Approved Judgment

Neutral Citation Number: **[2025] EWHC 443 (KB)**

Case No: QB-2019-002712

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 February 2025

Before :

MR JUSTICE SOOLE

- -

Between :

Claimants

(1) BB
(2)CC
(3)DD
(4)EE
(5)FF
(6)GG
(7)HH
(8)II

-

- and -

(1) MR MOUTAZ AL KHAYYAT
(2) MR RAMEZ AL KHAYYAT
(3) DOHA BANK LIMITED

Defendants

Sir Max Hill KC and Mr Christopher Hare (instructed by **McCue Jury LLP & Partners**) for the **Claimants EE, FF, GG, HH**
Mr Sandy Phipps (instructed by **Eversheds Sutherland (International) LLP**) for the **Third Defendant**

Hearing date: 19 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 28/02/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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Mr Justice Soole :

1. This is a sequel to the judgment delivered on 19 February 2025 in respect of the Discontinuing Claimants' application to disapply the presumptive costs rule in CPR 38.6: [2025] EWHC 379 (KB) ('the Discontinuance Costs Application'). That application was dismissed and permission to appeal refused.

2. There followed a hearing on costs orders consequential to that decision; together with a hearing on costs orders consequential to my Order of 1 July 2024 whereby the claims of the Continuing Claimants were struck out. I deal with these in turn.

Costs orders upon dismissal of the Discontinuance Costs Application

3. There is no dispute that the Discontinuing Claimants should pay the Bank's costs of the Discontinuance Costs Application, for detailed assessment on the standard basis if not agreed.

4. The Bank seeks an interim payment on account of those costs, pursuant to CPR 44.2(8), in the sum of £300,000; its claimed total of those costs being £606,152. For reasons to be considered below, the Discontinuing Claimants oppose this and all the applications for interim payments on account of costs.

5. As to the balance of the Bank's costs of the action, it follows from my dismissal of the Discontinuance Costs Application that the Discontinuing Claimants are liable for the costs which the Bank has incurred in respect of their claims until the date, 17 November 2023, when their Notices of Discontinuance were served on it pursuant to my Order dated 16 November 2023. In the absence of agreement, those costs are to be the subject of detailed assessment on the standard basis. This is subject, as the parties agree, to all existing costs orders made in the proceedings remaining in effect.

6. The issues which remain are (i) whether there should be any order(s) for interim payments of costs pursuant to CPR 44.2(8); and (ii) whether, as the Bank seeks, there should be a distinct order for the Discontinuing Claimants to pay that part of its costs which relates to the Jurisdiction Application, together with a distinct interim payment on account of £500,000.

7. The Discontinuing Claimants oppose orders for interim payments on two essential bases. First, that the Court has a discretion to grant them QOCS (Qualified One-Way Costs Shifting) protection against enforcement of costs orders, pursuant to CPR 44.16(2)(b); and that the exercise of such discretion should be considered only after the completion of detailed assessment and should not be compromised by orders for interim payments ('the QOCS issue'). Secondly, that in respect of the Bank's costs of the Jurisdiction Application and the request for an interim payment, a contractual Undertaking given by McCue Jury in that sum has lapsed and the monies should be released ('the Undertaking issue').

The QOCS issue

8. CPR 44.13-44.16 provide, as material:

'*44.13(1). This Section applies to proceedings which include a claim for damages – (a) for personal injuries;…*

44.14(1). Subject to rules 44.15 and 44.16, orders for costs made against a claimant may be enforced without the permission of the court but only to the extent that the aggregate amount in money terms does not exceed the aggregate amount in money terms of any orders for, or agreements to pay or settle a claim for, damages, costs and interest made in favour of the claimant…

44.15. Orders for costs made against the claimant may be enforced to the full extent of such orders without the permission of the court where the proceedings have been struck out on the grounds that – (a) the claimant has disclosed no reasonable grounds for bringing the proceedings; (b) the proceedings are an abuse of the court's process…

44.16(2) Orders for costs made against the claimant may be enforced up to the full extent of such orders with the permission of the court, and to the extent that it considers just, where - …(b) a claim is made for the benefit of the claimant other than a claim to which this Section applies.'

9. Sir Max submits as follows. First, and by reference to CPR 44.13(1), the 'proceedings' comprise all the claims of all the claimants in this action QB-2019-002712. That opening provision is a widely-drawn 'broad gateway' for QOCS protection: Brown v Commissioner of Police of the Metropolis [2019] EWCA Civ 1724; [2020] 1 WLR 1257 at [36]. In consequence, the availability of QOCS protection is to be ascertained by reference to the proceedings as a whole, rather than by reference to the individual claim(s) of each individual Claimant.

10. Secondly, and in consequence, the provisions of 44.16(2)(b) concerning 'mixed claims' are likewise to be construed by reference to the mixture of claims within the overall 'proceedings' rather than the mixture within the claims of an individual claimant. Thus the Court's discretion under that sub-rule is exercisable in favour of a claimant within the proceedings who has not brought a claim for damages for personal injuries, provided that another claimant within the proceedings has done so.

11. This is said to be supported by observations in Brown at [55]-[58] which view the discretion in the context of the 'proceedings'. Thus at [57] Coulson LJ stated: '*But in such proceedings, the fact that there is a claim for damages in respect of personal injury, and a claim for damage to property, does not mean that the QOCS regime suddenly becomes irrelevant. On the contrary, I consider that, when dealing with costs at the conclusion of such a case, the fact that QOCS protection would have been available for the personal injury claim will be the starting point, and possibly the finishing point too, of any exercise of the judge's discretion on costs. If (unlike the present case) the proceedings can fairly be described in the round as a personal injury case then, unless there are exceptional features of the non-personal injury claims (such as gross exaggeration of the alternative car hire claim, or something similar), I would expect the judge deciding costs to endeavour to achieve a "cost neutral" result through the exercise of discretion. In this way, whilst it will obviously be a matter for the judge on the facts of the individual case, I consider it likely that, in most mixed claims of the type that I have described, QOCS protection will - in one way or another - continue to apply…*'.

12. Sir Max also prays in aid the decision of the Court of Appeal in Achille v. Lawn Tennis Association Services Ltd [2022] EWCA Civ 1407; [2023] 1 WLR 1371. In that case, the claimant had a 'mixed claim' comprising a claim for personal injuries and a claim for injury to feelings. The personal injury claim was struck out on the grounds that it disclosed no reasonable cause of action; but the claim for injury to feelings was proceeding to trial. The Court held that, for the purposes of CPR 44.15, the 'proceedings' referred to all the claims brought by the claimant. Accordingly, the strike-out of the personal injury claim did not deprive the claimant of potential QOCS protection under the discretionary provisions of CPR 44.16(2)(b).

13. Sir Max also points to an earlier stage of these present proceedings when the Court was considering whether an order for payment on account of certain costs pursuant to CPR 44.2(8) was a form of enforcement within the scope of the QOCS provisions. In his judgment Swift J proceeded on the basis that '*It is accepted that the claims pleaded in these proceedings are what have been referred to in previous authority as "mixed claims" – i.e., proceedings that include claims for personal injury and other claims for damages, in this instance claims for damage to property.*': [2022] EWHC 1157 (QB) at [3].

14. Thirdly, the overall proceedings which form QB-2019-002712 include claims for damages for personal injuries. This is expressly so in respect of the claims of the Continuing Claimants (BB, CC, DD, II): see their pleaded claims of physical and/or psychiatric injury in paragraphs 10-19 and 23-25 of the Re-Amended Particulars of Claim. Sir Max submits that claims for personal injury can also be inferred from the pleaded claims of each of the Discontinuing Claimants (EE, FF, GG, HH): see paragraphs 20-22.

15. In consequence, and regardless of whether or not the claims of any individual Discontinuing Claimant include a claim for damages for personal injury, the Court has a discretion under CPR 44.16(2)(b) to grant them QOCS protection, in whole or in part, against enforcement of costs orders. That discretion should not be exercised until the detailed assessment of costs has been completed; and therefore in the meantime there should be no orders for payment on account of costs pursuant to CPR 44.2(8).

16. In my judgment this argument is in conflict with clear decisions of the Court of Appeal including Brown; and receives no support from Achille nor from the observations of Swift J in the present proceedings. In short, these authorities show that in every case where QOCS protection falls for consideration, the exclusive focus is on the claim or claims of the particular claimant within the proceedings. If the claim(s) of the individual claimant in question do not include a claim for damages for personal injuries, there is no QOCS protection.

17. Thus in Wagenaar v. Weekend Travel Ltd [2014] EWCA Civ 1105; [2015] 1 WLR 1968, Vos LJ stated at [38]: '*The whole thrust of CPR rr. 44.13 to 44.16 is that they concern claimants who are themselves making a claim for damages for personal injuries…*' He continued: [39] '*It is true, however, that the word "proceedings" in CPR r 44.13 is a wide word which could, in theory, include the entire umbrella of the litigation in which commercial parties dispute responsibility for the payment of personal injury damages. I do not think that would be an appropriate construction. Instead, I think the word "proceedings" in CPR r 44.13 was used because the QOCS regime is intended to catch claims for damages for personal injuries, where other*

claims are made in addition by the same claimant. There may, for example, in the ordinary road traffic claim, be claims for damaged property in addition to the claim for personal injury damages, and the draftsman would plainly not have wished to allow such additional matters to take the claim outside the QOCS regime. [40] *Thus, in my judgment, CPR r 44.13 is applying QOCS to a single claim against a defendant or defendants, which includes a claim for damages for personal injuries or the other claims specified in CPR r 44.13(1)(b) and (c), but may also have other claims brought by the same claimant within that single claim. Argument has not been addressed to the question of whether QOCS should apply to a subsidiary claim for damages not including damages for personal injuries made by such a claimant against another defendant in the same action as the personal injury claim. I would prefer to leave that question to a case in which it arises. CPR r 44.13 is not applying QOCS to the entire action in which any such claim for damages for personal injuries or the other claims specified in CPR r 44.13(1)(b) and (c) is made.*'

18. Brown at [19] cited these paragraphs from Wagenaar. Then at [36] Coulson LJ stated: *'It is clear that rule 44.13 was widely drawn so as to refer to all proceedings in which there might be a claim for damages for personal injury. Ms Darwin correctly called that "a broad gateway". But the exception at rule 44.16(2)(b) is more specific. It does not refer to proceedings. It simply refers to "a claim…other than a claim to which this Section applies". The narrower words of the exception demonstrate that what the CPR intended was to exempt from the QOCS regime, within the widest possible umbrella of the proceedings as a whole, claims which were* not *claims for damages for personal injury.'*

19. The further passages in Brown at [55]-[58] provide no support for the argument now advanced. The Court is simply making clear that it will be a 'mixed claim' where the claimant in question is claiming both damages for personal injury (including the financial consequences thereof) and damages for loss which are consequent upon the incident but not the injury.

20. True it is that the cases of Wagenaar and Brown concern proceedings with just one claimant; but the principles apply with equal force to proceedings which have multiple claimants. There is no principled basis for a claimant who makes no claim for damages for personal injuries to enjoy QOCS protection merely because he has joined in proceedings with other claimants who do make such claims. To take a simple example, where a negligent driver collides with another car. The owner-driver of that car is uninjured but his car is damaged. However his passenger is injured. Since each claim arises from the common collision, both claims are for convenience brought within the same Claim Form. There is no basis for the owner-driver to enjoy QOCS protection in respect of his claim, merely because his co-claimant has a claim in those proceedings for personal injury; nor for him thereby to be in a better position than if the two had issued separate Claim Forms.

21. The argument also gains no support from Achille. In that case, the 'proceedings' in CPR 44.15 was interpreted to include all the claims brought by the claimant in the action. The result would have been no different if Mr Achille had been just one of a number of claimants in the same action. For the purpose of QOCS protection the exclusive focus is on the particular claimant in question.

22. As to the observation of Swift J at [3] ('*It is accepted that..*'), this evidently reflects the common position of the parties at that time, rather than a decision following argument. The hearing took place before the split between two groups of Claimants occurred; and without any request for consideration of the individual position of each Claimant within the group.

23. I turn to the pleaded claims in these proceedings. The Re-Amended Particulars of Claim in respect of each of the Continuing Claimants include claims for personal injury, physical and/or psychiatric: see paragraphs [10]-[19] and [23]-[25]. By contrast, the relevant paragraphs in respect of the Discontinuing Claimants read: '[21] *In 2012 members of the al-Nusra Front attacked, looted and destroyed the Fourth and Sixth Claimants' business and the valuable property they owned in Deir-ez-Zor. The Fourth, Fifth, Sixth and Seventh Claimants and their families were thereafter forced to flee Syria permanently because of the severe threat to their lives posed by the al-Nusra Front.* [22] *As a result of their treatment by the al-Nusra Front, the Fourth, Fifth, Sixth and Seventh Claimants have been permanently deprived of all of their property and livelihoods in Syria and had been forcibly displaced from the country of their home and nationality. Further details concerning the Fourth, Fifth, Sixth and Seventh Claimants' claims are set out at paragraphs 36 to 45 in the Confidential Schedule.'*

24. I have been provided with the Confidential Schedule. It was not suggested that these contain any allegations of personal injury, whether physical or psychiatric. They do not.

25. Nor do I accept that anything in the pleaded case, including the Confidential Schedule, provides any basis to infer or imply that any of these Discontinuing Claimant must have suffered physical or psychiatric injury as a result of the pleaded events and/or therefore are to be treated as if they were making claims for damages for personal injury.

26. Accordingly there is no basis for the Discontinuing Claimants to have QOCS protection, whether under CPR 44.16(2)(b) or otherwise; nor therefore any reason to defer any of the outstanding costs issues on the basis that the discretion under that rule may fall to be exercised.

The Undertaking issue

27. This issue arises from the Bank's application that, insofar as their costs of the action relates to the Jurisdiction Application, these should be dealt with by a distinct order for costs, together with an interim payment of those costs in the sum of £500,000. The Bank's summary of its costs of that application claims £2,136,784.

28. The Bank seeks this distinct order because of a written contractual Undertaking dated 30 September/1 October 2020 by McCue Jury to the Bank's solicitors (Eversheds). By this Undertaking, McCue Jury agreed to hold the sum of £500,000 as security for the costs of the 'Jurisdiction Challenge', i.e. the Jurisdiction Application.

29. In opposition to this application, the Discontinuing Claimants submit that the Undertaking has lapsed; and that the Court should order that McCue Jury be released from its obligation. As to lapse, reliance is placed in particular upon the provisions of

its recital (F), which states that McCue Jury has agreed to hold the sum of £500,000 as security for the Bank's costs of the Jurisdiction Challenge '*pending resolution of the Jurisdiction Challenge by way of an order of the High Court (the "Order"), or as otherwise set out in paragraph 1 below'*, and paragraph 1.

30. That paragraph 1 provides: '*McCue & Partners hereby irrevocably undertakes to the Third Defendant to hold the Security Amount in the Client Account (i) as security for the Third Defendant's Costs; and (ii) pending, and in order to give effect to, any Order made or resolution of the Jurisdiction Challenge (the "Undertaking"). This Undertaking takes effect immediately and will lapse on the earlier of:*

1.1 Payment of the Security Amount to the Third Defendant pursuant to the Demand as provided for at paragraph 2 below;

1.2 Determination of the Jurisdiction Challenge on terms that do not require any payment of costs to the Third Defendant;

1.4 (sic) *Receipt by McCue & Partners of written confirmation from an authorised representative of the Claimants and an authorised representative of the Third Defendant that: (i) the Jurisdiction Challenge has been otherwise resolved; and (ii) the Security Amount may be released from the Undertaking; and/or*

1.5 (sic) *the Court otherwise making an order for the Security Amount to be released and/or paid.'*

31. Sir Max submits that, since the Jurisdiction Challenge will now never be heard, the Undertaking has lapsed. Accordingly it would be wrong to order an interim payment on the premise that the sum (£500,000) would be available pursuant to the Undertaking. Further, by virtue of sub-paragraph 1.5, the Court has jurisdiction to order release of the Security Amount and should do so. The Bank disputes these contentions.

32. This informal application was raised in the course of oral submissions and without prior notice to the Court. I made clear that there could be no question of such an application being considered without a formal application to the Court. The following day, 20 February, McCue Jury issued that formal application and asked the Court to resolve it without a hearing. There is no basis to do so without a full hearing at which the rival arguments can be heard and considered. In addition to the potential issues of interpretation, there may be questions as to the identity of the appropriate parties to the application. The application dated 20 February 2025 is made on behalf of the Discontinuing Claimants and against the Bank; whereas, at least on the face of it, the parties to the Undertaking are McCue Jury and Eversheds; together with the entity 'Doha Bank QPSC'. As to the latter, footnote 1 to the Undertaking states '*For the avoidance of doubt, McCue & Partners acknowledge that Doha Bank QPSC is a party to and is entitled to enforce the Undertaking*'. These are all questions for another day.

33. In any event, and whether or not the Bank can enforce the Undertaking, I see no good reason why the Court should not make a distinct costs order in respect of the Bank's costs of the Jurisdiction Application, together with an interim payment on account in

the requested sum. £500,000 is a reasonable sum when set against the summary total of £2.136m for that application.

34. I also reject Sir Max's further objection to an interim payment in respect of the Jurisdiction Application, namely that this would or might somehow adversely affect McCue Jury in respect of a wasted costs application brought against it by the Bank which has yet to be heard or determined ('the Wasted Costs Application'). I do not see how monies held by McCue Jury on Client Account pursuant to the Undertaking can have any relevance to that pending application, whatever its outcome.

35. The Bank then applies for an interim payment under CPR 44.2(8) in respect of the balance of their costs, i.e. net of the Discontinuance Application costs and the Jurisdiction Application costs, in the sum of £500,000. That would produce interim payments totalling £1.3m (Discontinuance costs £300,000; Jurisdiction costs £500,000; rest of costs £500,000). Set against the claimed total of c. £3.9m costs, I consider a total £1.3m interim payment of costs to be reasonable. I will allow 28 days for payment of these sums.

36. There is no dispute on behalf of the Discontinuing Claimants that the costs orders should be on the basis of joint and several liability of the Claimants who are the subject of the particular order in question. I agree that this is the appropriate course in a case where the claimants in question have made common cause in the action and/or the particular application: see the discussion of the authorities in Ontulmus v Collett [2014] EWHC 4117 (QB) at [59]-[61]. As the proposed draft order provides, this is subject to drawing a distinction between the Continuing and Discontinuing Claimants, so that the liability of the latter does not extend in time beyond 17 November 2023.

The costs orders sought against the Continuing Claimants

37. By my Order dated 1 July 2024 which struck out the claims of the Continuing Claimants, it was ordered that they should pay the Bank's costs of the Strike Out Application, for detailed assessment on the standard basis if not agreed. The remainder of the Strike Out Application as related to consequential costs orders was adjourned to be heard with the Discontinuing Costs Application and the Wasted Costs Application. By paragraph 9 of that Order, those applications were to be listed for hearing before me in what became the hearing of 28 and 29 November 2024 and 3 February 2025. In the event, I considered it necessary to defer the Wasted Costs Application until the party and party costs issues had been determined; and there was no time to deal with the remaining costs issues against the Continuing Claimants.

38. I must deal first with the question of service of documents on the Continuing Claimants. By Notices of Change of Legal Representative each dated 21 September 2023, the Continuing Claimants each gave notice that McCue Jury had ceased to act for them and that they were now acting in person. Each Notice identified their address for service as Jenner & Block LLP ('J&B')'s address in London. The obligation to provide an address for service in such Notices is contained in CPR 42.2(3), which in turn reflects the requirement under CPR 6.23(1)(2) and (3) for a party to provide the Court with an address for service in the UK.

39. By letter to the Continuing Claimants dated 18 November 2024, J&B terminated their retainer. By subsequent letter dated 25 November 2024 they advised their former

clients that they could no longer receive documents on their behalf in relation to the proceedings and that they (the Continuing Claimants) must provide the Court with a new address for service within the UK. The Continuing Claimants have not done so.

40. By letter dated 27 November 2024 J&B advised the Court of these events and stated that after 6 p.m. on 29 November 2024 the firm would no longer act as an address for service in connection with the proceedings, nor accept any documents or correspondence on behalf of the Continuing Claimants, nor forward any such documents or correspondence to them. They had been informed by one of their former clients (BB) that he was 'trying to work out a solution' and that he had asked J&B to inform the Court of this. The other three Continuing Claimants had not responded. However, from the witness statements filed in the proceedings by McCue Jury, it appeared that each of the Continuing Claimants had been in communication with that firm.

41. Following the adjournment part-heard of the various applications on 29 November 2024, Eversheds by letter to J&B dated 6 December 2024 advised them of the further listing and asked for confirmation that they would continue to act as an address for service for the Continuing Claimants until the earlier of the final determination of the applications or the date when the Continuing Claimants provided the Court with a new address for service.

42. By reply dated 12 December 2024 J&B stated that they were in principle prepared to do so, provided that the Continuing Claimants pay their outstanding fees. In the alternative they stated that it was open to McCue Jury to provide such a service to the Continuing Claimants.

43. By letter to J&B dated 15 January 2025 Eversheds noted the previous correspondence but asked them to forward their enclosed letter of the same date to the Continuing Claimants. This advised that the part-heard hearing was now listed to continue on 3 February 2025 and concluded by recommending that they take independent legal advice. By letter to McCue Jury also dated 15 January 2025, Eversheds likewise enclosed the letter to the Continuing Claimants. Noting that McCue Jury had been in contact with the Continuing Claimants for the purpose of obtaining their witness statements, Eversheds asked them at least to forward the letter.

44. By reply to Eversheds dated 16 January 2025, McCue Jury said that it was more appropriate for documents to be served on J&B, but that they would forward the documents relating to the 3 February hearing if J&B had not by 22 January given confirmation that it would do so.

45. By email to Eversheds dated 22 January 2025, J&B stated that they agreed to forward the letter of 15 January to the email addresses which they had for the Continuing Claimants, but would not be in a position to confirm receipt. They concluded '…this is the final occasion on which we will forward any correspondence or other documents to the Continuing Claimants'.

46. By letter to McCue Jury dated 10 February 2025, Eversheds enclosed a letter of the same date to the Continuing Claimants advising them of the hearing listed for 19 February 2025 when judgment on the Discontinuing Costs Application would be delivered. It continued: 'We understand that on that date Mr Justice Soole will also

determine issues which are consequential on his judgment and the strike-out of your (the Continuing Claimants') claim, including as to costs'. The letter again concluded with the recommendation that they take independent legal advice.

47. By reply dated 13 February 2025, McCue Jury repeated that, given the unchanged address for service, J&B was the more appropriate recipient of documents, but that they would use their best endeavours to forward the letter to the Continuing Claimants on this occasion. They did not believe that this constituted effective service but they would provide whatever assistance they could to ensure that the Continuing Claimants were at least aware of the letter. They stated that the situation was unsatisfactory and invited Eversheds to raise it with the Court on 19 February. This they did.

48. In considering how to deal with this unsatisfactory position, I very much have in mind the difficulty for J&B in circumstances where their retainer with the Continuing Claimants has terminated and yet their former clients have provided no new address for service.

49. However, for the purpose of determining the appropriate address for service, it is necessary to draw a distinction between the position of the Continuing Claimants and that of J&B.

50. As to the former, their Notices of Change of Legal Representative provide J&B's address in London as their address for service. In the absence of their notification of any change, that remains their address for service.

51. As matters stand, I do not think it would be right to order service by any alternative method or at an alternative place pursuant to CPR 6.15 as applied by CPR 6.27. The only possible candidate is McCue Jury. However, although that firm has evidently been in contact with the Continuing Claimants, they are acting for the distinct group known as the Discontinuing Claimants. In those circumstances it would in my judgment be inappropriate to permit alternative service at their address.

52. Accordingly, and for the purpose of clarity, the Order to be drawn in the light of my judgment should include confirmation that the address for service on the Continuing Claimants remains as in the Notices of Change dated 21 September 2023, namely the address in London of J&B.

53. The correspondence shows that, with one exception, the notifications of the adjourned dates of hearing have been sent to J&B at that address. The exception is the 10 February 2025 letter advising of the further hearing on 19 February 2025. That letter has been sent to McCue Jury, who responded in the terms of their letter dated 13 February. In all the circumstances I have concluded that it is appropriate to proceed with the residual matters against the Continuing Claimants.

54. The Continuing Claimants' claims having been struck out by my Order dated 1 July 2024, there is no reason why the general rule on costs should not apply so that they should bear the Bank's costs of the action (including those incurred after 17 November 2023), for detailed assessment on the standard basis if not agreed; save in respect of the costs of the Discontinuance Costs Application, to which they were not a party, and subject as follows.

55. For the same reasons set out above in respect of the Discontinuing Claimants, I consider it appropriate that there be (i) a distinct order in respect of the Jurisdiction Application, but in this case to include costs incurred after 17 November 2023; (ii) orders for interim payments on account of costs as to £500,000 in respect of the Jurisdiction Application and £500,000 as to the balance of the costs; (iii) joint and several liability; and (iv) 28 days for payment. Further, as with the Discontinuing Claimants, all existing orders in the proceedings to remain in effect.

56. As to QOCS, the claims of the Continuing Claimants in each case include claims for damages for personal injuries. However all of their claims were struck out on the grounds of abuse of process: see my judgment delivered on 1 July 2024 in [2024] EWHC 2951 (KB) at [40].

57. As noted above, by CPR 44.15(b), orders for costs made against the claimant may be enforced to the full extent of such orders without the permission of the court where the proceedings have been struck out on the grounds that the proceedings are an abuse of process. As held in Achille, the 'proceedings' in CPR 44.15 has the same meaning as in CPR 44.13, namely all of the claims made by a claimant against a single defendant when one such claim is a claim for personal injury.

58. Since all of the claims of each Continuing Claimant were struck out on the grounds of abuse of process, their position is to be distinguished from the claimant in Achille. It follows from CPR 44.15(b) that in each case the Continuing Claimants have no QOCS protection against enforcement of the costs orders made against them.

59. I now ask Counsel to prepare and agree a revised draft order in the light of these conclusions.