



Neutral Citation Number: [2025] EWHC 201 (Admin)

Case No: AC-2024-LON-001761

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 03/02/2025

**Before :**

**MR JUSTICE DOVE**

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**Between :**

**DEAN GREGORY**  
**PAVEL STROILOV**

**Claimant (1)**  
**Claimant (2)**

**- and -**

**JUDICIAL CONDUCT INVESTIGATIONS OFFICE**  
**JUDICIAL APPOINTMENTS AND CONDUCT**  
**OMBUDSMAN**

**Defendant (1)**  
**Defendant (2)**

**- and-**

**(1) THE RT.HON LORD JUSTICE PETER JACKSON**  
**(2) THE RT.HON.LADY JUSTICE KING**  
**(3) THE RT.HON.LORD JUSTICE MOYLAN**

**Interested Parties**

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**Dean Gregory** (representing themselves) for the **1<sup>st</sup> CLAIMANT**  
**Pavel Stroilov** (representing themselves) for the **2<sup>nd</sup> CLAIMANT**  
**Alex Line** (instructed by **Government Legal Department**) for the **1<sup>st</sup> DEFENDANT**  
**Myles Grandison** (instructed by **Government Legal Department**) for the **2<sup>nd</sup> DEFENDANT**

Hearing dates: 17<sup>th</sup> December 2024

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on Monday 3<sup>rd</sup> February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## **Mr Justice Dove**

### **Introduction**

1. In this case the claimants renew their application for permission to apply for judicial review, having been refused permission on the papers by Freedman J on 22<sup>nd</sup> August 2024. The hearing of this renewed application was greatly assisted by the careful preparation of the electronic bundles which were provided to the court, and I place on record my thanks to all who appeared for their focussed and helpful written and oral submissions.
2. The circumstances giving rise to this judicial review are as follows. The first claimant is the father of Indi Gregory, a baby who tragically became critically ill and the subject of litigation in relation to her care and treatment in October and November 2023. It appears from the papers that Indi suffered from an extremely rare mitochondrial condition along with comorbidities which led to her requiring full life support from early September 2023. On 16<sup>th</sup> October 2023 Peel J, the judge with conduct of Indi's case, approved a care plan permitting the withdrawal of invasive treatment and its replacement with palliative care. This care plan was resisted by Indi's parents.
3. At the hearing before me the first claimant explained the unimaginably distressing and tragic circumstances in which he and Indi's mother found themselves as a result of Indi's serious ill-health. Their daughter was critically ill, and they were faced with an application by the Nottingham University Hospitals NHS Trust ("the Trust") to the Family Court to authorise the withdrawal of Indi's life support as described above. The first claimant had sought the opportunity to take Indi to Italy for treatment for her condition, but that had been refused. Thereafter the first claimant made an application to Peel J for permission for Indi to be extubated at home rather than, as the Trust proposed, in a hospice. Peel J refused that application, and the first claimant made an application for permission to appeal to the Court of Appeal, who conducted an oral hearing sitting in a constitution comprised of the interested parties.
4. In his submissions to me the first claimant expressed his concern, subsequently set out in the complaint to the first defendant, that during the course of giving an *ex tempore* judgment on 10<sup>th</sup> November 2023 dismissing the application, the first interested party had passed comments which were both insulting to Indi's parents and also the legal team acting for them. In effect, the first claimant submitted, the comments amounted to making of accusations of misleading behaviour and dishonesty against the claimants. The first claimant submitted that this was quite inappropriate and occurred at an extraordinarily difficult time for himself and his wife.
5. The second claimant is the solicitor instructed on behalf of the first claimant in the application before Peel J and the subsequent appeal to the Court of Appeal. Whilst at the time of the appeal he was a trainee solicitor, in the interim and prior to the hearing before me he has been admitted to the Roll. The second claimant also complains about the comments in relation to his conduct of the case which were made by the first interested party in giving judgment in the case.

### **The judgment and the complaint**

6. The leading judgment of the Court of Appeal was given by the first interested party. It is appropriate for present purposes to focus on those aspects of the judgment to which the claimants take objection. In paragraph 6 of the judgment the first interested party noted a number of recent developments in the case including, whilst identifying that it was not a matter before the court, an initiative taken by an official of the Italian Consulate in the UK, who “purported to issue a decree appointing a guardian for Indi and authorising her removal to Italy for treatment”. The first interested party went on to observe that “the argument that the Italian authorities are better able than the English court to determine Indi’s best interests is in our view wholly misconceived and a request of this nature is clearly contrary to the spirit of [the Hague Convention]”.
7. At paragraph 13 and 14 of the judgment the first interested party made the following observations having set out the grounds upon which the application was based.

“13. Before coming to consider these arguments, it must be observed that there is, to say the least, a sense of unreality surrounding this latest application. Before us the parents are seeking an order leading to an outcome that Indi should be extubated at home, but in reality they (or those who they have entrusted with their legal representation) are taking steps to prevent the court’s decision from being carried into effect at all. I have already mentioned the issue of a transfer of the proceedings to Italy. Although the father’s statement before the judge stated that the parents fully understood that the court has already declined the proposal of a transfer to Rome and that the decisions of the UK courts would have to be followed, it would appear that the parents continue to seek an outcome whereby extubation does not take place and that, far from returning home, Indi should be transferred abroad for operative treatment.

14. Then, it transpired that during the midday break in the hearing of this appeal, Mr Pavel Stroilov, a trainee solicitor instructing Mr Quintavalle, who was in the same room as him during his submissions this morning, had sent a letter and a witness statement to the judge in an apparent attempt to persuade him to reopen his welfare decision. Mr Quintavalle was asked a number of questions by the court about this, but I am not yet clear what he knew about this further initiative before he addressed us this morning, or what control is being exercised over the trainee solicitor’s actions in this case. I do not propose to say more about that now, but we will take whatever action seems appropriate in due course.”
8. The first interested party then proceeded to examine the grounds upon which the application was advanced, and for the reasons which he gave concluded that the grounds of the application were “entirely without merit”. The first interested party concluded his judgement in paragraph 22 in the following terms:

“22. Before leaving this matter, I would add the following. Although this is a legal decision, it is taken with a full awareness of the deeply sensitive question that lies at the heart of the proceedings. Indi’s Guardian, who firmly opposes this application because of the continuing distress to Indi caused by the delays, rightly acknowledges that her parents love her fiercely and that it is impossible for us to fully comprehend their current circumstances. Nevertheless, I wish to express my profound concern about the approach that has developed in this litigation. The judge has throughout approached the assessment of Indi’s welfare in a fair and sensible way and has reached decisions, of which the latest is but one, that were based on strong evidence that had been carefully tested. In the 25 days since his decision of October, a period during which good arrangements could have been made for Indi’s benefit, there have been no fewer than six court hearings, each of them requiring very significant preparation and distraction of attention from Indi herself. As Ms Sutton says, a fair hearing has to be fair to everyone, and I would add, most of all to Indi. The increasing demands and changing positions of the parents have been extremely challenging for the clinicians, who have not only to look after Indi but twelve other critically ill children on the ward. The highest professional standards are rightly expected of lawyers practising in this extremely sensitive area. The court will not tolerate manipulative litigation tactics designed to frustrate orders that have been made after anxious consideration in the interests of children, interests that are always central to these grave decisions.”

9. Sadly, two days after the hearing before the Court of Appeal, Indi passed away.
10. On 10 February 2024 the claimants lodged a complaint with the first defendant in respect of the conduct of the three interested parties. In the introduction to the complaint it was stated that it “concerns inappropriate and offensive comments made by [the first interested party] in an *ex tempore* judgement refusing permission to appeal in *Gregory v Nottingham University Hospitals NHS Foundation Trust* [2023] EWCA Civ 1324 (10 November 2023). [The first interested party’s] comments were then unreservedly endorsed by [the second interested party] and [the third interested party].”
11. The complaint was made on a number of discrete and specified grounds. Complaint one was that the observations of the first interested party in the judgment included inappropriate comments in respect of the outstanding request from the Italian judicial authorities under article 9 of the Hague Convention. The complaint included the submission that the suggestion that this request was “wholly misconceived” interfered in the determination of the merits of an application which was currently *sub judice* and before Peel J. Furthermore, some of the comments passed implied that the first claimant had conceded that the request should be refused, as well as insinuating that the request had not been validly made. It was submitted that the first claimant had not conceded in his evidence that the UK courts should retain jurisdiction to determine

the welfare of Indi, he had merely acknowledged the necessity of obeying the UK courts orders whether or not he agreed with them.

12. Complaint two was that the first interested party's comments in paragraphs 14 and 22 of the judgment carried the implication that the contents of correspondence sent by the first claimant's solicitors to Peel J were seriously inappropriate, leading to a suspicion that the second claimant must have sent it without proper supervision and in a manner which raised professional conduct issues for solicitors and/or counsel. These observations were likely (and apparently intended) to influence Peel J's reaction to the correspondence when considering it in due course. The matters raised in the correspondence had no relevance to the application before the Court of Appeal. The complaint was accompanied by copies of the relevant correspondence to support the contention that the observations of the first interested party were unjustified.
13. Complaint three was that in the first interested party's judgment there were insinuations of serious allegations against Indi's parents. The complaint relied upon the observation that the application had a sense of unreality about it, along with the suggestion that the first interested party had implied in paragraph 13 of the judgment that the first claimant's witness statement was misleading. It was also contended under this heading that stating in paragraph 16 of the judgement that "the parents exercising their legal rights to the fullest extent, at least" implied that they had exceeded their legal rights. Objection was also taken to paragraph 22 when it was observed that the "increasing demands and changing positions of the parents have been extremely challenging for the clinicians, who have not only to look after Indi but twelve other critically ill children on the ward." It was submitted that there was no basis for any of these observations and that they were grossly insensitive, in particular with respect to Indi's mother who had not actively participated in the proceedings.
14. Complaint four related to concerns in relation to the insinuation of serious allegations against the first claimant's lawyers. In particular, the complaint relies upon the strong criticisms of the Italian proceedings, which were portrayed as an example of improper and manipulative litigation tactics designed to frustrate orders made in the UK courts. Further, the comments in paragraph 14 in relation to the correspondence and the comments upon Mr Quintavalle's ability to answer the court's questions further implied that this correspondence was a manipulative litigation tactic. These observations and insinuations were not justified, and the first claimant's lawyers had acted carefully and on instructions at all times, deploying the highest professional standards.
15. The substance of complaint five was that it was clear from the terms of the first interested party's judgement that he intended to convey his anger, or at the very least irritation, against Indi's parents and the lawyers who represented them. It was inappropriate for the first interested party to display his emotions in open court "by littering his extempore judgement with irrelevant derogatory comments directed at the parents, [the first claimant's] lawyers, or the Italian Consul."
16. The complaint noted that the second and third interested parties both gave judgments stating simply that they agreed with the judgment of the first interested party. By doing so it was submitted that they associated themselves fully with all of the first interested party's comments which they knew, or ought to have known, were improper for the reasons set out in the complaint.

17. On 23 February 2024 the first defendant responded to the claimants in relation to the complaint which they had lodged. In both cases the first defendant refused to accept the complaint for consideration. The reasons provided for why the first defendant could not accept the complaint was the same in both instances. It was expressed as follows:

“When considering complaints, the JCIO is required to follow the Judicial Conduct Rules 2023 (“the 2023 Rules”), which are available to view on our website.

Rule 10 (a) of the 2023 Rules states that the JCIO must not accept a complaint which does not meet the requirements of Rule 8. To comply with Rule 8(c), a complaint must-

“contain an allegation of misconduct about a named or identifiable person holding an office, which is supported by relevant details as specified in guidance published by the JCIO from time to time.”

**We cannot accept your complaint because it does not comply with Rule 8(c).** The appendices, attached to this letter, contain more information about why we cannot accept complaints because they do not comply with Rule 8(c).

Having assessed your complaint, matters which you have raised relate to judicial decision and judicial case management in which the JCIO do not have the authority to intervene.

Please note that while we recognise you might not agree with our decision, it is final.”

18. Appendix A which was attached to the decisions given to both claimants provides information to explain why the first defendant cannot accept complaints which do not comply with Rule 8(c) of the Judicial Conduct Rules 2023 (“the 2023 Rules”). In particular, in relation to allegations of misconduct the following information is provided.

**“Allegation of misconduct.**

-This means that your complaint is about a judges personal behaviour, **not about a decision order which they have made, or how they have managed a case.**

-Examples of common complaints **which we cannot accept because they are about judicial decision and case management,** include:

-bias in a judges decision-making

-allowing one party to speak for longer than another

- refusing to allow a party to give certain evidence or submit certain documents
- appearing to react more favourably to one person's evidence than another's
- a judge saying that they do not believe a person's evidence, questioning a person's credibility or criticising a person's actions
- a judge making an error of law or procedure-a judge making an incorrect order or refusing to make an order
- a judge expressing opinions about issues or parties related to a case they are hearing
- a judge not reading documents before a hearing
- a judge refusing to transfer a case to a different judge or court
- a judge reserving a case to themselves
- a judge refusing to correspond with the party about a case."

19. Appendix B which was also attached to the first defendant's decisions in each case provides guidance on what is meant by "relevant details", and advises that if a complaint relates to something a judge said, for example rudeness or something in their tone or manner, then the details required would include the words that the judge used, a description of the judge's tone or manner, or if the complaint related to laughing inappropriately, the context of that behaviour. In addition to these appendices the first defendant's decisions provided details of the second defendant and the opportunity to complain to them.
20. On 18 March 2024 the claimants wrote to the second defendant complaining of the failure of the first defendant to investigate their complaints against the interested parties and to comply with the procedures prescribed by the 2023 Rules. On 26 March 2024 the second defendant responded separately to each claimant following completion of preliminary investigations into the claimants' complaints and including a report of that preliminary investigation. In the report the second defendant explains that the remit which is being exercised precludes a review of the substance of the decisions taken but is confined to the process by which the complaints were handled by the first defendant.
21. The essence of the conclusions reached by the second interested party, adjusted to reflect that the rejections of both claimants' complaint, were in similar terms, and were as follows.

"The JCIO's assessment that it could not investigate [the claimants'] complaint because it was outside its statutory remit and did not contain an allegation of misconduct about a named or identifiable person holding an office, which is supported by relevant details, as set out in the Rule 8(c) of the Judicial



Conduct Rules 2023. This assessment was, taking into account all the information provided by [the claimants] consistent with the explanation it gave, and the appropriate legislation. Whilst it is not within my remit to comment on the decisions made by the JCIO, it is important to point out that there are two elements to Rule 8(c) that need to be met for the JCIO to accept a complaint for assessment. The first, is to provide the name of the judicial office holder complained about, and the second, is that a complaint also needs to include “an allegation of misconduct which is supported by relevant details as specified in guidance published by the JCIO from time to time”. Although [the complainant’s have] asserted in [their] complaint to my office that [they] had met the requirements of Rule 8, it is for the JCIO to assess whether the allegations about the personal conduct of a judicial office holder were supported by the details specified in the JCIO guidance (as set out in Appendix B). Having considered the correspondence carefully, I can see no issue with the JCIO’s handling of this complaint.

The JCIO explained that “we cannot accept your complaint because it does not comply with Rule 8(c). The appendices attached to this letter, contain more information about why we cannot accept complaints because they do not comply with Rule 8(c). Having assessed your complaint, the matters which you have raised relate to judicial decision and judicial case management which the JCIO do not have the authority to intervene in. Please note that while we recognise you might not agree with our decision, it is final”. Having considered the correspondence in this complaint carefully, I can see no issue with the process followed by the JCIO in its assessment of his complaint.”

22. The second defendant concluded the report into the complaint by again noting that the enquiry to be undertaken in response to the complaint was limited to the process followed by the first defendant in dealing with the claimants’ complaints, and that the second defendant had found no issues with procedure that the first defendant followed. The claimants complaints were rejected.
23. On 24 May 2024 the claimants brought these proceedings for judicial review.

### **The law**

24. Disciplinary powers in relation to judicial office holders were given to the Lord Chancellor by virtue of the provisions of the Constitutional Reform Act 2005. Section 3 of the 2005 Act guarantees the independence of the judiciary in the following terms.

#### **“3 Guarantee of continued judicial independence**

- (1) the Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or

otherwise to the administration of justice must uphold the continued independence of the judiciary.

...

(4) The following particular duties are imposed for the purpose of upholding that independence.

(5) The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.

(6) the Lord Chancellor must have regard to-

(a) the need to defend that independence,

(b) the need for the judiciary to have the support necessary to enable them to exercise their functions;

(c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.”

25. Section 108 of the 2005 Act provides the power for the Lord Chancellor, or the Lady Chief Justice with the agreement of the Lord Chancellor, to exercise disciplinary powers in respect of judicial office holders in the form of sanctions such as the giving of formal advice, formal warning or reprimand. In furtherance of the exercise of these powers section 115 and 116 of the 2005 Act provide as follows.

#### **“115 Regulations about procedures**

The Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in-

(a) the investigation and determination of allegations by any person of misconduct by judicial office holders;

(b) reviews and investigations (including the making of applications or references) under sections 110 to 112.

#### **116 Contents of Regulations**

(1) Regulations under section 115 (a) may include provision as to any of the following-

(a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);

(b) steps to be taken by a complainant before a complaint is to be investigated;

- (c) the conduct of an investigation, including steps to be taken by the officeholder under investigation or by a complainant or other person;
- (d) time limits for taking any step and procedures for extending time limits;
- (e) persons by whom an investigation or part of an investigation is to be conducted;
- (f) matters to be determined by the Lord Chief Justice, the Lord Chancellor, the officeholder under investigation or any other person;
- (g) requirements as to records of investigations;
- (h) requirements as to confidentiality of communications or proceedings;
- (i) requirements as to the publication of information or its provision to any person.”

26. The opportunity for an interested person to make an application to the second defendant for a review the exercise of these disciplinary powers is specified in section 110 of the 2005 Act in the following terms.

**“110 Applications to the Ombudsman**

(1) this section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been-

- (a) a failure to comply with prescribed procedures, or
- (b) some other maladministration.

(2) the Ombudsman must carry out a review if the following three conditions are met.

(3) the first condition is that the Ombudsman considers that a review is necessary.

(4) the second condition is that-

- (a) the application is made within the permitted period,
- (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
- (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made

within a reasonable time.

(5) the third condition is that the application is made in a form approved by the Ombudsman.

(6) but the Ombudsman may not review the merits of a decision made by any person.”

27. The then Lord Chief Justice exercised the powers conferred by sections 115, 116, 117, 120 and 121 of the 2005 Act in making the Judicial Discipline (Prescribed Procedures) Regulations 2023. The 2023 Regulations were made on 13 September 2023 and came into force on 13 October 2023. The first defendant is the body designated pursuant to Regulation 4 of the 2023 Regulations for the purpose of performing the functions specified by the Regulations. Regulation 6 requires that complaints about a judicial officeholder must be made to the first defendant (with one exception which is of no relevance to these proceedings). Regulation 7 of the 2023 Regulations makes provision for the Lady Chief Justice, with the agreement of the Lord Chancellor, to make rules about the process to be applied in respect of a complaint to the first defendant. The Judicial Conduct Rules 2023 are the rules which have been made pursuant to this provision.

28. The 2023 Rules contain provisions in relation to the making of a complaint about misconduct on the part of a judicial officeholder. Rules 6 and 7 provide that a complaint must be made to the first defendant using the online portal unless otherwise agreed. The provisions of particular relevance to the present case are contained within rules 8 to 10 as follows.

“8. A complaint must-

(a) state the name of the person making the complaint;

(b) state the address or email address of the person making the complaint;

(c) contain an allegation of misconduct on the part of an identified or identifiable person holding an office, which is supported by relevant details as specified in guidance published by the JCIO from time to time;

(d) state the date, or dates, that the alleged misconduct took place unless the JCIO decides that this is unnecessary taking into account all the circumstances of the complaint.

9. A complaint must be accompanied by copies of all the documents within the control of the complainant to which they intend to refer.

10. The JCIO must not accept a complaint in any case where one or both of the following applies-

(a) the complaint does not meet the requirements set out in rules 6 to 9;

(b) the complainant states that they do not want the officeholder concerned to see a copy of the complaint or of any document accompanying it.”

29. Rule 22 of the 2023 rules provides that a complaint “must initially be considered” by the first defendant. Thereafter, rules 23 and 24 of the 2023 rules make the following provisions:

“23. The JCIO must dismiss a complaint, or part of a complaint, if it falls into one or more of the following categories-

(a) the alleged facts are obviously untrue;

(b) even if the alleged facts were true, they would not require a disciplinary sanction to be issued;

(c) it is about a judicial decision or judicial case management, and raises no question of misconduct;

(d) it is vexatious;

(e) it is misconceived;

(f) it raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not present any significant new evidence;

(g) it is about the private life or the professional conduct in a non-judicial capacity of a person holding an office and raises no question of misconduct;

(h) for any other reason it does not relate to misconduct by a person holding an office.

24. If it appears, following initial consideration, that none of the criteria for dismissal of a complaint in rule 23 apply the JCIO must make such enquiries as it considers reasonable and proportionate to establish the facts of the case.”

30. Pursuant to the provisions of Rule 8(c) the first defendant provides guidance on its website in respect of how to make a complaint and what a person can complain about. Much of this material reflects what was set out in the appendices to the first defendant’s decisions in this case. In particular, the online guidance provides the following in respect of an allegation of misconduct.

**“What does an “allegation of misconduct” mean? An allegation of misconduct means that your complaint is about a judge’s personal behaviour, not about a decision or order which they have made, or how they have managed a case. It means you believe that the judges personal behaviour has fallen below the standards of conduct in the *Guide to Judicial Conduct*.”**

31. Further material on the first defendant's website emphasises that they can only deal with complaints about the personal conduct of judicial office holders, not about a judge's decision or the way in which a judge has managed a case. Examples of what might amount to misconduct include, amongst other matters, bullying or harassment, using racist, sexist or other offensive language and a loss of temper or rudeness, for example by shouting.
32. There has been little judicial consideration of the provisions governing the activities of the first defendant. However, in *R(on the application of Hammersmith and Fulham LBC* [2016] EWHC 2849 (Admin) Soole J dealt with a renewed application for permission to apply for judicial review in respect of the refusal of the first defendant to investigate a local authority's complaint of alleged misconduct by a Senior Coroner. The nature of the misconduct was that it was alleged that the Senior Coroner had held a significant number of hearings after office hours, and the dates and times of those hearings which had been taken from digitally recorded transcripts did not correspond with the dates recorded in the court diary for the Senior Coroner. As a result of that alleged mismatch appropriate notification of the hearings could not have been given pursuant to the relevant regulatory regime. The first defendant refused to consider the local authority's complaint on the basis that, having clarified that it was not suggested that the Senior Coroner had falsified any records, this was a complaint about a judicial decision and not misconduct. Soole J concluded, refusing permission to apply for judicial review, as follows:

“17. In these circumstances, I see no properly arguable case for submitting that the decision was unlawful. Whether there has been a breach of the Coroner's Rules on one or multiple occasions, that is prima facie the consequence of a judicial decision which falls outside the remit of the JCIO. If breaches occur, they fall to be determined through the judicial process, including, as I have indicated, judicial review.”
33. This decision was one which was reached at the permission stage and in circumstances somewhat different from the present case. Other decisions were cited in the course of argument but were of limited assistance in relation to the issues before the court.

### **Submissions**

34. As against the first defendant the claimants bring their case on five grounds. Ground 1 is that the first defendant erred in law in concluding that the complaint was outside its remit on the basis that it related to comments made whilst giving judgment. The claimants submit that the comments upon which they rely were wholly unconnected to the issues which were before the interested parties and upon which they were required to adjudicate. There is not, nor should there be, any rule that every word of a judgment is fully immune from the possibility of making a complaint to the first defendant. The claimants submit that there are two alternative analyses which they are entitled to rely upon and which support the contention that this case is arguable and provide a good reason for permission to be granted. The first alternative is that the immunity granted to judicial decisions applies only to reasons given for the decision that the court is required to make but not to any other comments unrelated to the reasons for the decision. The second alternative is that the contents of a judgment will

rarely amount to misconduct, but they could do in an extreme case, for example if the judge was motivated by a dishonest ulterior motive. The claimant submits that permission could only be refused on this ground if every word of a judgment is fully immune under the legislation.

35. Ground 2 is the contention that what are submitted to have been prejudicial comments about matters which were at the time *sub judice* and before Peel J were capable of amounting to misconduct and ought to have been investigated by the first defendant. The claimant submits that even if the observations could not be pursued as a contempt of court, and were protected by judicial immunity, the observations were not exempt from consideration as misconduct, and the first defendant's failure to consider them as such was an error of law.
36. In a similar fashion it is submitted that the first defendant erred in law in concluding that the complaints related to the insinuation of impropriety by both Indi's parents and their lawyers was not capable of being misconduct. The allegations related to what would be recognised as breaches of the codes applying to legal professionals and therefore they should have been investigated and considered. These contentions are Ground 3 of the claim.
37. Ground 4 is the submission that the first defendant fell into error in failing to investigate the complaint that from reading the judgment of the first interested party it could be discerned that he had lost his temper and was exhibiting inappropriate emotions when delivering it. A failure to be courteous, tolerant and respectful is a well-established category of judicial misconduct and this complaint should have been taken forward for investigation. Finally Ground 5 is an allegation that the decision given to both the claimants failed to provide adequate reasons to explain the decision which had been reached. At best the first defendant provided formulaic or generic reasons without engaging with the need to provide reasons which clearly and intelligibly conveyed a proper explanation for why the complaints had been rejected.
38. Turning to the second defendant in the claimants' Ground 6 the claimants contend that the second defendant failed to exercise its statutory duty to review their case, in circumstances where the basis of the application to the second defendant was that by refusing to accept their complaints under the 2023 Rules and the 2023 Regulations the first defendant had failed to comply with prescribed procedures. This was a paradigm example of the kind of failure of process that the second defendant ought to have properly reviewed.
39. The first defendant submits in response that it was entitled to conclude that, firstly, the claimants' complaint did not comply with the guidance in relation to the necessary details to be provided to support a complaint of misconduct and, secondly, that the complaint was plainly about a judicial decision and not within their statutory remit. There are clear and appropriate limits on the scope of the first defendant's jurisdiction which correctly exclude any complaint about a judicial decision in a ruling or in the course of case management.
40. It is submitted that when the claimant's complaints are analysed they are a grievance in relation to the content of the first interested party's judgment, or what was said in it. That could not properly be the subject of a complaint since it is in respect of a judicial decision or the exercise of case management powers. The first defendant

draws attention to the importance of preserving the independence of the judiciary and the chilling effect on that independence if it were thought that the content of judgments could be the subject of complaints. Further, it is inappropriate for the first defendant's jurisdiction to be exercised following the dissection of the judgment into those aspects which are the *ratio* and those which are *obiter dicta* in the manner implied by some of the claimants' submissions. The ambit of misconduct in the first defendant's jurisdiction is narrow and necessarily so since the judiciary are office holders and have a very different role to people who are members of other regulated professions.

41. The second defendant submits in response to Ground 6 that the statutory remit established by section 110 of the 2005 Act is clear and does not involve any enquiry into the merits of the first defendant's decision at all. The conclusion which the second defendant reached, that the process followed by the first defendant was fair and appropriate, was unimpeachable.

### Conclusions

42. It is necessary at the outset of my conclusions to records my deepest sympathies for Indi's family, who found themselves, along with their much loved baby daughter, in such devastatingly tragic and difficult circumstances. It is hard, if not impossible, for those who have not faced such a situation to imagine the impact it creates for all concerned, in particular the family.
43. I note for the purposes of record that at the outset of proceedings a point was taken in relation whether or not the first defendant has been correctly served with proceedings. This point was not pursued, or certainly not pursued with any great vigour, at the hearing and I do not propose to consider it further in reaching my decision on the application.
44. In order to evaluate the claimants' grounds it is necessary to examine the statutory framework within which the first defendant has to exercise its jurisdiction. Sections 108 and 115 of the 2005 Act provide, firstly, the powers to impose a disciplinary measure on a judicial office holder and, secondly, the power to make regulations to govern the investigation and determination of allegations of "misconduct" by judicial office holders. Section 122 of the 2005 Act explains that the "prescribed" procedures which must be complied with before the disciplinary powers can be deployed are those made pursuant to section 115. The term "misconduct" is not defined in the 2005 Act, or the 2023 Regulations or the 2023 Rules.
45. In my view the term "misconduct" must be construed in the context in which it is used, namely the framework provided by the 2005 Act. It is of very limited value to seek to use how that term may have been defined in other professional disciplinary contexts: as the 2005 Act makes clear, a judge is an office holder and as such subject to specific provisions in relation to appointment and regulation. Most importantly for these purposes is the key overarching requirement for a judge's continued independence to be guaranteed by the duties identified in section 3(1) and (6) of the 2005 Act. The need for "misconduct" to be read subject to the explicit and critical duty to safeguard judicial independence is consistent with Rule 23(c), which requires a complaint to be dismissed if it relates to "a judicial decision or judicial case management, and raises no question of misconduct". It is clear that "misconduct" is



entirely to be distinguished from judicial decisions and case management, that is to say the judge performing a judicial role.

46. It is clear both from the introductory paragraph of the claimant's complaint to the first defendant, and also the substance of each of the complaints raised, that the claimants were concerned in relation to comments and observations which were expressed by the first interested party during the course of giving judgment. At first sight, therefore, the matters complained of were part of a judicial decision and not matters about which the claimants could raise a complaint. However, the claimants' concern is in relation to the phrase "and raises no question of misconduct". They submit that it cannot be the case that everything said in a judicial decision is immune from potential disciplinary proceedings, and have, as set out above, posited a number of potential alternative approaches to the issue.
47. I am not convinced that the claimants' analysis is the correct route to the solution of the arguments in this case. In my view it is clear, and a cardinal principle upon which the 2005 Act is built, that judicial independence must be guaranteed and safeguarded. This is a principle which has to govern the operation of the first defendant's role in relation to the disciplinary powers contained in sections 108 and 115 of the 2005 Act. In undertaking their activities they must protect judicial independence and take account of the Lord Chancellor's duty not only to protect judicial independence but also recognise the need for the judiciary to have the support necessary for them to exercise their judicial functions. As noted, it is clear that this is reflected in the 2023 Rules; it is also reflected in the emphasis in the guidance provided by the first defendant online focussing on a judge's "personal behaviour" as distinct from a decision that they have made or how they have managed a case. It is this distinction which leads to what the first defendant describes in written submissions as its limited remit.
48. It is important to recognise that in undertaking their judicial role a judge will often need to make findings or pass observations about the case to which they have been assigned which will be unwelcome or even offensive to parties or witnesses involved in the dispute. The judge may have to find someone to have been untruthful or guilty of deceit. The judge may have to make pointed remarks about how a case has been presented or argued; it may be regarded by the judge as necessary to express judicial displeasure about how a case has been prepared. The protection of judicial independence also safeguards the ability for a judge to express conclusions in trenchant and uncompromising terms. It may also be considered by the judge to be appropriate to pass some observations about wider issues in the context of the case before them well beyond the specific issue they are having to determine, for instance in relation to earlier applications which have been made or the behaviour of the litigants at earlier stages of the litigation. This may be required to guide the future conduct of the case, or in some cases to provide wider guidance in relation to appropriate practice. All of these activities are part of the judge undertaking their judicial duties; they are not aspects of personal behaviour, entirely divorced and distinct from a judge fulfilling their judicial role. The way in which the judge performs this judicial role is, therefore, protected by the principle of judicial independence.
49. Once this distinction is understood it is clear that the first defendant was correct not to accept the claimants complaints because they did not comply with Rule 8(c) since on

analysis they did not contain allegations of misconduct. The complaints which were particularised all related to the first interested party's judicial decision and the way in which, fulfilling his judicial role, he expressed the judgment which he delivered in that capacity. The comments and observations which he made during the judgment related to the case before the court and were part of a judicial decision: judges are not confined in pronouncing their decisions to the specific issue before them for the reasons set out above. Complaint 5 was, as expressed in the complaint, again related to the first interested party's "choice of words" and a suggested inference of anger or irritation to be drawn from the way in which the judicial decision was articulated. As pointed out by the first defendant in its written submissions this complaint was unsupported by any details of any tone or manner relied upon or any times of the hearing relied upon when a recording of the hearing could be reviewed. The complaint was therefore, akin to the other complaints, related to the judicial decision and the way in which it was expressed. That was a matter excluded from the first defendant's limited remit since the complaint related to the first interested party's discharge of his judicial duties in making a judicial decision as distinct from personal behaviour unrelated to that role.

50. In considering the application of Rule 8(c) and whether a complaint should be accepted, in my view the first defendant was entitled to have regard to the contents of Rule 23(c) in determining whether the complaint contained admissible complaints of misconduct. For the reasons set out above, the complaints which the claimants made were excluded by the provisions in Rule 23(c) as amounting to misconduct within the first defendant's jurisdiction limited as it is by ensuring the protection of judicial independence. As a result of the analysis set out above, the first defendant was bound to determine whether the complaint had been properly particularised for the purposes of Rule 8(c) by assessing whether they would be bound to dismiss it as falling into the category identified by Rule 23(c).
51. It follows that I have reached the conclusion that the decision of the first defendant was correct and it is not arguable that the first defendant ought to have accepted the complaint and investigated it. Having reviewed the decision issued by the first defendant I am satisfied that it adequately explained the basis for rejecting the claimants' complaints and set out the relevant rule that the complaint failed to comply with. It appears clear from the claimants' case that the basis of the first defendant's rejection of their case, that the complaints fell within the exception provided for judicial decisions and case management, was understood. In reality what is sought by means of this ground is the reasons for the first defendant's reasons and those are not required by the principles which govern the assessment of legally adequate reasons. The claimants' case in relation to the reasons provided by the first defendant under Ground 5 is not arguable.
52. It follows that in the light of my conclusions in respect of the claim against the first defendant the claim against the second defendant must also fail. The second defendant was entitled to conclude, exercising the restricted jurisdiction provided by section 101 of the 2005 Act, that there had been no error in the process operated by the first defendant when declining to accept the claimants' complaints. The claimants argue that the procedures prescribed for the first defendant required them to investigate the complaint but for the reasons which have already been set out above that was not the case. The first defendant was fully entitled to reach the conclusion that these

complaints were excluded by the specific provisions in the 2023 Rules in relation to judicial decisions and case management. There was no procedural failure in the way in which the first defendant reached that conclusion and therefore the second defendant was entitled to reach the decision which was made. It is not arguable that there is an error of law in any of the decisions which are challenged in these proceedings.

53. When refusing permission to apply for judicial review Freedman J made a costs order in favour of the first defendant in the sum of £3,664 and in favour of the second defendant in the sum of £3,040.63, and whilst doing so permitted the claimants to make submissions if they objected to the costs order being made. The claimants took the opportunity to object to both of the costs orders which had been made, submitting that given the exceptionally tragic circumstances of the case and the genuine and serious grievances of the claimants there should be no order for costs in the case or alternatively a reduction in the costs awarded. Furthermore, it is submitted that there is no divergence between the interests of the two defendants and it was unnecessary for them to instruct separate representation. Finally, the claimants submit that the arguments which have been advanced by the first and second defendants are straightforward, and in the light of this the amount of costs which have been sought are excessive and disproportionate.
54. I have reviewed the schedules of costs which were submitted by each defendant and also the responses which they have provided to the claimants' submissions. In my view, bearing in mind the extent of the papers and the nature of the issues which have been raised in this application, the hours claimed in each schedule are reasonable and the rates appropriate. It is clear that both defendants needed to be represented separately: they have separate roles to play, with the second defendant undertaking a supervisory role so far as the first defendant is concerned. I have already acknowledged the extraordinarily tragic context of this case and have no difficulty in accepting that the claimant's motivation for bring this application was their sense of grievance in relation to the decision of the interested parties. However, neither of these features amount to a legitimate justification for reducing the costs in this case or departing from the usual principle that an unsuccessful applicant for permission to apply for judicial review should bear the costs of a defendant in providing an acknowledgment of service and summary grounds for resisting the claim. As a consequence of these conclusions I do not propose to disturb the costs order which was made by Freedman J which will remain in force.
55. In the light of the absence of earlier authority in which issues in relation to the scope of the first defendant's jurisdiction and its relationship to the principle of judicial independence I give permission for this judgment to be cited.