

FORDHAM J:

Introduction

1. This is a case about Liverpool taxis and legitimate expectations, 52 years after Lord Denning's famous case [1972] 2 QB 299. The Claimant operates a fleet of taxis in Liverpool and is today exercising its right, pursuant to CPR 54.12, to have a decision refusing permission for judicial review on the papers reconsidered at a hearing in open court. As I explained during the hearing, an important function of the Judge at the filtering stage of permission is to test whether there is a viable judicial review claim with a realistic prospect of success. It is not appropriate to allow a claim to continue if, having tested it, the Court is satisfied that the claim has no realistic prospect of succeeding.
2. Specifically, this case is about allowing the ongoing retention of a renewal opportunity, in respect of "expired" Hackney Carriage Vehicle ("HCV") Licences. The Claimant has, for many years, held a number of licences from the Defendant ("the Local Authority"). A licence has a 12 month duration. It is accompanied by a "plate", held by the licensee. Obtaining a licence involves paying the fee (some £170). But obtaining a licence also involves satisfying important preconditions: valid insurance; an up-to-date MOT and a compliance certificate obtained following relevant vehicle checks at a test station. All of this is the subject of a statutory framework governed by the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.
3. If you are a taxi operator with vehicles, you need drivers to drive them, and you need demand to make the outlay worthwhile. When the Covid-19 pandemic hit, now four years ago in March 2020, the Local Authority introduced more relaxed arrangements which permitted holders of HCV licences to retain expired licences, and the associated plates, retaining the ability subsequently to renew those licences. Mr Richard Gawith, the company director who has appeared in person for the Claimant at this hearing today, says that there were always arrangements in Liverpool for post-expiry renewal. But he accepts that these arrangements became more relaxed during the pandemic. That change was in recognition of the economic impacts for the taxi trade, in the context of shielding, lockdowns and the other implications of the pandemic.
4. More recently, the Local Authority has been communicating with the Claimant and others, whose licences had expired but who had been permitted to retain the plates. This has been with a view to returning to what the Local Authority says is or would be a regularised arrangement of licence retention, transfer or surrender. One of the striking features of this case is that Mr Gawith candidly submits that it would be far better if expired licences could not be renewed at all. But in order to understand that position it is important to recognise that he also emphasises another point. He says there need to be an ongoing and flexible arrangements for applications for new licences, whether made by new entrants or made by operators who were unable to renew at the time of expiry.

Background

5. The position in July 2021 was that the Claimant had received some 29 licence renewal notice letters from the Local Authority. Each of these had imposed a 28 day deadline for renewal, but each allowed the Claimant to contact the Local Authority to explain

any “reason” for being unable to satisfy that deadline. Mr Gawith responded with one of his many communications giving his reasons.

6. The Claimant’s position, throughout, has in essence been this. We have a fleet of taxi vehicles. Only some of those vehicles have been in use. There has been a lack of demand. There has been an insufficiency of drivers. Things have not yet returned to normal. Renewing licences of vehicles which are “parked up unused” would be costly and pointless. It is uncommercial and it is unaffordable. Quite rightly, the Local Authority has allowed licences to sit expired. That is within its legal powers. It can, and should, continue in the circumstances. Rightly, the Local Authority has said we do not need to renew the expired licence if we can give a “reason”: we can give very good reasons. These licences, although expired, are valuable “assets”. You can sell, and another person can buy, an expired licence which sits awaiting its renewal. The Local Authority is well aware of that and has been involved in subsequently renewing expired licences which have been transferred in that way. We should not simply lose these expired licences and their value. But in any event, we need proper time. We cannot simply renew multiple licences within a few weeks.
7. The Local Authority, for its part, has taken a policy position, articulated in its many communications to Mr Gawith. Its essence has been this. It is not satisfactory to have former licensees retaining expired licences, on an ongoing basis, and with a view to reserving indefinitely an entitlement subsequently to renew them. A licence should, in principle, be renewed at the end of the year of its annual term. If, for whatever reason, the commercial position of a licensee or a taxi fleet operator cannot sustain the number of licences previously held, those licences should be given up. They should not be retained expired. No licensee has a right to retain an expired licence. No licensee has a right to renew a licence long after its expiry. No licensee has a right to retain the plate, or ownership of the plate, in respect of an expired licence. It is transfer or renew, or it is lapse and lose. This is the way the arrangements operated, in substance, prior to the pandemic. It is the operation which is reflected in the statutory scheme. It is also supported by authority. In R (Exeter City Council) v Sandle [2011] EWHC 1403 (Admin) the High Court held that an HCV licence was capable of renewal after the expiration of its one-year period but only in “exceptional circumstances” and governed by the relevant local authority’s “discretion”.

No New Licences Mechanism 1

8. One of the features that has emerged as prominent at today’s hearing relates to the position regarding applications for plates which are returned to the Local Authority. Mr Gawith told me that there have been some 56 returned plates, as identified in a Freedom of Information Act response. Under this regulated regime, which involves assessing unmet demand, there is a capped limit for Liverpool of 1,426 HCV licences. Mr Gawith makes the point that, as at present, there is no mechanism by which a new entrant can take advantage of a returned plate and apply for the licence plate which has been liberated. He makes the point that the Claimant, by the same token, would not be able to take advantage of any avenue for seeking to obtain a new licence, in circumstances where it has had to give up an expired licence plate. Mr Hercock, for the Local Authority, ultimately explains the position in this way. He says that one of the things that the Local Authority will need to do, as part of its steps to regularise the position post the pandemic, is to identify a ‘mechanism’ for new allocation or reallocation of

licences, liberated within the 1,426 cap, and that the Local Authority has not yet taken that step.

The Local Authority's Actions

9. After a long sequence of letters, emails and formal notices, the Local Authority set the Claimant deadlines for the renewal of expired licences, culminating in formal notices to apply for 21 licence renewals within 28 days. It then issued statutory notices for the return within 7 days of expired plates (s.58 of the 1976 Act). It then said 'no more renewals'. Finally, it has 'taken back ownership' of 6 plates. I will explain the sequence of events.
10. On 17 February 2023, the Local Authority sent the Claimant letters requiring the renewal of expired licences – Mr Gawith says 21 of them – within 28 days or that the Claimant “advise ... in writing within this period of any reason why you cannot do so”. The February 2023 notices said that if the expired plates were not renewed, the Local Authority “may decide to give a formal notice to you under section 58 of the 1976 Act which will require you to return the plate within 7 days”. Some of the licences to which those notices referred were successfully renewed by the Claimant subsequently, including within the 28 day period between 17 February and 17 March 2023. On 26 February 2023 Mr Gawith wrote giving his “reason”, by reference to a number of points including the continuing driver shortage which was severely hampering his business, saying that he would continue to renew licences as fast as he could, that over half of his licensed taxis were “parked up unused”, and that 28 days was simply not enough time for renewals. He said that the costs associated with 21 renewals were unaffordable but that he was willing to pay all the licence fees.
11. On 21 March 2023, the Local Authority sent notices pursuant to section 58, requiring the then remaining 13 unrenewed plates to be returned within 7 days. On 28 March 2023 Mr Gawith responded again, pointing out that he had been asked to give his “reason” in writing as to why he was unable to renew, and that he had complied with this. In the subsequent weeks, the Claimant successfully renewed some of the remaining 13 licences. In some cases this involved a transfer. Mr Hercock has submitted that each permitted renewal or transfer was referable to the particular facts. But he also submits that, in the event, no renewal was blocked up to 30 May 2023.
12. On 30 May 2023, the Local Authority wrote again. It referred to some successful further renewals and the prospect of one successful transfer, concluding: “Any further plates that you have received a 7 day notice for and are suspended cannot be renewed or transferred”. At that point, there were 6 licences which were expired and had not been renewed or transferred, in respect of which the Local Authority insisted the plates be returned.
13. On 14 June 2023 the Claimant wrote a letter before claim foreshadowing a judicial review of the decision not to permit any post-expiry renewal. The Local Authority responded, defending the lawfulness of its actions. On 28 June 2023, the Local Authority wrote a letter stating that it was “taking back ownership” of the unreturned plates of the 6 outstanding licences. A meeting took place on 21 July 2023 and the Local Authority communicated a confirmation on 28 July 2023 that it would not be changing its position.

Delay 1: Filing the Papers

14. One point taken by Mr Hercock, as a ‘knockout blow’, is this. There was delay in commencing the claim for judicial review. The true focus of the claim was and must be on the formal notices issued on 21 March 2023 requiring the 7 day return of the plates, and on the exercise of the section 58 statutory power. That was recognised by the Claimant in the letter before claim. It is also reflected, as Mr Hercock showed me, in many of the points expressed in Mr Gawith’s skeleton argument for today’s hearing. This claim was, and is, all about the use of that statutory power. Three months from the relevant date was 21 June 2023. There is no good reason to extend time for a judicial review claim which was not filed with the Court until 30 August 2023. This argument was accepted on the papers when permission for judicial review was refused. HHJ Halliwell was persuaded by the Local Authority that “the latest decision material to the claim for judicial review” was made on or before 21 March 2023.
15. My role has involved considering the issues afresh, in the light of all of the written and oral submissions made. On this first point, I have come to a different view. I do not think the claim was out of time. There had, throughout the passage of time, been a series of formal notices: sometimes notices requiring renewal; sometimes other demands and warnings. Renewals continued to be made and permitted. The 7 day section 58 notices of 21 March 2023 related to 13 plates. But several of these were subsequently permitted to be renewed. In my judgment, the true focus of the claim is on the crystallised position, finally taken and communicated on 30 May 2023, when the Local Authority stated that it would no longer be accepting any renewals. That was a decision. It was a decision which was communicated. It was a decision which mattered because, prior to that, renewals were being allowed and none was refused. Viewed in practical commonsense terms, so far as concerns the Claimant’s position, the adverse impact and the concrete situation arose on 30 May 2023, when the guillotine finally came down. It was at that point that the Local Authority was drawing its firm line in the sand.
16. This was recognised by the Claimant. The decision of 30 May 2023 was identified in the Form N461 as the target decision for judicial review. The claim was recognised as being on the last day of 3 months from that impugned decision. Even if, on the basis of the legally correct analysis, this case arises out of the exercise of the section 58 power and the formal section 58 notices, it remains the case that there was the subsequent firm line drawn by decision on 30 May 2023. Looking at the position realistically, if renewals had continued to be permitted after 30 May 2023, it may be that the remaining 6 expired licences would also have been renewed. As Mr Gawith put it to me, in those circumstances, he would not be here in Court today. If all of this means that what is needed is an extension of time then I would grant it, on the basis of the reality and the reasonableness of the Claimant’s actions in trying to resolve matters, waiting for a crystallised position and treating judicial review as a last resort. But in my judgment the position is even more straightforward. The decision of 30 May 2023 is properly identified as a target for judicial review. Accordingly, if this is a viable claim for judicial review, I would not dismiss it for being filed on 30 August 2023. That deals with the first delay point. There is a second delay point, with which I will deal at the end of this judgment.

Essence of the Claim

17. I started this judgment by explaining that a Judge in my position will refuse permission to apply for judicial review unless satisfied that there is an arguable ground for judicial review which has a realistic prospect of success. The Claimant does not have legal representation. But the legal shape of the claim which is being advanced, and is capable of being advanced, is identifiable. It is identifiable first from the documents which have been filed and secondly from Mr Gawith's oral submissions. But thirdly, I also had the opportunity – with Mr Hercock – of considering what other point or points could be raised on the Claimant's behalf. That is in a context where Mr Hercock, rightly, recognises his duties to the Court when the claimant appeared through its director in person. Here, as I see it, is the essence of the legal challenge:
18. The Local Authority is acting unlawfully and/or unreasonably and/or inconsistently. It has breached a legitimate expectation. It has abused its powers. The decision is unfair, or has not been taken for a proper purpose. Legally adequate reasons have not been given.
- i) The Local Authority's hard-line, in declining to accept further renewals in the context of expired licenses, has been claimed to be based on operating the statutory scheme. But the statutory scheme does not impose duties on the Local Authority. Instead, there are discretionary powers. For example, section 58 (action to require the return of plates) is a power: the statute says "may". The case of Sandle recognises that there is a "discretion". The Local Authority has always allowed expired licence plates to be retained and the licences then renewed. This was continued, and relaxed, during the pandemic. It was lawful to allow licences to sit unrenewed with a view to future renewal. Nothing in the statutory scheme precludes the Local Authority from continuing with that well established course of dealing. The implications and consequences of the pandemic have not suddenly disappeared. The effects for the taxi trade are still being felt today.
 - ii) The established practice has involved allowing expired licences to be renewed. There has never been a strict time limit. The Claimant's legitimate expectation, engendered by the actions and the communications from the local authority, was that extensions would continue to be permitted; or at very least a reasonable time given for renewals before this was brought to an end.
 - iii) Each and every time formal notices were sent to the Claimant requiring actions within specified timeframes, an alternative was permitted. It was for the Claimant to explain its "reason" in writing for being unable to comply. On each occasion, a "reason" was properly given by the Claimant. Of course, a reason needs to be "sensible" and "trade-related". But the Claimant had such a reason. It gave a good reason, including on 26 February 2023: that 28 days was impossible; together with the broader points about the commercial position and realities. The Claimant has – throughout – complied with what the notices required. The Claimant had its legitimate expectation that – if it provided a good reason – there would be no insistence on the relevant alternative action. The Claimant also had its legitimate expectation that renewal would continue to be allowed. That is always what happened, including up to 30 May 2023 and the last 6 licences out of the 21. These legitimate expectations have been breached.
 - iv) The Local Authority's actions are, in any event, unjustified, arbitrary and inconsistent. On the one hand, the Local Authority has taken a 'hard-line' stating

that it will not accept renewals; on the other hand, it has continued to accept renewals both from the Claimant and other third parties. It also continued to accept transfers, a species of renewal. There is no power in law to enforce a decision “in part” only. The March 2023 decision cannot “half” apply. Further, no reason has ever been given for enforcing the decision “in part”, or “half”. It was unlawful, unjustified and unreasonable for the Local Authority on 30 May 2023 to bring down the guillotine on the remaining 6 expired and unrenewed licences, rather than allowing some further time. If only the Claimant had been allowed a bit of further time, these licences could and would have been renewed the vehicles would have returned to serving the public and the public interest, and the local authority’s 1,426 working taxis for Liverpool would have been promoted. All of that has been lost, for no good reason, particularly in circumstances where there is no mechanism for any new entrant or for that matter the Claimant to apply for any of the 56 plates whose return local authority has secured.

- v) The decision not to permit further renewals or further time for renewals is unfair, unlawful, and involves no reasons. There remain the Claimant’s entirely legitimate reasons relating to driver shortages and unaffordable costs, being the experienced reality following the pandemic. 28 days was, in any event, quite impossible to comply with. Renewals could reasonably have been expected at, say, two expired licences renewed per week. Three months could have been a reasonable period. But, in addition, there would have been the ongoing renewals of working cars.
 - vi) Licences, including expired licences and the plates referable to them, constitute valuable “assets”. They are marketable assets and a transfer – even of an expired licence - is worth around £10,000. Indeed, transfer is the only way in which a licence can be acquired, there being no other current mechanism the Claimant has lost £60,000 in marketable assets. The Local Authority’s actions are an unjustified breach of human rights, including property rights.
 - vii) Any or all of that is at least arguable with a realistic prospect of success and permission for judicial review should therefore be granted.
19. That, then, is my encapsulation of the essence of the arguments in support of the claim as I see them. I repeat that, in circumstances where the Claimant’s director appears in person, it is important that the Court should strive to see the way in which the claim could in public law terms most forcefully be put.

Discussion

20. Having considered the matter afresh, I have not been able to see in this case an arguable claim with a realistic prospect of success. In those circumstances I am duty-bound to refuse permission for judicial review and that is the right course for the Court to take. It serves nobody for the Court to give a ‘green light’ to a case which, on examination, has no realistic prospect of success.
21. I agree with HHJ Halliwell. He said that the claim has no realistic prospect of success; there being no reasonable grounds for challenge. He said that, following the Claimant’s failure to apply for renewal within a reasonable period, having been notified of the need to do so, the Local Authority could not reasonably be required to issue the Claimant

with licences; nor could the Claimant have any legitimate expectation that it would be issued with licences. I agree with that. In my judgment, the contrary is not reasonably arguable with a realistic prospect of success.

22. The headline points are these. The Local Authority was entitled to take a policy position, consistently with the statutory scheme. The powers and functions are entrusted to it as the primary decision-maker. Judicial review is a secondary, supervisory jurisdiction and the court will intervene only where the public authority has acted unlawfully in one of the recognised public law senses. The notices, in and after February 2023, had an important background and context. As Mr Hercocock put it in his oral submissions, this was not in any way a “standing start”. The licences were long-since expired. There had been repeated explanations and warnings. Back in July 2021, a deadline of 1 October 2021 had been set. The fact that renewals were continued to be allowed does not mean there was a public law duty to allow that position to endure indefinitely. And even if it were right that minimum standards of fairness and reasonableness – or legitimate expectation – required more time, the guillotine was brought down on 30 May 2023. That was, in fact, 3½ months after the 28 day notices on 17 February 2023.
23. The position was explained to the Claimant in the pre-action letter of response, on 28 June 2023. Mr Thomaidēs, the Local Authority’s senior lawyer, made the following clear points in that letter. The Claimant had previously been informed, in clear terms, as to the Local Authority’s stance concerning the renewal of HCV licences, most comprehensively in an email of 28 July 2021 written by Mr Johnson (City Manager). The statutory function of the Local Authority includes to ensure the efficient administration of HCV licences, as provided for by the 1847 and 1976 Acts. Due to the exceptional pressures brought to bear on the trade by the pandemic, the Local Authority had chosen to put in place special measures concerning the renewal of licences. These had been aimed at assisting the trade for the duration of the pandemic. The pandemic was now concluded, and the Local Authority’s position was that it should now resume to a strict approach to the renewal of vehicle licences. It was regarded by the Local Authority no longer to be feasible or justified to allow individual proprietors, except in the most exceptional circumstances, to be permitted to retain expired HCV licences, in the mistaken belief that the Local Authority would simply renew them as and when it was in the business interests of the former holder to apply to do so. A professional fleet operator holding multiple vehicle licences was expected to put in place a strategy for ensuring the prompt annual renewal of the licences it wished to retain, and to transfer those which were surplus to its business requirements. It was not the Local Authority’s role, post the pandemic, to make special arrangements for individual fleet operators, tailor-made to their individual business needs. The Claimant had no legitimate or reasonable expectation, post the pandemic, that expired HCV licences would be renewed, as and when the Claimant sought their renewal, simply on the basis of the Claimant providing its reasons for not applying for their renewal, which reasons it considered to be reasonable. The local authority had not acted unreasonably in carrying out its functions. That, in my judgment, was a clear reasoned basis for action, consistently with what had been said throughout the earlier communications.
24. In my judgment, these basic points are a complete answer to the claim for judicial review. Pursuant to the statutory scheme, the licence is a permission which is held for one year. It can be transferred; or renewed. The fee and insurance, the MOT and test

station compliance requirements for renewal are all plainly legitimate. There is no entitlement to hold on to a slot for future renewal of an expired licence, retaining the plate referable to the expired licence. The Local Authority was entitled, beyond argument, acting lawfully and reasonably, to take a principled firm line. It was entitled to allow some ongoing flexibility, with a degree of dialogue. Its notices throughout were clear as to the action that was being required, but gave the opportunity for reasons to be explained if the claimant was unable to take that action. The function of that was to enable the Local Authority to consider the reason being put forward and to evaluate whether it was a persuasive basis for any ongoing indulgence. The only legitimate expectation which arose from the sequence of events, and from the communications, can have been that the reason put forward would be considered, in a context where the basic principle of public law reasonableness governed the Local Authority's actions from start to finish. The Local Authority has plainly considered the points consistently put forward by the Claimant throughout the entire sequence of events. But it has also consistently explained why driver shortage and affordability do not provide a basis for expired licences to "sit unrenewed" on an ongoing basis, that it was necessary and appropriate to regularise the position, and that fair time had been allowed. There are situations in which licences or legitimate expectations can constitute property interests in human rights terms. But these are expired licences, and there is no identifiable substantive legitimate expectation. In any event, I cannot see how the Local Authority's actions are arguably unjustified when seen against the backcloth of the entirety of the picture, the passage of time and the sequence of events. It is for those reasons that I will be dismissing the claim for permission for judicial review.

No New Licences Mechanism 2

25. I will record that a point that gave me reason to pause in this case was Mr Gawood's description today (see §8 above) of the absence of any present mechanism for any new entrant, or operator of a previously expired licence, to make an application for an HCV licence, to take advantage of plates which have been returned to the Local Authority. However, I have to focus on the shape of the judicial review claim, and the challenged action, which has been brought and which is before me. That is what I have done. I also record that I was told by Mr Hercock that the Local Authority recognises the need, having regularised the position relating to HCV plates, to address the question of reallocation and the appropriate process. The lawfulness of what the Local Authority does, or does not do, in relation to that issue is – as I see it – a distinct matter and I say no more about it.

Delay 2: Service of the Claim Form

26. I said earlier there was another delay point. Nothing now turns on it in this Court, but I will address it. Everybody accepts that the claim form received by the Administrative Court Manchester ("ACM") on 30 August 2023 was not, in fact, issued by ACM until 16 October 2023. It appears that the papers may have been delivered at the county court, within the Manchester Civil Justice Centre, because they are stamped as received by the County Court on 30 August 2023. Having said that, Mr Gawith has told me today that he dealt with a named individual who is also one of the team members at ACM. The Local Authority's point is this. The Claimant was in default of serving the claim form within 7 days of 16 October 2023, and did not send it to the Local Authority until 11 December 2023, and that there is no basis to extend time because the Claimant has not taken "all reasonable steps" to comply: see R (Good Law Project Ltd) v Health

Secretary [2022] EWCA Civ 355 [2022] 1 WLR 2339 at §85. HHJ Halliwell was persuaded by this. He emphasised that the Claimant had provided no explanation; nor had it applied for an order extending time for service.

27. There is now before the Court a clear explanation of what happened. When the claim was, finally, issued by ACM on 16 October 2023 an issuing letter was sent to the Claimant. The fact that this had happened, on that date, was subsequently confirmed by ACM to the Local Authority on 19 December 2023. The Local Authority, properly and promptly, disclosed that ‘unilateral’ communication with the Court to the Claimant, by including it in a bundle of materials accompanying its summary grounds of resistance (22 December 2023). However, what the Local Authority did not ask about, and did not know to ask about, was the issuing letter that ACM had sent the Claimant on 16 October 2023. ACM’s email (16.10.23) simply said: “please find attached your claim issued in this matter”. The Form N461, with its correct case number, was attached now stamped as issued. Also attached to that email was a letter dated 16 October 2023. It said it was informing the Claimant that “your matter was issued on this day 16-10-2023”. It then said: “when serving the matter please ensure you enclose a copy of the attached notice”. It then spoke about advocates’ details for a hearing and drew attention to the Civil Procedure Rules, but not Part 54 (judicial review). Instead, it referred to CPR Part 8, Part 52 (appeals) and Part 50E (extradition).
28. On 8 December 2023, Mr Gawith emailed ACM to say this: “I have yet to hear back from the defendant, Liverpool City Council. I presume you issued the claim to them at the same time. Did they have to respond or will the claim just be allocated a court date?” He added: “The letter you attached does not seem to be from my claim. Please advise.” In response to that email, on the same date, the member of ACM staff who had sent the email and attached letter of 16 October 2023 wrote an email saying: “Please find attached the directions in this matter”. The new attached letter was dated “16.10.23” and said: “I write to inform you of your claim for judicial review issued this day”. This letter had not been provided on 16 October 2023. The correct letter, provided for the first time on 8 December 2023 but dated 16 October 2023, said this (emphasis added):

It is now necessary for you to serve all documents on the Defendant... Please note that service must be effected within 7 days of the date [of] this letter and a Certificate of Service (Form N215) lodged with the Court. Failure to comply with this requirement may result in the file in these proceedings being closed. When serving the claim on the Defendant... please ensure you enclose a copy of the attached notice...

29. On receipt of that letter, Mr Gawith promptly responded to say: that he had tried without success to telephone ACM; that the corrected letter was dated 16.10.23 which means he is now outside the 7 day service window which he had just learned about; and asking whether ACM could reissue it with 8.12.23 as the date when it was received. He added this:

You’ll have to excuse me but my own experience is with small claims proceedings where the court sends a copy of the claim directly to the Defendant. Has that not been done in this instance? I paid my claim fee and was told I would hear from the defendant.

That last description of the conversation, included within that email, matches what Mr Gawith has told me he was told by the staff member.

30. Mr Hercock does not in any way seek to impugn the genuineness of the description in the contemporaneous emails, as to what Mr Gawith in fact understood. But what he does do is to make 3 points, which individually or cumulatively he says are why this court should refuse any extension of time. First, he says it would have been a reasonable step for Mr Gawith to consult the rules, bearing in mind that he needed to do that for the purposes of his pre-action letter before claim and his Form N461, and bearing in mind that that Form itself refers to the rules and to the published free-access Administrative Court Judicial Review Guide. That source is available online. It explains all the requirements of judicial review and the importance that litigants in person comply fully with those requirements. Secondly, he says that Mr Gawith could and should have noticed at the time of receipt that he been given a wrong issuing letter, with the wrong name and case number and which was referable to an appeal not a judicial review. He should, at very least, promptly have clarified the position with the Court. Thirdly, he says that Mr Gawith should not have waited as long as he did, until December 2023, to follow-up and find out what was happening with his judicial review case. In default of those three basic steps the test of “all reasonable steps” is not satisfied and the Court should refuse to extend time.
31. I have not been persuaded by those submissions. If this were otherwise a viable claim for judicial review, I would have been persuaded in the very particular circumstances of the present case to extend time, notwithstanding the rigours of the rules and the expectations of litigants in person, and despite the force of the three points which have been made. The fact is that the correct letter, which was the communication used by ACM to emphasise the need to serve and to serve within a timeframe from “this letter” was not provided to the Claimant, as it should have been. I have been transparent, in this judgment, about the delay on the part of ACM in issuing the claim, about what is said about circumstances relating to receipt of the papers, and about the letters which were provided by ACM and their timing. Needless to say, none of this is remotely the fault of the Local Authority. But, in the light of the very particular circumstances, I would not have been prepared to shut out a viable claim in light of the regrettable sequence of events and what I accept, on the part of Mr Gawith, was his genuinely held albeit erroneous understanding.
32. I have dealt with the three issues with which the Judge, on the papers, dealt and on which I have heard argument today. I will deal with any loose end that now arises.

Costs

33. So far as costs are concerned, the Judge ordered that the Local Authority have the costs of its Acknowledgement of Service and Summary Grounds of Resistance in the entirety of the claimed sum of £4,900. The order made no reference to the Claimant having the right of challenging that order for costs by way of submissions. Mr Hercock rightly drew my attention to that and rightly recognises that the Claimant should not be disadvantaged by the absence of that provision. He recognises that I can appropriately revisit the question of costs and the quantum of costs. Between us, Mr Hercock and I have sought to identify the points that can properly be made in support of Mr Gawith’s invitation to reduce the costs order, as a matter of my judgment and discretion. I am quite satisfied that it is not necessary to defer the question of costs, to allow written submissions or any further hearing, and that Mr Gawith has not been disadvantaged by the fact that this was not previously flagged up to him. If permission for judicial review had been granted, the costs order would have been reopened in its entirety, and costs

would have been a function of the final outcome of the case. It is because I am refusing permission for judicial review that the question arises as to what to do about those costs, if anything.

34. I bear in mind that I have not upheld two of three suggested ‘knockout blows’, all of which persuaded the Judge on the papers. I also bear in mind the reality that the two delay points did not make a very substantial contribution to the length of the Summary Grounds. I bear in mind the reality of the costs that have been incurred by the Local Authority, as a direct consequence of having to deal with this claim. No application for costs of today is pursued. I will make some reduction and replace an order of £4,000 for the order of £4,900 made by the Judge on the papers, principally to reflect the fact that there is no basis for costs on an indemnity basis, and therefore recognising that a broadbrush reduction is appropriate; but also looking at the position fairly and in the round. I have regard to the fact that permission has today been refused on that part of the case which was always the main event: the legal merits.

5.3.24