respective scopes to one side, the effect of each order is to require the permission of the court to be obtained before further proceedings are issued. There is no inconsistency between the 2020 GCRO and the all-proceedings order that will now be made under section 42 of the Senior Courts Act 1981. The provisions of each order can work harmoniously. The duration of the section 42 order should not be fixed. Orders for an indefinite period are envisaged by section 42(2) of the 1981 Act. Given Mr Millinder's conduct to date – in particular for this purpose the way in which he was quick to take advantage when the 2018 ECRO lapsed – an indefinite order is appropriate. As explained by Lord Woolf CJ at paragraph 64 in his judgment in *AG v Covey* (above), it will remain open to the court to vary the terms of the order *"in the light of entirely new circumstances"*. Unless and until such circumstances arise, an order preventing Mr Millinder instituting either civil or criminal proceedings without the permission of the court will remain a necessity.

43. The Attorney General has provided a proposed form of order. There are two specific matters arising from the proposed form that I should mention. The first is the request (see paragraph 6 of the draft order) that Mr Millinder should be prohibited from acting as a representative or *McKenzie* friend or as the representative of any company or any partnership in any proceedings. Mr Lewis for the Attorney General, relying on the judgment of Bean LJ in *Attorney General v Vaidya* [2017] EWHC 2152 (Admin), submitted that a restriction in the form of paragraph 6 of the draft order is appropriate, in particular given that on occasion Mr Millinder has made applications purporting to act for one or other of his companies. In his judgment in *Vaidya*, Bean LJ said as follows:

> "I turn finally to the question of whether that section 42 order should extend to preventing Dr Vaidya from acting as a representative or *McKenzie* Friend in proceedings in any court of law or tribunal. Dr Vaidya argued that such an order would impede other citizens' access to justice although he did say in the last two or three years he has not acted as representative or *McKenzie* Friend. In my view, when an order is made under section 42 against a vexatious litigant it should be standard practice to include a paragraph prohibiting a vexatious litigant from acting as representative or *McKenzie* Friend. If a litigant is to be prevented without leave of the court from bringing cases himself, the case must surely be even stronger to prevent him from appearing as a representative."

This reasoning applies equally in this case, in particular because Mr Millinder has on previous occasions sought to pursue applications and claims on behalf of his companies. The order should therefore include a provision in the terms of paragraph 6 of the draft order.

44. The second matter regards paragraphs 7 – 10 of the draft order, which are in the following terms:

> "7. The Respondent shall not seek leave under paragraphs 3 to 5 above:
>
> 7.1 More than twice per calendar month:
>
> 7.2 In seeking leave shall send no more than five messages (whether by correspondence or email) in respect of each request.
>
> 8. Any requests or messages sent in breach of paragraph 7 above will not receive any response nor be placed on the court file.
>
> 9. Save as provided in paragraph 7 above or by any further order of the Court, the Respondent shall not send any correspondence or emails or communicate with
>
> 9.1 Her Majesty's Courts and Tribunals Service in respect of the Respondent's litigation or proposed litigation;
>
> 9.2 The Insolvency Service;
>
> 9.3 The Attorney General's Office;
>
> 9.4 The Government Legal Department.
>
> 10. Any correspondence or emails or communications sent in breach of paragraph 9 above shall not, unless the recipient decides otherwise, receive any acknowledgment or response."

In this way, the Attorney General seeks to curb Mr Millinder's opportunity to correspond with the Court, the Insolvency Service, his office, and the Government Legal Department.

45. I consider an order in the form of paragraph 7 of the draft can be made pursuant to section 42 of the 1981 as a necessary adjunct to the power therein for the court to prevent abuse of its own process. In this case such an order should be made. The limits proposed are reasonable and are warranted by Mr. Millinder's behaviour to date. Paragraph 8 of the draft is consequential on paragraph 7 and is also appropriate. To the extent that paragraphs 9 and 10 of the draft concern corresponding with HM Courts and Tribunal Service (i.e. per paragraph 9.1) the same reasoning applies; that restriction too is appropriate in this case to prevent abuse of the Court's process. Further, I think it needs to be made clear that the prohibition on correspondence provided for by this part of paragraph 9 applies equally to correspondence sent to judges or their clerks. The need for such an order has been amply demonstrated by Mr Millinder's conduct to date: his persistent and unnecessary email correspondence has been referred to by several judges; this pattern of behaviour was repeated both before the hearing of this application and in the period since judgment on it was reserved (as to which, see below). However, I do not consider that an order in the form of any of paragraphs 9.2 to 9.4 of the draft order can be made. Each proposes a restriction which is outside the scope of section 42 of the 1981 Act. Therefore, my conclusion is that an order to the effect of the draft proposed by the Attorney General should be made, save in respect of paragraphs 9.2 to 9.4 of the draft order. The final order made by the court will be published when this judgment is handed down.

(3) Matters arising after the hearing of the application

46. Following the hearing on 30 March 2021, Mr Millinder sent an application notice to the court on 5 April 2021. It is apparent that the purpose of this application is to avoid the court giving judgment on the Attorney General's section 42 application. Mr Millinder's application seeks the following. *First*, to add various parties to the section 42 application. These include MFC, Gibson O'Neil, the solicitors and counsel who have acted for them, and the Official Receiver. *Second*, Mr Millinder requests that the section 42 application proceed as or be converted to a trial of all the allegations of fraud and criminality he has previously made against all the parties who he wishes to be joined. *Third*, Mr Millinder requests that the 2018 ECRO and the 2020 GCRO and all other orders made in consequence of them, be set aside. He contends each order is "void" as being made "without jurisdiction".

47. What these applications come to is an attempt, through transformation of the section 42 proceedings, to turn back the clock to the beginning of the dispute between Mr Millinder, his companies, and MFC, and to erase all orders made in those proceedings and subsequently. There is no basis for any of these applications. There is no reason not to determine the Attorney General's section 42 application; it is before the court and has been the subject of a full hearing. Given that, and given also the matters I have referred to in the course of this judgment, there is every reason why the section 42 application should be determined. There is no reason to revisit any of the prior proceedings. This part of Mr Millinder's application is yet a further repetition of his argument that he is entitled, on as many occasions as he chooses, to apply to set aside any/all of the decisions made which are adverse to him or his companies. That

argument has been rejected, repeatedly and correctly, by the other judges who have had cause to consider Mr Millinder's claims.

48. The further part of Mr Millinder's 5 April 2021 application is that I should not be part of the court that deals either with the section 42 application or those proceedings as they would continue if transformed in the way Mr Millinder would like them to be. Mr Millinder submits that at the hearing of the application I made "ridiculous, totally unfounded comments that contradict the supremacy of the rule of law itself"; and by suggesting that the judgment of the Chancellor was correct, I have given Mr Millinder grounds to perceive I am biased against him. In addition, Mr Millinder repeats his complaints made in writing before the hearing, but expressly not pursued by him at the beginning of the hearing, that I am a "go to judge for the corrupt establishment" and that my ability to act fairly in this case is affected because I was (between 2007 and 2014) First Treasury Counsel. All these matters, contends Mr Millinder, give rise to an appearance of bias.

49. I have considered these submissions carefully. The first question is whether there are any matters which have a bearing on the submission on the appearance of bias. If there are such matters, the second question is whether those matters either alone or together, would cause a fair-minded and informed observer to conclude there was a real possibility or danger of bias.

50. I do not consider any matters exist that might cause a fair-minded and informed observer to conclude there is a real possibility or danger of bias. During the hearing I did put points to Mr Millinder to probe his submission based on the judgments in *Re Fraser* and *Dawodu*. I suggested Mr Millinder's reliance on those judgments did not assist him. These I suspect are the "ridiculous … totally unfounded comments" to which Mr Millinder now refers. At the hearing Mr Millinder replied to my questions maintaining his reliance on those authorities. Nothing in any of this could cause concern to any fair-minded and informed observer. One important purpose of any oral hearing is to allow submissions to be tested. This testing often takes the form of the judge suggesting, for one reason or another, that one or other proposition relied on by a party is or may be incorrect. This allows the party the opportunity to respond: perhaps to improve or refine its submission; perhaps to satisfy the judge that the point the judge has raised is not a good one after all. Such exchanges do not of themselves provide any basis for a suggestion that the judge's mind is, or might appear to be, closed. Considered fairly, such exchanges indicate only that a judge has considered the case papers before the hearing, and identified matters he thinks may be material and wishes to raise. The exchanges between me and Mr Millinder in this case did not go beyond the usual ebb and flow of a court hearing. Mr Millinder's other point (repeating assertions he made prior to hearing of the application) do not take this part of his application any further. An informed observer would know I stood down as First Treasury Counsel in 2014. Mr Millinder's references to "corruption" are no more than general abuse. He has made similar allegations of fraud against many judges who have heard applications he has issued. A fair-minded observer would recognise this, conclude there was no substance to it at all, and attach no significance to it. Strictly speaking, Mr Millinder's 5 April 2021 application falls within the scope of the 2020 GCRO. It should not have been issued without the permission of the relevant judge. Be that as it may, and considered on its own terms, it raises no matter of any substance and should be refused.

C. Disposal

51. For the reasons set out above I would if my Lady, Lady Justice Andrews agrees, make an order in the form requested by Attorney General subject to the matters referred to above, at paragraph 45.

LADY JUSTICE ANDREWS:

52. I agree, and only wish to add a few observations of my own. First, when an individual persistently and habitually makes claims or applications in the civil courts which are totally without merit, a civil restraint order will generally suffice to contain that activity, whilst ensuring that any claims or applications which have merit will still be allowed to proceed. The requirement for permission acts as a judicial filter, though it may place a heavy burden on the supervising judges and the court staff who have to deal with applications for permission. Civil restraint orders do create some impediment to access to justice, but they are justified and proportionate, and compliant with Article 6 of the European Convention on Human Rights.

53. Applications for an Order under section 42 of the Senior Courts Act 1981, which would contain a similar judicial filter, and are also compatible with Article 6 (as confirmed by the Court of Appeal in *Attorney General v Covey*, above) are very much a last resort. Therefore, if the individual concerned is already subject to a GCRO, as Mr Millinder is, the Court will need to be persuaded that it is insufficient to meet the situation. That may well be the case where the person concerned is not just persistently abusing the process of the court in civil proceedings, but seeking to bring vexatious criminal prosecutions. In practical terms, an order under section 42 is the only means of preventing such prosecutions. On behalf of the Attorney General, Mr Lewis explained that the purpose of seeking such an order in the present case was to stop the unmeritorious criminal proceedings to which Mr Millinder had increasingly turned after the imposition of the ECRO.

53. The jurisdiction of the court to make an order under section 42 does not depend on whether the vexatious litigant lives in the United Kingdom or abroad, as Mr Millinder at one time sought to suggest. Those who, like Mr Millinder, make their homes overseas are no more entitled to abuse the process of the Courts of England and Wales with impunity than those who live within the jurisdiction. The wrongful behaviour which the court is restraining occurs within the jurisdiction. In any event, in his communications with the court, Mr Millinder regularly uses email addresses of a company whose trading name is Intelligence UK and whose registered office is in Oxford Street in London.

54. The statutory criteria for making an order under section 42 are different from, and more stringent than, the criteria for a civil restraint order. The court must be satisfied by the Attorney General that the civil proceedings or applications in civil proceedings or the private prosecutions instituted by the individual concerned are vexatious, in the sense described by Bingham LJ in *Attorney General v Baker* (above). That means that the court is not just considering whether the civil or criminal proceedings or

applications in question are hopeless, because they have no basis in law or are otherwise bound to fail (which would make them "totally without merit" for the purposes of a CRO even if they were not vexatious). It must consider whether they are also an abuse of the process, and what impact they have or are likely to have on the defendants or respondents. As Lord Donaldson MR said in *Attorney General v Jones* (above) at page 862H-863A, the mischief at which section 42 is directed is that:

> "The compulsive authority of the state vested in the courts and the judiciary shall not be invoked without reasonable cause to the detriment of other citizens and that, when someone takes this course habitually and persistently, that person shall be restrained from continuing to do so, but shall nevertheless be as free as any other citizen to use those processes if he has reasonable cause for so doing."

55. Secondly, in determining whether the test is satisfied, the Divisional Court hearing the application is bound by any findings or rulings made in earlier proceedings as to the merits of previous claims and applications made by the respondent. It is not obliged to re-open those decisions, and it generally will not have the power to do so: see *Attorney General v Jones* at page 863E-F.

56. Sadly, because he has apparently convinced himself that anyone who disagrees with his point of view must be dishonest or insane (because from his perspective, any rational and honest person would agree with him) Mr Millinder cannot accept that earlier judgments or orders which he made no attempt to appeal are binding upon him, as they would be on any other litigant in his position, and that in principle there must be finality in litigation. Before us, he sought to rely on *Re Fraser* as authority for the proposition that he was entitled to make any number of attempts to set aside the judgment debt upon which the petition to wind up his former company Earth Energy was based (on the basis that the court was misled into finding that Earth Energy had not been assigned a claim by Empowering Wind that far exceeded in value the costs awarded against Earth Energy by the consent order of Norris J.)

57. For the reasons explained by Swift J, that is not what that case decides. It has nothing to do with giving the judgment debtor (in this case Earth Energy, not Mr Millinder) multiple bites of the cherry or allowing that person to bypass an appeal. As Lord Esher MR explained in *Re Fraser,* the Bankruptcy court, when deciding whether to make a receiving order, has a discretion. When exercising that discretion, the court is entitled to satisfy itself that the money is in fact due and owing to the petitioning creditor, rather than treating a judgment in his favour as the final word on the subject (though the power to go behind the judgment is subject to the limitations explained by Etherton J in *Dawodu*). That power exists even if the judgment has been the subject of an unsuccessful application to set it aside or an unsuccessful appeal. The reason why that power exists is that a receiving order will affect other creditors of the debtor besides the petitioning creditor, and any judgment obtained by the creditor will not bind those other creditors, even though it is binding on the debtor.

58. However, the Bankruptcy court has no *duty* to go behind the judgment, which is prima facie evidence of the debt, and it is for the Bankruptcy court to decide whether on the evidence before it, the circumstances that would justify it in doing so have been established. As the Chancellor explained in his judgment, the Bankruptcy court (ICCJ Barber) was satisfied that the debt was due when it made the winding up order in

respect of Earth Energy, and Mr Millinder has exhausted all legitimate attempts to set aside the winding up order.

59. In the course of argument at the hearing before us, Mr Millinder accepted that all his complaints had been fully ventilated before the Chancellor; but that was in the context of a hearing of Mr Millinder's application to set aside the ECRO. His grievance is that there has never been a trial, in which witnesses would be called and cross-examined, at which he would have the opportunity to convince a judge that his various allegations of fraud and similar wrongdoing on the part of MFC and its representatives, in particular, were fully justified. I understand that Mr Millinder feels frustrated about that, but he has now been told enough times for the message to have got home that, in order to get a claim based on fraud or dishonesty to the stage where it will be fully ventilated at a trial, there needs to be enough evidence to raise a case to answer. One cannot prove dishonesty by mere assertion, however strongly one feels that it must have occurred.

60. Mr Millinder knows this, but he is still prepared to make the wildest of allegations against anyone and everyone who he perceives to be an obstacle to his getting justice, and that behaviour is what has led to my concluding, albeit with some reluctance, that this is one of those rare cases where the court has really no choice but to exercise its discretion in favour of making an order under section 42. All the requirements are met, for the reasons adumbrated in Mr Justice Swift's judgment. If there had been any indication that, in the light of hindsight, Mr Millinder accepted that he should not have sought to bring the criminal prosecutions and undertaken not to do anything of the kind again, I might have been persuaded to give him one last chance on the basis that the GCRO would suffice. However, that is plainly not a viable option.

61. In the same way as with the GCRO, if Mr Millinder ever did have sufficient evidence to raise a sufficiently arguable claim or application, then unless the claim or application would be an abuse of process (e.g. because it is an attempt to relitigate matters that have been finally determined, or it is a claim that Mr Millinder has no status to bring), an order under section 42 would not act as a barrier: the High Court would permit it. But whether a claim is legally arguable is a matter for the assessment of the judge considering the application for leave to bring the claim or make the application. The Chancellor made the same point at paragraph 39 of his judgment when he said of the ECRO that the judicial filter will not prevent the bringing of meritorious claims which are legally realistically arguable.

62. Mr Millinder has exhausted his rights to challenge the ECRO and GCRO and it is no longer open to him to dispute their validity or the jurisdiction of the court to grant them. However, if an Order is made under section 42 there would be a degree of overlap between that Order and the GCRO; in practical terms there will be no necessity for the GCRO to remain in force and the Attorney General has made it clear that he would not oppose its discharge. I do, however, think it should be kept in force at least until such time as Mr Millinder has exhausted his rights of appeal against the Order that this Court makes under section 42. In that way, if Mr Millinder were to succeed in setting the Order aside on appeal, there would still be an operative means of preventing him from engaging in vexatious civil litigation. The sensible course, it seems to me, is to specify that whilst the GCRO remains in force, one of the designated supervising judges under the GCRO should consider any applications for leave made by Mr Millinder pursuant to the Order under section 42, and to leave any

question of discharge of the GCRO to be considered on a future occasion. In that way, during such time as both orders are in force, any necessary applications made by Mr Millinder for permission to bring proceedings or make applications will be considered by the same judge.

63. Thirdly, in anticipation of what Mr Millinder might allege when he becomes aware of our decision on this application, he had a fair hearing. Indeed, he sent an email to the Administrative Court office on 31 March 2021 which said, among other things: "A productive hearing yesterday. The Judges were brilliant, the first fair hearing I have had in all the proceedings." He was given a fair opportunity to raise and argue his previously-indicated objection to my Lord, Mr Justice Swift, sitting as part of the constitution. He declined that opportunity. Had he maintained the objection, it would have been heard and dealt with on its merits, after hearing and considering his submissions. That was his one and only chance to make the objection; he cannot have second thoughts about it after the hearing has ended. To allow him to do so would be to treat him more favourably than other litigants.

64. In fact, the objection was fundamentally misconceived; the fact that a judge was, many years ago, and when still in practice at the Bar, First Treasury Counsel, does not predispose him or her to find in favour of the Government or the Attorney-General, nor would any fair-minded objective and impartial observer rationally believe that it would. I was under the impression at the hearing that Mr Millinder accepted the force of this point, and slightly surprised in the light of this to hear that he had tried to resurrect the objection after we had heard all the arguments and reserved judgment. There appears to be a huge disparity between the way Mr Millinder behaves in court and the way he behaves outside court.

65. Mr Millinder had raised a point in correspondence with the Administrative Court office that the Attorney General should have applied for permission to serve the application on him out of the jurisdiction. That argument seemed to me to have some force. At the start of the hearing I raised with Mr Lewis the court's concern that there had been a failure to comply with the necessary formalities in respect of service, because Mr Millinder lives abroad, I believe somewhere in the Far East (though his address may not be known to the Attorney General). The proceedings had been served at Intelligence UK's registered office. So far as I had been able to ascertain, there had been no order for substituted service, and that was confirmed. As I pointed out to Mr Lewis, the Civil Procedure Rules apply as much to the law officers as they do to any other litigant.

66. However, as it happened, the failure to effect personal service or to obtain an order for service out of the jurisdiction (if required) caused no unfairness, and at the hearing, Mr Millinder did not claim that it had. Mr Millinder undoubtedly knew of the application, he had copies of the evidence relied on in support of it, and he had had ample opportunity to respond to the application in writing and had availed himself of that opportunity in lengthy written submissions, which both members of the constitution had taken the time to read and digest in advance of the hearing. He was also aware of the time and date of the hearing. Indeed, he had participated in a successful test of the video link on the previous day. Every effort was made to mitigate any difficulties for Mr Millinder caused by the time difference. In those circumstances it was hardly surprising that Mr Millinder indicated that he was content to proceed with the hearing. However, I was not prepared to leave matters as they

were without requiring the Attorney-General to take the necessary steps to cure the service irregularity, which led to the application to which Swift J has referred. I agree, for the reasons given by my Lord, that the application should be allowed, but the Attorney General should bear his own costs of that application.

67. I had not encountered Mr Millinder before and I went into the hearing with a completely open mind. I have not discussed this application with any of the other judges who have previously dealt with Mr Millinder's applications. After hearing the application, I considered all the submissions carefully, and formulated my own views of the merits entirely independently of Mr Justice Swift, and without having seen the substance of some of the abusive emails directed to him by or on behalf of Mr Millinder. Now that I have read my Lord's judgment in draft, I am fortified in my independently formed view that Mr Millinder is set on a campaign of vindictive harassment which will not stop unless he is constrained to stop by court order.

68. On 14 June a message was sent to myself and Mr Justice Swift from the Administrative Court office complaining that Mr Millinder was continuing to email the general mailbox regularly and call the office by phone. This proliferation of correspondence appeared to pertain to the application notice he had filed, without first obtaining permission as required under the GCRO, on 5 April 2021, after the hearing of the Attorney General's application, which Swift J has addressed in his judgment to the extent that it was relevant to the outcome of the section 42 application. These further developments have reinforced my conclusion that the Order should be couched in terms which preclude Mr Millinder from corresponding with the Court except for the purposes of issuing and paying the fees for an application for leave/permission made to the supervising judge, filing evidence in support of such an application, making any claims or applications permitted by the supervising judge, or complying with court directions.

69. Finally, I will just add this. It is extremely ill-advised for any litigant who is facing an application of this kind to seek to influence the outcome after the hearing. It is in any event wholly inappropriate for such a litigant to send unsolicited correspondence directly to any judge, at any stage of the litigation, particularly to a judge who is considering a reserved judgment in a matter relating to the sender. Mr Millinder somehow got hold of my judicial email address and on 24 May, 2021 I received an unsolicited email which appeared to be a diatribe of invective aimed at the Attorney General and the Lord Chancellor. As soon as I realised what it was, and who the author was, I did not read any further and disposed of it. Further emails from Mr Millinder were received and disposed of in similar fashion without my opening them.

70. It may not have occurred to Mr Millinder that on the face of it, this behaviour appears to be an attempt to pervert the course of justice as well as a contempt of court. He should be disabused of any notion that his place of residence makes him safe from prosecution for the former, or proceedings to sanction the latter. It is not too late for Mr Millinder to start thinking more carefully about the consequences of his actions. I hope that he does. Meanwhile, I agree with my Lord, for the reasons set out in his judgment, and in this short concurring judgment, that this application should be granted subject to the modifications to which my Lord has alluded.