

Neutral Citation Number: [2014] EWHC 2544 (Admin)

CO/12090/2013

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

Cardiff Civil Justice Centre
2 Park Street
Cardiff

Wednesday, 18 June 2014

B e f o r e:

MR JUSTICE HICKINBOTTOM

Between:

THE QUEEN on the application of

- (1) CARL CUMMINGS**
- (2) PRIMEOUTLET LIMITED**
- (3) SUPATAX 2000 LIMITED**
- (4) FARZAND ALI**
- (5) STEPHEN MEARS**

Claimants

v

COUNCIL OF THE CITY AND COUNCIL OF CARDIFF

Defendant

Digital Audio Transcript of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Leslie Blohm QC and Roy Light (instructed under the provisions for direct access)
appeared on behalf of the **Claimants**

James Findlay QC and Gwydion Hughes (instructed by Cardiff Council Legal Services)
appeared on behalf of the **Defendant**

J U D G M E N T
(Approved)
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1. MR JUSTICE HICKINBOTTOM: There are two types of car available for hire for the transport of passengers, hackney carriages (or taxis) and private hire vehicles (or minicabs). Whilst there are other differences, the main operational difference between the two is that hackney carriages may be hired by pre-booking or plying for hire (i.e. soliciting or waiting for passengers on the street, without prior booking), whereas private hire vehicles can only be hired by a pre-booking. Private hire vehicles can only undertake work through a separately licenced operator, and a booking can only be made through that operator.
2. Outside London, hackney carriages are regulated by the Town Police Clauses Act 1847, as supplemented by the Local Government (Miscellaneous Provisions) Act 1976. The 1847 Act provides for the licensing by local authorities of hackney carriages (section 37) and hackney carriage drivers (section 46). Private hire vehicles are also regulated by the 1976 Act, albeit under a regime different from that applying to hackney carriages. Part 2 of the 1976 Act provides for the licensing by local authorities of private hire vehicles (section 48), drivers of such vehicles (section 51) and the operation of such vehicles (section 55).
3. The authority responsible for licencing may charge a fee for these various licences, under sections 53(2) and 70 of the 1976 Act. The former covers drivers' licences. The authority may demand and recover "such a fee as they consider reasonable with a view to recovering the costs of issue and administration...". The latter covers fees for vehicle and operators' licences. The authority may "charge such fees... as may be resolved by them from time to time and as may be sufficient in aggregate to cover in whole or in part" the reasonable costs of carrying out inspections, providing hackney carriage stands and administrative costs in connection with the control and supervision of hackney carriages and private hire vehicles.
4. The Defendant Council ("the Council") is the unitary authority responsible for licensing in relation to hackney carriages and private hire vehicles in Cardiff. The First, Second and Third Claimants are involved in owning and operating hackney carriages and private hire vehicles in Cardiff. The Fourth and fifth Claimants are each a holder of a hackney carriage vehicle and driver's licence issued by the Council.
5. In this claim for judicial review lodged on 29 August 2013, the Claimants challenge the decision of the Council made on 3 June 2013 through its Public Protection Committee ("the Committee"), setting hackney carriage and private hire licence fees. They do so on two grounds, namely (i) the level of fees set unlawfully failed to have regard to, or to take account of, any surplus or deficiency in previous years, back to 1 May 2009; and (ii) the level of the fee set for hackney carriage licences unlawfully included part of the costs of funding taxi marshals for the Council's administrative area. The relief sought in the original claim was for (i) an order quashing the Council's decision of 3 June 2013 as it relates to hackney carriage and private hire licence fees; (ii) a mandatory order requiring the Council to determine reasonable hackney carriage and

private hire licence fees for each year from 1 May 2009 to 1st July 2013, taking account of any surplus generated in previous years, leaving out of account any part of the cost of funding taxi marshals and ensuring that any surplus under each type of licence was accounted for only in respect of that licence; and (iii) a declaration that the level of fees had been set without due regard to any previous surplus and had included the cost of funding taxi marshals; and (iv) restitution (including interest) of any surpluses accrued for hackney carriage and private hire licences.

6. On 20 November 2013, Wyn Williams J gave permission to proceed.
7. In its Detailed Grounds of response, lodged on 13 January 2014, the Council conceded that the decision in relation to the setting of the relevant fees was unlawful, in particular in having failed to have regard to previous surpluses (paragraphs 4-6). It agreed to redetermine the level of fees for the period 2009 to 2013, on the basis that (i) earlier surpluses and deficits would be taken into account, (ii) the costs of taxi marshals would be left out of account, and (iii) there would be no cross-subsidisation as between the various categories of licence.
8. That same day (13 January 2014), Wyn Williams J gave directions including an order that the Council lodge and serve evidence upon which it intended to rely in relation to the points remaining in issue, and that the Claimants lodge and serve any response within 28 days. He gave directions through to a substantive hearing. In due course, the substantive application was set down for hearing on 18 June 2014.
9. However, on 9 February 2014, on the basis of the concessions made by the Council, the Claimants issued an application to amend the application for judicial review, to include a prayer for restitution for all surpluses arising from failing to take surpluses into account but going back to 1978 rather than 2009. The effective application before me today is that application to amend.

On 28 March 2014, I set down the application to amend for hearing at the same time as the substantive hearing. I also gave directions that the Claimants lodge and serve a draft Amended Statement of Facts and Grounds setting out the factual and legal basis of their claim for restitution in respect of surpluses before 2009, including any evidence relied upon; with the Council to respond by 16 May. I directed the Claimants to serve a skeleton argument by 23 May.

In the event, the Claimants did not comply with those directions. On 10 June – just a week before the final hearing of the claim – they served a copy of a proposed Amended Statement of Facts and Grounds, with an application seeking an extension of time. No evidence was produced; and the Claimants’ skeleton argument was not lodged and served until 17 June, the day before the hearing, when it was lodged with a bundle of documents. Whilst I understand that the Claimants are acting in person, I can only say that the bundle is unfortunately in a somewhat ramshackle order that has made the hearing more difficult and longer than it might otherwise have been.

Mr Findlay QC, for the Council complains with some force that the Claimants are in flagrant breach of the orders of the court, and to allow the amendment now would

hijack the substantive hearing date, which would inevitably have to go off if the amendment were allowed.

10. It seems to me that the Claimants are entitled to bring a claim for restitution in respect of surpluses from 1978 to 2009, of course subject to any defences that the Council may have, for example, in respect of limitation. However, that does not mean that such a claim must be pursued within this action; and an important issue – indeed, the main issue - in this application to amend is whether that claim should be heard under the umbrella of this action or whether the Claimants should be made to commence separate private law proceedings for restitution.
11. Mr Blohm QC, for the Claimants, submits that the amendment should be allowed, and the claim should be allowed to continue in this action; although he accepts that it should proceed, not by way of judicial review in the Administrative Court, but rather by way of a Part 7 claim and be transferred to either the Queen's Bench Division General List or the Chancery Division.
12. Mr Findlay QC, for the Council, submits that the public law elements of this claim have now been brought to an end; and, if the Claimants wish to pursue a private law claim in restitution, that should be commenced in the appropriate court as a separate action and pleaded properly in that separate action.
13. Both Mr Blohm and Mr Findlay referred me to the recent case of Hemming & Ors v Westminster City Council [2012] EWHC 1260 (Admin), appealed as [2013] EWCA Civ 591. In that case, there were some significant European Union law issues involved, which do not arise here; and so the cases are not on all fours. However, some of the learning from that case is of considerable assistance. In particular, Hemming makes clear that setting of licence fees is a matter for the relevant local authority (see the judgment of Keith J at first instance at [31], and the judgment of Beatson LJ in the Court of Appeal at [112]). Consequently, the taking of an account is inappropriate on any application for restitution where surpluses of licence fees have not been properly taken into account over time. The correct approach is for the local authority to make a fresh decision on the fees which is, of course, subject to judicial review challenge if they err in any public law way.
14. In the current claim as unamended, the relief sought by the Claimants is now, by and large, either conceded or unnecessary. I shall formally quash the decision of 3 June 2013 because the Council accept that it was unlawfully made. In respect of a mandatory order requiring the Council to determine the licence fees for each year from 2009 to 2013, no order is required, because the Council have now done that. The relevant decisions were made in March 2014 and, as I understand it, no public law challenge to them has been made. Any such challenge now would be out of time, subject to the Court's jurisdiction to extend that time. In respect of the declaration sought, the Council in substance accepts that the level of fees which are assessed must take into account any surplus generated in previous years and generally they have agreed not to take into account the costs of funding taxi marshals. The only other claim is for restitution, which has in essence been covered by the resetting of the licence fees for

each of those years. Consequently, the claim as currently made is now one which is substantively empty.

15. In respect of the claim which the Claimants now wish to make, for restitution going back to 1978, in my judgment that should be brought, not under the umbrella of this claim, but by way of a separate claim. Indeed, in my view, that is clearly the appropriate procedural course. The current claim concerns many issues that are now no longer alive, such as the lawfulness of the 2009 to 2013 decisions. The claim as it currently stands is not in good order, and the documents that I have before me are in particularly poor order. On the other hand, as Mr Blohm properly accepts, the proposed claim should proceed by way of a Part 7 action. Under whatever umbrella it is brought, it would need to be pleaded again and pleaded properly. The private claim in restitution may, in due course, raise public law points; but, as currently put forward, no such points are overtly made.
16. In my view, the claim should be brought by way of separate proceedings, properly pleaded in the conventional way, to which the Council should have a proper and full opportunity to respond. In that response, it will no doubt bring forward a limitation defence, which it has already trailed.
17. There is no reason why the current public law claim cannot be brought to an end now; and why the claim for in respect of the earlier period, if the Claimants wish to pursue it, cannot be pursued by way of a separate action. That should not involve any substantial additional expense. Indeed, by focusing on the issues that will arise in that claim properly, hopefully the costs will be reduced – because the new claim will not involve the enormous baggage that currently accompanies the public law claim.
18. For those reasons, I refuse the application to amend this claim.
19. (Post-judgment discussion)
- 20.
21. MR FINDLAY: My Lord, I have an application for costs and relevant to that is a Part 36 offer.
22. MR BLOHM: My Lord, before we get there, we have the question of damages and the restitution of the claim in the 2009/2013 action to deal with unless I am mistaken.
23. MR FINDLAY: My Lord I can certainly as part of that, the evidence before this court at the moment is that the claimant is entitled to some £92,000 and there has not been any detailed response to that. My Lord, I am quite happy for an order to be made in that sum subject to any set-off against costs.
24. MR JUSTICE HICKINBOTTOM: Is there any dispute as to that sum?
25. MR BLOHM: My Lord, there is. Your Lordship will have read the statements of Miss Donahue and Mr Cummings, who do not accept that the sums calculated by the council are correctly calculated or preferably set out.

26. MR JUSTICE HICKINBOTTOM: These are the sums that form the basis of the March decisions?
27. MR FINDLAY: Your Lordship has said March decision, my learned friend has referred to a March decision. As understand the position there was a decision of the Council in March, that they publicise, as they were statutory obliged to do, went out to public consultation that further consultations is considered and the decision itself is made in May or June.
28. MR BLOHM: My Lord, with respect my learned friend is confusing two matters. I hope I have made it clear earlier. The decision to deal with the fee set for the years 2009 to 2013 was taken in March to deal with restitutionary claim. The decision for the fees going forward --
29. MR JUSTICE HICKINBOTTOM: Was put out to consultation.
30. MR BLOHM: Was put out to consultation in March, so the March decision dealt with two separate matters. That what came back to the council in May was confirmation about what had had gone out for consultation for the future year. So that in terms of the decision as to how to deal with the restitutionary claims that was taken in March and, as your Lordship will have seen from our skeleton, claims have been invited and payments have been made pursuant to that. Whether in these proceedings or otherwise Mr Cummings and the other claimant will be paid out in accordance with their entitlement under the March order.
31. MR FINDLAY: As I understand my learned friend's criticisms and Mr Cummings and Miss Donahue's criticisms is it of the decisions lodged not of the calculation that was sent to them on two occasions with setting out exactly how the figure of £85,000-odd had been reached. Spreadsheets were sent out and they are in the bundle.
32. MR JUSTICE HICKINBOTTOM: Is --
33. MR BLOHM: I do not understand what the statutory function my learned is referring to. It is either the re-setting of fees in which case a procedure has to be gone through or it is not. If it is not it is simply the concession that is litigation.
34. MR JUSTICE HICKINBOTTOM: What am I being asked to? What are you challenging?
35. MR BLOHM: The sums involved my Lord. The evidence that we put forward saying the calculations are wrong and the methodology is inaccurately.
36. MR FINDLAY: My Lord, that is a challenge to the March decision.
37. MR JUSTICE HICKINBOTTOM: That is fine, that can be made.
38. MR FINDLAY: Made in a fresh set of proceedings.

39. MR JUSTICE HICKINBOTTOM: It is not challenged here, is it? Where is the challenge to the March decision?
40. MR BLOHM: The March decision itself is not challenged as a decision, it is the calculation behind the decision that is challenged and the evidence....
41. MR JUSTICE HICKINBOTTOM: I am sorry I simply do not understand that.
42. MR BLOHM: Your Lordship has the evidence --
43. MR JUSTICE HICKINBOTTOM: The Council have done what the claimants has asked them to do. They have agreed to quash the June 2013 decision and they have recalculated the licence fees.
44. MR BLOHM: My Lord, no. What they have done, as I understand it, is to calculate a figure which they say should be reimbursed.
45. MR FINDLAY: My Lord, with respect to my learned friend, what the Council did and it is set out in tab 70 at some length in witness statement served as long ago March, in the witness statement of Claire Hartrey, they set out a detailed discussion as to the fees that were to be calculated for each year, if I find the bundle. Does your Lordship have tab 17? It is internally paginated and for instance, if one is to go to page 37.
46. MR JUSTICE HICKINBOTTOM: I am sorry.
47. MR FINDLAY: Just by way of an example, one can see for each financial year, and I am afraid not up to speed on these as I should be. For each year there was a table - my junior will correct me if I am wrong ... Perhaps it is easier to go over the page. Page 38, table 2, fees are set for driver grant, driver renewal, hackney carriage grant, hackney carriage renewal, private hire grant, private hiring renewal and operator, either full year or half year for the years 2009/10 to 2012/13, and then the exercise was gone through, if one follows over to next page, one can see page 39 table 3, the level of overpayment or underpayment incurred per licence. For instance in 2009/2010 the authority under-recovered by a £158 on driver grant. In fact on driver grant it under-recovered every year. Hackney Carriage renewal and private hire grant which are the vehicles, there was an over claim and therefore those were the sums per licence to be reimbursed.
48. That is a very brief summary. I do not think I need to take your Lordship. What they have done is calculate fees for each year, calculate the excess money that they demanded that they should not have demanded and calculated what that is and sought reimbursement.
49. MR JUSTICE HICKINBOTTOM: Mr Blohm what ... I am sorry, it is me being slow. The Claimants sought an order that the council determined reasonable licence fees for the period 2009 to 2013.
50. MR BLOHM: Yes.
51. MR JUSTICE HICKINBOTTOM: Where have the Council not done that?

52. MR BLOHM: They have not done that by the procedure they have adopted.
53. MR JUSTICE HICKINBOTTOM: If the procedure is wrong, then it is challengeable by way of on normal judicial review grounds.
54. MR BLOHM: It is not the resetting of the licence fee for that period. As I understand it, in order to reset ... To set a licence fee there is a statutory that must be gone through.
55. MR JUSTICE HICKINBOTTOM: I am sorry, the claim is not to reset the fees. The claim was for mandatory order requiring the council to determine reasonable fees.
56. MR BLOHM: Reasonable fees my Lord, yes. We say they have not done that.
57. MR JUSTICE HICKINBOTTOM: Is this a public law challenge?
58. MR BLOHM: In so far as it is challenging the decision of a public authority my Lord of course it must be.
59. MR JUSTICE HICKINBOTTOM: So it is on normal judicial review grounds.
60. MR BLOHM: We are in this sort of Alice in Wonderland position that we make a challenge to a decision that has been made, the Council deny it, then they accept it, then they say they have made a further decision, then we have to bring a further judicial review application.
61. MR JUSTICE HICKINBOTTOM: That is really very, very, very common in this court.
62. MR BLOHM: But the difficulty here is that the Defendants are saying "and you are entitled to £X". That is posited on the assertion that the calculation they carried out and the procedures they have gone through is right.
63. MR JUSTICE HICKINBOTTOM: Is lawful.
64. MR BLOHM: Right in that sense, yes.
65. MR JUSTICE HICKINBOTTOM: We deal with lawfulness. If the Council have acted unlawfully in assessing these fees, then that is open to challenge.
66. MR BLOHM: My Lord it is.
67. MR JUSTICE HICKINBOTTOM: But the problem for the Claimants - one of the problems for the Claimants - is that the Council have done exactly what they have asked them to do.
68. MR BLOHM: As at if one looks at the unamended application.
69. MR JUSTICE HICKINBOTTOM: I am looking at 2009 to 2013.

70. MR BLOHM: They have done it in general terms but whether they have done correctly --
71. MR JUSTICE HICKINBOTTOM: Of course they may have acted unlawfully - but if they have acted unlawfully then the proper course is to bring a challenge to the new decision.
72. MR BLOHM: The difficulty for the Claimants is that if it is unlawful in effect the consequence being ... Let us postulate for a moment that this has not taken into account matters that should have been taken into. There will be a further restitutionary claim arising out of this decision.
73. What I am trying to avoid my Lord is there being a position whereby the Council says: Well, you have made a restitution. The answer they would not, in fact; they would have only made partial restitution. So if your Lordship makes an order that the restitution on the footing of that, a certain order is treated as valid but without prejudice to any bring (inaudible) any further challenge or restitution claim, then that may be one way of dealing with matters.
74. MR FINDLAY: My Lord, I would be quite happy with that, that the sum that we posited be ordered, without prejudice to the Claimant's rights --
75. MR JUSTICE HICKINBOTTOM: To challenge the March decision.
76. MR FINDLAY: Challenge the March decision or to raise that issue in further private law restitutionary claims.
77. MR JUSTICE HICKINBOTTOM: But this simply confirms me in my view that this particular claim should be brought to an end.
78. MR BLOHM: My Lord, I am grateful to at least achieve that.
79. MR JUSTICE HICKINBOTTOM: Because the claim as it is currently constituted is really not in good shape. First, if you are going to proceed to challenge the March decisions then that should be brought by a new and clean claim, challenging those decisions of whatever grounds the Claimants choose; and secondly, if they are going to proceed in respect of the claim for restitution, in respect of the earlier years, that must be done in a separate claim properly pleaded.
80. MR BLOHM: My Lord, that is your Lordship decision. That has been noted.
81. MR JUSTICE HICKINBOTTOM: Because dealing with this application has been extremely difficult, partly because of the lateness in which things have been produced; and, secondly, because of form in which documents have been put together, both individually and collectively. I am very clear in the determination that if there are any other claims to be made, they should be dealt with in separate proceedings and not encumbered with this baggage.

82. MR BLOHM: That brings us back to the form of order that your Lordship has to make in terms of restitution. I have indicated the Claimants' position.
83. MR JUSTICE HICKINBOTTOM: And the Council quite properly have said, that is fine in substance - because they are content for the Claimants to retain an ability to make a further restitution claim, based upon the unlawfulness of the March decision.
84. MR BLOHM: Your Lordship has the evidence of Miss Donahue and Mr Cummings. I can take the matter no further than that.
85. MR FINDLAY: My Lord, the restitutionary claim would then be in the sum of £92,175 without prejudice to the....
86. MR JUSTICE HICKINBOTTOM: That can be simply captured by way of a caveat in the order.
87. MR FINDLAY: Absolutely, my Lord. My Lord, we then come to costs. Can I pass your Lordship a Part 36 offer.
88. My Lord there are a number matters to a number of Claimants but your Lordship can concentrate on the first one. We say it is a proper Part 36 offer where we consented to the making of the quashing order. It is almost identical to the terms which your Lordship has indicated. Make the declarations and the Council were offering to pay £100,000 to the three Claimants, whereas the sum they have recovered today is £92,175.
89. This Part 36 offer came with, so your Lordship is aware, a spreadsheet, setting out how the sum was reached. My Lord, there were then open offers on 30 May which are in the bundle at tab 72, which also came with the same spread sheets, setting out how the sums were calculated.
90. But, my Lord, in my submission the Claimants have not bettered their position that we offered in Part 36 offer, so the Part 36 consequences should follow, which are that we should have from 21 days after the date of the offer, we should have our costs on an indemnity basis.
91. MR BLOHM: My Lord, I bear in mind the time, is it possible for me to take instructions over lunch?
92. MR JUSTICE HICKINBOTTOM: Certainly - 2 o'clock.
- (Short Adjournment)
93. MR JUSTICE HICKINBOTTOM: Yes.
94. MR BLOHM: My learned friend's application was that the Claimants should pay the Defendant's costs running from 21 days after the service of the Part 36 offer on the indemnity basis. The basis on which that was made was that this was a Part 36 offer which was successful in the sense that the claimant did not beat it.

95. Can I deal first of all, as it were, the counter-point of that? In my submission, the Claimants should have their costs up to 5 May, on the basis of his success in the application. The concession is made by the Defendant. That will be on a standard basis.
96. As far as the application for costs by the Defendant is concerned, it may be that it slipped my mind, but I do not think that Part 36 offers made by Defendants attract indemnity costs.
97. MR FINDLAY: No, they do not. I am asking it for in addition. I accept that the Part 36 consequences for a Claimant and Defendant differ. I am sorry if ... I was rushing before lunch. I accept it does not automatically follow.
98. MR JUSTICE HICKINBOTTOM: What are the automatic consequences?
99. MR FINDLAY: The automatic consequences are costs from date on which the relevant period expired and interest on those costs.
100. MR JUSTICE HICKINBOTTOM: Right. The automatic consequence is to reverse the burden of costs.
101. MR BLOHM: My Lord in the circumstances I could not object to that; but I would object to indemnity costs.
102. MR FINDLAY: My Lord, in terms of costs up to 5 May, I have one caveat to that, which is that in respect of the costs of the application to amend, which started before that time, with respect, I submit there should be no order for costs before 5 May in respect of the application to amend, because we successfully resisted that.
103. In terms of costs after 5 May, my Lord, in my submission due to the wholesale non-compliance with your Lordship's order and the very late time at which matters, pleadings, skeleton arguments and witness statements came in, notwithstanding my learned friend's reference to paragraph 5 of the application, with very limited excuse, this an appropriate case for your Lordship award costs on an indemnity basis. It is a matter of judgment for your Lordship. I cannot really say more.
104. MR BLOHM: Only in respect of the discrete matter of the application.
105. MR JUSTICE HICKINBOTTOM: Yes.
106. MR BLOHM: In my submission matters as far as that was concerned somewhat changed after March 2014. The position was that an application was made in February to amend. Of course at that stage everything was live, as far as it would ever be live. It was I think your Lordship who directed that it should be continued, the application should be continued by way of the amendment of the statement of facts.
107. Matters have changed since the application was made. Your Lordship's judgment is, as understand it, predicated on the fact that things have changed and concessions have been made.

108. MR JUSTICE HICKINBOTTOM: Just looking at the application to amend discretely, you have failed in that application.
109. MR BLOHM: I accept that, if you treat it as a discrete matter, of course that is the result which your Lordship has directed. The point that I make is that, looking at the application when it was made, matters may have viewed differently and indeed one can see why they would have been viewed differently. If one is looking for a point of division, in the sense that costs go one way up to a certain date in costs and cost go other way afterwards, that point is essentially the Defendant's without prejudice offer, when they concede not simply the substantive part of the application but also the restitution requirements being made.
110. MR JUSTICE HICKINBOTTOM: Thank you very much.
111. In respect of costs I will order as follows: first, the Claimants will pay the Defendant's costs of the application to amend on the standard basis; and, second, the Defendant will pay the Claimants' costs of the claim to 5 May 2014 on the standard basis and the Claimant will pay the Defendant's costs of the claim thereafter on the standard basis.
112. I make those orders for the following brief reasons.
113. In respect of the application to amend, the Defendant was wholly successful and there does not seem to me to be any reason why the usual order should not be made in respect of that application.
114. In respect of the costs of the claim, the Part 36 offer of 14 April was a good offer under Part 36; and, in my judgment, the usual consequences of that offer not having been beaten by the Claimant should flow. I do not consider that this is a claim in which the basis should be other than the standard basis from 5 May, although the Claimant failed to comply with a number of procedural orders, it does not seem to me that that should tip this order from standard basis to an indemnity basis.
115. Is there anything else?
116. MR BLOHM: No, my Lord. In terms of the order, what I was going to suggest is that if parties seek to agree the precise terms of the order and submit that to you.
117. MR JUSTICE HICKINBOTTOM: Yes, please. That would be very helpful.
118. MR BLOHM: In that regard, are you sitting here over the next week?
119. MR JUSTICE HICKINBOTTOM: Until the end of next week. Thank you.
120. MR FINDLAY: Would your Lordship direct that costs be set off on assessment if not agreed?
121. MR BLOHM: I am grateful for being reminded of that, there should be a general set off.

122. MR JUSTICE HICKINBOTTOM: There should be general set off. That is correct.
123. Who is going to send me the draft order? You will liaise in terms of the draft order.
124. MR BLOHM: Technically, I have the carriage of it being the Claimant and concessions having been made; so I am happy to do that.
125. MR JUSTICE HICKINBOTTOM: Thank you very much. If you send it to my clerk direct, that will save some time.
126. MR FINDLAY: Before your Lordship goes I appreciate your short has been on a short lunch any way, can I take instructions on one short matter?
127. MR JUSTICE HICKINBOTTOM: Certainly.
128. MR FINDLAY: In terms of the Khan order we can take care of that.
129. MR JUSTICE HICKINBOTTOM: Yes, please.
130. MR FINDLAY: I have instructions to make an application for permission to appeal. Your Lordship has heard my submissions. I think I can do no better than simply say that.
131. MR JUSTICE HICKINBOTTOM: Thank you very much. I am going to refuse permission to appeal. This is a case management decision well within my discretion, and consequently I do not consider that there is a real prospect of success on an appeal. I will complete the usual form. Thank you all very much.