Neutral Citation Number: [2022] EWHC 1962 (Admin)

Case No: CO/3107/2021, CO/3717/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/07/2022

Before :

THE HON. MR JUSTICE LANE

- -

Between :

(1) The Anti-Trafficking and Labour Exploitation Unit (2) QB (by his litigation friend THE OFFICIAL SOLICITOR)	**Claimants**
- and –	
The Secretary of State for Justice	**Defendant**

- -
- -

Mr Chris Buttler QC, Ms Marisa Cohen, Ms Katy Sheridan (7 July) Mr P Skinner (26 July) *(instructed by **Freshfields Bruckhaus Deringer and ATLEU**)* for the **Claimants**
Ms Galina Ward QC, (7 and 26 July) Mr Simon PG Murray, Mr Jack Holborn, (7 July) Ms Scarlett Milligan (7 and 26 July) (instructed by **The Government Legal Department**) for the **Defendant**

Hearing dates: 7 and 26 July 2022

- -

Approved Judgment

Judgment Approved by the court for handing down.

Mr Justice Lane :

1. This judicial review concerns the adequacy and efficacy of the measures taken by the defendant to support victims and potential victims of human trafficking and modern slavery, who are serving sentences of imprisonment or who are remanded in custody. It was set down for hearing on 6 and 7 July 2022.

2. On 6 July 2022, I was presented with a consent order, which I subsequently approved. The order is reproduced in the Annex to this judgment.

3. As envisaged in paragraph 4 of the consent order, on 7 July 2022, I heard Mr Buttler QC for the claimant and Ms Ward QC for the defendant on the question of whether paragraph 4(ii) of the order of Jay J dated 20 January 2022 should be varied, so as to provide that the pro bono costs order referred to therein should be capped.

4. Jay J's order granted permission to the first claimant (hereafter "ATLEU") to apply for judicial review and joined ATLEU's claim with that of QW (C0/3107/ 2021).

5. The order included the following:-

> "4. The Defendant's liability for the Claimant's costs be limited to: (i) the time costs of the Claimant's counsel team at Treasury civil counsel panel rates; and (ii) in respect of Freshfields Bruckhaus Deringer LLP's time, a pro bono costs order under section 194 of the Legal Services Act 2007 for the benefit of the Access to Justice Foundation".

6. Under the heading "Observations", the judge said:-

> "I am not aware of any submissions from the defendant on the issue of costs-capping. If the Defendant contends that no such order is appropriate, it should submit its reasons as soon as possible. The Claimant will have the final word."

7. In ATLEU's statement of facts of grounds, it requested a costs capping order in the following terms:-

> "60.1 The Claimant's liability for the Defendant's costs, if the claim fails, be limited to £5,000 inclusive of VAT."
>
> 60.2 The Defendant's liability for the Claimant's costs be limited to the time costs of the Claimant's counsel team at Treasury civil counsel panel rates and a pro bono costs order under section 194 of the Legal Services Act 2007 for the benefit of the Access to Justice Foundation in respect to Freshfields Bruckhaus Deringer LLP's time".

8. In the following paragraph of the statement, ATLEU explained why the proceedings were public interest proceedings and why, as a registered charity with net limited unrestricted funds of £40,277, ATLEU was in a precarious financial position and unable to take on the risk of an adverse costs order of more than £5,000.

9. Under the heading "Other Relevant Factors", the statement confirmed that ATLEU's solicitors "are acting free of charge". In addition to acting at risk of non-payment pursuant to a complete conditional fee agreement, ATLEU's counsel were "willing to be subject to a reciprocal cap so that, even if a claim succeeds, they will not recover their fees at their usual rates, but will instead be limited to treasury rates".

10. The statement ended by informing the Court that ATLEU had sought to reach agreement with the Defendant in relation to a costs cap and reciprocal cap "but the Defendant refused to engage on the grounds that he did not consider the claim to be arguable". ATLEU had earlier pointed out in correspondence that this was not a good reason to refuse to discuss appropriate terms of a CCO "given that the Court will need to consider the CCO application immediately following the grant of permission".

11. As well as containing paragraph 4, Jay J's order of 20 January 2022 directed that ATLEU's liability for the Defendant's costs should be limited to £5,000 inclusive of VAT.

12. The claim and statement of facts and grounds had been filed on 15 September 2021.

13. The Defendant's acknowledgement of service and summary grounds of defence are dated 27 October 2021. They did not contain any response to ATLEU's request for a costs capping order and pro bono costs order; an admission implicitly acknowledged by the terms of Jay J's observations, as set out above.

14. On 26 November 2021, the Government Legal Department ("GLD") e-mailed the Administrative Court Office to say that the defendant opposed ATLEU's application for a costs capping order and would file submissions within 14 days. The e-mail said that the representatives of ATLEU had been copied in.

15. On 14 December 2021, the GLD sent the Administrative Court Office by e-mail the defendant's submissions in response to ATLEU's application for the costs capping order. The GLD apologised for any inconvenience caused by the delay in filling these submissions. Again, ATLEU's solicitors were copied in.

16. The defendant's submissions, settled by counsel, contended that a CCO should not be made at all but that, if one were made, there should be a cap of £20,000 and a reciprocal cap of £20,000 on ATLEU's costs, with counsel's fees being treasury rates.

17. As is obvious from the terms of his order, there is no dispute that the defendant's submissions were not placed before Jay J.

18. On the GLD becoming aware of the terms of Jay J's order, the defendant's submissions on costs capping were re-sent by e-mail to the Administrative Court Office on 26 January 2022, and again the following day, with a request that the submissions be placed before the judge.

19. On 4 February 2022, Freshfields sent by e-mail to the Administrative Court Office ATLEU's reply to the defendant's submissions on the costs capping order. The reply was settled by counsel. The reply contended that a cap of £20,000 would expose ATLEU to unacceptable financial risk. It said that to impose an additional cap on top

of the treasury rate cap for counsel meant counsel would be paid an even smaller fraction of their ordinary fees, if ATLEU won and nothing if it lost.

20. The defendant's detailed grounds of defence are dated 25 March 2020. They include the following:-

> "31. This claim was then issued on 9 September 2021. Permission was granted on 25 January 2022. A costs-capping order was also made, apparently without any consideration of SSJ's submission in respect of the application. On 26 January 2022, SSJ wrote to the Court asking those submissions to be placed before a judge. On 4 February 2022, ATLEU filed submissions in response. The Court is yet to make a decision upon these submissions."

21. On 28 April 2022, an Administrative Court lawyer made an order by consent, granting ATLEU an extension of time in order to apply to file and serve evidence in reply to the defendant's detailed grounds of defence. This followed an extension of time being given to the defendant to respond to ATLEU's preliminary request under Part 18 CPR for further information.

22. On 9 June 2022, Choudhury J ordered the Defendant to respond to the requests of ATLEU for further information and granted ATLEU permission to rely on further evidence.

23. At none of these stages was the Court asked to deal with paragraph 4 of the order of 20 January 2022.

24. On 28 June 2022, the GLD e-mailed the Administrative Court Office to "kindly request an update from the Court on the issue of the costs-capping order ahead of the substantive hearing on 6 and 7 July 2022". Having been allocated the substantive hearing of the judicial review, I instructed my clerk to respond that the matter would be dealt with at the commencement of the hearing.

LEGAL FRAMEWORK

25. The capping of costs in judicial review proceedings in the High Court and the Court of Appeal is governed by sections 88 and 89 of the Criminal Justice and Courts Act 2015.

The relevant provisions of section 88 are follows:-

> "Capping of costs
>
> 88..- (1) A costs capping order may not be made by the High Court or the Court of Appeal in connection with judicial review proceedings except in accordance with this section and sections 89 and 90.
>
> (2) A "costs capping order" is an order limiting or removing the liability of a party to judicial review proceedings to pay another party's costs in connection with any stage of the proceedings.

> (3) The court may make a costs capping order only if leave to apply for judicial review has been granted.
>
> (4) The court may make a costs capping order only on an application for such an order made by the applicant for judicial review in accordance with rules of court.
>
> …
>
> (6) The court may make a costs capping order only if it is satisfied that—
>
> (a) the proceedings are public interest proceedings,
>
> (b) in the absence of the order, the applicant for judicial review would withdraw the application for judicial review or cease to participate in the proceedings, and
>
> (c) it would be reasonable for the applicant for judicial review to do so.
>
> (7) The proceedings are "public interest proceedings" only if—
>
> (a) an issue that is the subject of the proceedings is of general public importance,
>
> (b) the public interest requires the issue to be resolved, and
>
> (c) the proceedings are likely to provide an appropriate means of resolving it.
>
> (8) The matters to which the court must have regard when determining whether proceedings are public interest proceedings include—
>
> (a) the number of people likely to be directly affected if relief is granted to the applicant for judicial review,
>
> (b) how significant the effect on those people is likely to be, and
>
> (c) whether the proceedings involve consideration of a point of law of general public importance.
>
> …"

26. The relevant provisions of section 89 are:-

> "89.- (1) The matters to which the court must have regard when considering whether to make a costs capping order in connection with judicial review proceedings, and what the terms of such an order should be, include -

> (a) the financial resources of the parties to the proceedings, including the financial resources of any person who provides, or may provide, financial support to the parties;
>
> (b) the extent to which the applicant for the order is likely to benefit if relief is granted to the applicant for judicial review;
>
> (c) the extent to which any person who has provided, or may provide, the applicant with financial support is likely to benefit if relief is granted to the applicant for judicial review.
>
> (d) whether legal representatives for the applicant for the order are acting free of charge;
>
> (e) whether the applicant for the order is an appropriate person to represent the interests of other persons or the public interest generally.
>
> (2) A costs capping order that limits or removes the liability of the applicant for judicial review to pay the costs of another party to the proceedings if relief is not granted to the applicant for judicial review must also limit or remove the liability of the other party to pay the applicant's costs if it is.
>
> ..."

27. CPR 46 makes provision for judicial review costs-capping orders. CPR 46.17 sets out the requirements of an application for such an order. CPR 46.19 deals with applications to vary such orders : -

28. Applications to vary judicial review costs capping orders

> **"46.19-** (1) An application to vary a judicial review costs capping order must be made on notice and, subject to paragraphs (2) and (3), in accordance with Part 23.
>
> (2) Subject to paragraph (3), the applicant must serve a copy of the application notice and copies of any supporting documents on every other party.
>
> (3) If the application is supported by evidence setting out a summary of the applicant's financial resources, the court may, on application by the applicant, dispense with the need for the applicant to serve such evidence on one or more of the parties."

29. Pro bono representation orders are made pursuant to section 194 of the Legal Services Act 2007. So far as relevant, this provides:-

> "**194. Payments in respect of pro bono representation: civil courts in England and Wales**

> (1) This section applies to proceedings in a civil court in which—
>
> (a) a party to the proceedings ("P") is or was represented by a legal representative ("R"), and
>
> (b) R's representation of P is or was provided free of charge, in whole or in part.
>
> (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
>
> (3) The court may order any person to make a payment to the prescribed charity in respect of R's representation of P (or, if only part of R's representation of P was provided free of charge, in respect of that part).
>
> (4) In considering whether to make such an order and the terms of such an order, the court must have regard to—
>
> (a) whether, had R's representation of P not been provided free of charge, it would have ordered the person to make a payment to P in respect of the costs payable to R by P in respect of that representation, and
>
> (b) if it would, what the terms of the order would have been.
>
> …
>
> (8) "The prescribed charity" means the charity prescribed under section 194C.
>
> …"

THE PARTIES' SUBMISSIONS

30. Ms Ward referred to paragraph 49 of the defendant's skeleton argument of 30 June 2022. This states that the issue of a costs cap "remains outstanding" and that, given the stage that the proceedings have reached, the defendant "no longer seeks the removal of the cap on the costs that ATLEU is to pay if the claim is dismissed."

31. At paragraph 50, however, the skeleton acknowledges that the reciprocal costs cap "may become live if the claim succeeds on any ground." In the event, the consent order represents success for the claimants. In these circumstances, the defendant maintains his submission that the reciprocal caps should be set at £20,000, which would enable counsel to be paid at Attorney General panel rates, with any balance going towards the pro bono costs order. Ms Ward says there is no reason why the defendant should be subject to an uncapped liability, based on the ordinary rates of the solicitors that ATLEU chose to instruct.

32. Those solicitors, Ms Ward points out, are a prominent and expensive City firm, whose fees will be extremely significant. Had Jay J been aware that the defendant did not

accept the principle or terms of the costs capping order, Ms Ward says it is inconceivable that he would have left the defendant with unlimited potential exposure to these costs.

33. Although the present case is not an environmental judicial review, regard should be had, according to Ms Ward, to the usual reciprocal cap of £30,000 that is imposed in such cases.

34. Ms Ward also draws attention to an article in the *Law Society Gazette* of 5 July 2022. The article recorded that Waksman J had imposed a CCO with a reciprocal cap of £300,000 in a judicial review brought against the Department of Health and Social Care by the Good Law Project, where the government's costs are estimated at £1.2 million.

35. Anticipating Mr Buttler QC's submission that the Court has no power to interfere with paragraph 4 of the order of 20 January 2022, Ms Ward said that Jay J had specifically contemplated that paragraph being varied in the light of subsequent submissions. These submissions had been made but no account had been taken of them.

36. Mr Buttler submits that it would be contrary to legal policy to revisit the CCO at this point. The intention of a CCO is to provide the parties with certainty as regards their respective liabilities for costs, before those costs are incurred.

37. In R (Buglife - the Invertebrate Conservation Trust) v Thurrock Thames Gateway Development Corp. and another [2009] [1 Costs LR 80], the Court of Appeal dealt with the correct procedure to be followed in connection with protective costs orders (now superseded by CCOs). The Court reiterated the point made in R (Cornerhouse Research) v Secretary of State for Trade and Industry [2005] EWCA Civ 192, that "the court should not set aside a PCO unless there is a compelling reason for doing so" (paragraph 29, citing paragraph 80 of Cornerhouse).

38. At paragraph 31, the Court stated that "if a defendant wishes to make [an order capping its liability for costs] it should make it in the acknowledgement of service". That requirement finds expression in paragraph 9.9.3 of the *Administrative Court Judicial Review Guide 2021.* As I have noted, the defendant's acknowledgement of service/summary grounds did not deal with the CCO.

39. Mr Buttler also relies upon R (Elan-Cane) v Secretary of State for the Home Department (Human Rights Watch intervening) [2020] 3 WLR 363. At paragraph 148, the Court held that if the test of being "public interest proceedings" within the meaning of section 88 of the 2015 Act was satisfied:-

> "Both sides will know from an early stage what their maximum exposure to costs will be, but they will also know that the costs which they actually incur in pursuing or defending the litigation are likely, to a greater or lesser extent, to prove irrecoverable. That is the price which has to be paid, in the wider public interest, so that justice can be obtained in important cases of this character."

40. Mr Buttler says that to permit a CCO to be varied after costs have been incurred would be grossly unfair, striking at the important need to provide litigants in these circumstances with legal certainty.

41. Mr Buttler's second submission is that, in any event, the consent order has brought the present proceedings to an end. As a result, any basis for the adjusting CCO has fallen away. Jay J made paragraph 4 of the order at a time when ATLEU needed costs protection. That is no longer the position. Accordingly, looking at matters from the standpoint of today, the Court would have to say that there was no need for costs capping at all.

42. Mr Buttler's third submission is that no different principles can apply where, as here, the issue is the defendant's liability to pay a pro bono costs order. Mr Buttler draws attention to CPR 46.7 (orders in respect of pro bono representation). He submits this may enable the costs judge to apply some form of cap in the course of a detailed assessment; but that is all the defendant can expect, at this stage.

43. Notwithstanding that Freshfields were providing their services to ATLEU free of charge, such firms undertake pro bono work on the understanding that, if the case succeeds, then provision in respect of the firm's work will follow in the form of a pro bono costs order in favour of the Access to Justice Foundation. This, he says, is a legitimate reputational concern.

44. Fourthly, Mr Buttler points to the inactivity on the part of the defendant, following receipt of the claimant's response to the defendant's objections to the CCO in February 2022. It was, he says, wrong of the GLD to continue to assume that it would receive a response from the Administrative Court Office to its e-mails. The defendant should have made a formal application. That is unlikely to have been overlooked. In any event, any failure on the part of the Administrative Court Office can be addressed by the defendant making a claim for compensation from HMCTS, as a result of its maladministration.

45. As well as the applications and orders that are referred to above, Mr Buttler says that Jay J gave further directions of the Part 18 issue on 26 May 2022. Again, he was not asked to address the CCO.

46. Mr Buttler criticises the GLD's e-mail to the Administrative Court Office of 28 June 2022 for giving the misleading impression that a CCO had not, in fact, been made, when it plainly had. By this stage, an application under CPR 46.19 should have been made by the defendant, rather than leaving the matter to an e-mail.

47. Fifthly and finally, Mr Buttler submits that, if the Court rejects these submissions, then, instead of seeking a pro bono costs order in respect of more than £500,000 at commercial rates, and £250,000 level 2 rates, he is instructed that ATLEU would be content with a reciprocal cap in respect of Freshfields' fees, which restricts these to GLD rates. That, Mr Buttler says, would reduce the sum in question to around £130,000.

DISCUSSION

48. I am satisfied that there is no jurisdictional bar at this point in the proceedings to this Court making an order that retrospectively varies paragraph 4 of the order of 2022. The terms of the consent order make it plain that this issue is still before the Court. There is nothing in the primary legislation or the CPR, which points to the Court having no power to act.

49. That is unsurprising. One can envisage circumstances in which a CCO may have been made on a supposed factual basis, which it later transpires is fundamentally wrong. It would be remarkable if, in such a situation, a CCO could not be varied, including retrospectively.

50. The real force of ATLEU's case is that there are, nevertheless, extremely compelling public policy considerations, which mean that, even if the Court can do so, it should decline to revisit a CCO, where a party has incurred costs that fall within the ambit of the CCO. The same point applies to those carrying out professional work on the party's behalf, who are understandably concerned not to be retrospectively put out of pocket.

51. These considerations are both legitimate and powerful. It will therefore only be in an exceptional set of circumstances that the Court is likely to vary CCO in the way described. The question is whether the facts of the present case reach that threshold.

52. It is difficult to escape the conclusion that the present situation would not have arisen, if the defendant had followed the judgment of the Court of Appeal in Buglife and 9.9.4 of the *Judicial Review Guide*, and had responded to the CCO application in the defendant's Acknowledgment of Service/Summary Grounds of Defence. Nevertheless, in making his order and giving his observations of 20 January 2022, Jay J set in train a process of consequential submissions, which the parties were entitled (indeed, obliged) to follow. There was no suggestion, at this stage, that this process had to be by way of formal application, although with the benefit of hindsight, such a course may well have avoided or at least minimised the later difficulties.

53. In this regard, I consider it relevant that ATLEU engaged with the process; and submitted its February 2022 response by e-mail, just as had the defendant.

54. Thereafter, it should have been apparent both to ATLEU and to the defendant that there was a serious question hanging over the status of paragraph 4 of the order of 20 January 2022.

55. This is so, albeit that, as the party who stood to lose if the CCO was not varied, the defendant bore the primary responsibility for ensuring the matter was promptly resolved. It can be all too easy for a Court, with the benefit of hindsight, to underestimate the pressure under which modern litigators must operate. Even so, there is some force in ATLEU's argument that those acting for the defendant ought to have queried the position far earlier than the end of June 2022; and that the most effective way of doing so would have been to make an application under CPR 46.19, by reference to the respective written submissions.

56. I should at say this point that I do not accept the criticism that the GLD's e-mail of 28 June 2022 was misleading. I agree it would have been better if the email had said in

terms that a costs capping order had, in fact, been made on 20 January 2022. Nevertheless, reading the attached earlier emails, this was made sufficiently plain.

57. I agree with Mr Buttler that the fact we are dealing with a potential cap to a pro bono costs order does not constitute a reason for adopting a lower overall threshold for variation, compared with the position where those doing the work are charging for it.

58. But this does not mean no account at all should be taken of this factor, in deciding whether, in all the circumstances, the requisite threshold is met. In this regard, it is noteworthy that section 89(1)(d) of the 2015 Act states that one of the matters to which the Court must have regard when considering whether to make a costs capping order is "where the legal representatives for the applicant for the order are acting free of charge."

59. I bear in mind Mr Buttler's point that a firm which is acting pro bono may regard it as reputationally significant that the Access to Justice Foundation receives a sum which reflects the nature and quality of the work the firm has undertaken on a pro bono basis. It is, however, more likely that the main motivation for the firm lies in achieving success for a worthy client (in the eyes of the firm and others), which would otherwise be unable to litigate a matter of general public importance.

60. Ms Ward advances the powerful submission that if the defendant's position on the CCO had been drawn to Jay J's attention in early 2022, the judge would have placed a limit, not only on counsel's fees but also on the fees of ATLEU's solicitors. Mr Buttler accepts as much; but argues that matters have moved on to the point where nothing should now be done in this regard.

61. The next factor concerns the Administrative Court Office. It is evident that the defendant's e-mails were overlooked. The reasons for this are unknown. The then current public health situation may have played a part. Whatever the reason, I do not accept ATLEU's submission that the defendant should simply pay the unlimited sum to the Access to Justice Foundation (subject to detailed assessment) and pursue a claim to compensation with HMCTS. Again, this ignores the fact both parties were aware that the process set in train by the order of 20 January 2022 had not been resolved.

62. Finally, I am unpersuaded that the question of varying the CCO can merely be left to be addressed in some oblique way at the detailed assessment stage under CPR 46.

63. Standing back and having regard to all the above matters, I conclude that the circumstances of the present case are of a sufficiently exceptional kind, as to justify, at this stage, the variation of paragraph 4 (ii) of the order of 20 January 2022. The requisite threshold is reached.

64. This does not, however, mean that the defendant's contentions as to the nature of the reciprocal cap automatically fall to be accepted. On the contrary, the various failings on the defendant's part make it necessary to adopt an approach which differs significantly from what would have been likely in January or February 2022. The Court's approach must still have regard to all the matters ATLEU prays in aid; not least the need to minimise any "chilling effect" on those seeking in future to benefit from (and maintain the public benefit of) CCOs.

65. Following the hearing on 7 July, I concluded that the appropriate course is the one proposed in Mr Buttler's "alternative submission"; namely that the pro bono costs order be limited to the costs of Freshfields Bruckhaus Derringer LLP's time at GLD rates.

66. Giving effect to this has, however, proved more problematic than was envisaged. On 26 July, I heard submissions from Mr Skinner and Ms Ward. Having done so, I was persuaded by Mr Skinner that the order which most fairly reflects the conclusion in paragraph 65 and which avoids any further argument is summarily to assess the costs of Freshfields Bruckhaus Derringer in the sum of £130,000.

67. In conclusion, it may be helpful to identify a number of lessons learned, in order to avoid repetition of what happened in this case.

68. Where a CCO is sought in the statement of facts and grounds accompanying an application for judicial review, the defendant should follow Buglife and paragraph 9.9.3 of the current *Administrative Court Judicial Review Guide* and articulate any resistance for the making of the CCO in the defendant's acknowledgement of service/summary grounds of defence.

69. Where these are silent, and a CCO is made, a defendant who is unhappy with that order should immediately make an application to the Administrative Court. The progress of any such application should be kept under close review by the defendant.

.

MR JUSTICE LANE

Judgment Approved by the court for handing down.

IN THE HIGH COURT OF JUSTICE Claim Nos. CO/3107/2021, CO/3717/2021
ADMINISTRATIVE COURT BETWEEN:

THE QUEEN (on the application of
(1) THE ANTI-TRAFFICKING AND LABOUR EXPLOITATION**UNIT**
(2) QW (by his litigation friend THE OFFICIAL SOLICITOR)

Claimant

-and-

THE SECRETARY OF STATE FOR JUSTICE

Defendant

CONSENT ORDER

Before the Honourable Mr Justice Lane

Upon the Claimants and the Defendant having agreed on 6 July 2022 to compromise the claims for judicial review on terms that the Defendant agrees to:

(1) By 31 July 2022, commence the development of operational guidance relating to victims and potential victims of modem slavery for staff working in prisons ("the Operational Guidance").

(2) Use his best endeavours to publish the Operational Guidance by 3 1 October 2022.

(3) Prior to publication of the Operational Guidance, consult the organisations who participated in the roundtable meeting on 21 February 2022 on the contents of the Operational Guidance.

(4) Clarify in the Operational Guidance all the matters set out at paragraph 16(a)-(m) of the second witness statement of Stephen O'Connor. In particular, that reasonable grounds and conclusive grounds decisions should be notified to a potential or confirmed

victim's keyworker and that the keyworker should then assess the potential or confirmed victim's needs (para.16 (f)); that reasonable grounds and conclusive grounds decisions should be communicated to all other prison staff through the NOMIS system (para. 16 (h)); and that prisons officers should inform partner agencies (including the Salvation Army) before a potential or confirmed victim of trafficking is released from custody to support the provision of resettlement services (including, if appropriate, support to protect the victim from re-trafficking).

(5) Include in the Operational Guidance provision in relation to bail applications for potential or confirmed victims of trafficking, including (if appropriate) liaison with the Salvation Army.

(6) Include in the Operational Guidance provision for a specific assessment of the modem day slavery needs of any prisoner who has a positive reasonable or conclusive grounds decision.

(7) Consider whether HMPPS should be designated a first responder, to enable it to make direct referrals to the National Referral Mechanism for victims of trafficking.

And upon the Defendant agreeing not to rely on the bringing, stay or dismissal of this claim as the basis for a defence to any civil claim that QW may bring if he is re-encountered (but without prejudice to the Defendant's right to advance any other defence to such a claim, including any limitation defence).

BY CONSENT, IT IS ORDERED THAT:

l . All further proceedings in these claims are stayed except for the purpose of carrying the terms of the agreement set out above into effect and for that purpose the parties have permission to apply without the need to issue fresh proceedings.

2. If no application is made to lift the stay in accordance with paragraph 1 of this order by 30 November 3022, the claims shall stand dismissed.

3. The Defendant shall pay ATLEU's reasonable costs of the claim, limited to (i) the time costs of the Claimant's counsel team at Treasury civil counsel panel rates; and (ii) in respect of Freshfields Bruckhaus Deringer LLP's time, a pro bono costs order under section 194 of the Legal Services Act 2007 for the benefit of the Access to Justice Foundation to be the subject of detailed assessment if not agreed, subject to any cap ordered by the Court in accordance with paragraph 4 below.

4 The question of whether paragraph 4(ii) of the Order of Jay J dated 20 January 2022 should be varied to provide that the pro bono costs order referred to therein should be capped shall be determined by the Court at the hearing listed on 7 July 2022 at 10.30am.

Judgment Approved by the court for handing down.

5. The Defendant shall pay QW's reasonable costs of the claim, to be subject to detailed assessment if not agreed.

6. The Defendant shall pay 50% of the total estimated costs payable to ATLEU and QW on account in accordance with CPR 44.2(8) within 14 days of being notified of the Claimant's estimated legal costs (such estimate to be without prejudice to the Claimants bill of costs).

Dated the 6 July 2022

Freshfields Bruckhaus Deringer

On behalf of the First

Claimant

Freshfields Bruckhaus Deringer LLP
100 Bishopsgate

London

EC2P 2SR

Anti Trafficking and Labour Exploitation Unit

On behalf of the Second

Claimant

ATLEU

Blackfriars Settlement

1 Rushworth Street

London

SEI ORB
For the Treasury Solicitor

On behalf of the Defendant

Judgment Approved by the court for handing down.