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

AC-2025-LON-001700
Neutral Citation Number: [2025] EWHC 2299 (Admin)
ROYAL COURTS OF JUSTICE,
ADMINISTRATIVE COURT LONDON
LONDON, WC2A 2LL
22 August 2025

Before

THE HONOURABLE MRS JUSTICE ELLENBOGEN DBE

BETWEEN:

THE KING (ON THE APPLICATION OF OXFORD BUSINESS COLLEGE UK LIMITED)

Claimant

-v-

THE SECRETARY OF STATE FOR EDUCATION

Defendant

JASON COPPEL KC of **11KBW CHAMBERS** and **WEE-AN TAN OF FOUNTAIN COURT CHAMBERS** (instructed by **Ronald Fletcher Baker LLP**) appeared on behalf of the Claimant
LEON GLENISTER, KARL LAIRD and **CLAUDIA HYDE,** of **LANDMARK CHAMBERS** (Instructed by the **Government Legal Department**) appeared on behalf of the Defendant

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APPROVED JUDGMENT

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MRS JUSTICE ELLENBOGEN:

1. This is a rolled-up hearing following a challenge brought by Oxford Business College UK Limited ("OBC") to the decision of the Secretary of State for Education, dated 17 April 2025 ("the Decision"), which, in material part, will take effect on 1 September 2025. The claim was lodged on 27 May 2025. For reasons which are unclear, it was not processed by the court office until a time when it could not be heard during the legal term. The hearing took place on Tuesday and Wednesday of this week, two days before my period as duty vacation judge was due to end, following an order for expedition made by Mr Justice Ritchie on 18 July 2025. It follows that this judgment is, in parts, necessarily briefer than it would otherwise have been, and sets out only the key facts, evidence, submissions and reasons for my conclusions. I have read with care the skeleton arguments of both parties, supplemented by their oral submissions over one and a half days, and all of the witness statements and documents to which my attention has been directed.

The factual background

2. Pursuant to section 22 of the Teaching and Higher Education Act 1998 ("THEA"), the Secretary of State is responsible for student funding. She has the power to designate courses which are eligible for such funding and, then, in respect of tuition fee loans, to make payments to institutions: see regulations 5 and 113 of The Education (Student Support) Regulations 2011 ("the 2011 Regulations"). So far as material to these proceedings, she designates higher education courses provided on behalf of regulated providers, that is providers which are registered with and regulated by the Office for Students ("the OfS"), pursuant to section 3 (10)(a) of the Higher Education and Research Act 2017 ("HERA"). She then makes fee loan payments to those registered providers.

3. OBC is an unregistered provider, which entered into contracts with registered providers, negotiated on ordinary commercial terms, to provide higher education courses. Its business involves, exclusively, the provision of courses which are designated under the 2011 Regulations. In the agreements between OBC and the registered providers, the relationship is described as a sub-contract. Within higher education, the model is known as ‘franchising’ and the registered provider as the lead provider. The lead provider is

accountable to the OfS for the higher education provided by franchisees. The Secretary of State has a direct financial and regulatory relationship with the lead providers. She has no direct relationship with the franchisees, as the franchise arrangement is governed by the contract between franchisee and lead provider. OBC entered into contracts with five lead providers: Buckinghamshire New University ("BNU"); New College Durham ("NCD"), Newcastle College Group ("NCG"); University of West London; and Ravensbourne University London ("RUL") to deliver higher education courses as a franchisee.

4. The Decision was encapsulated in paragraph 9:

> "The Secretary of State has, therefore, decided to remove the designation of all courses provided by the College's existing five partners in conjunction with the College. She will not designate any new courses delivered by the College in partnership with the five current providers, or with any new providers. This will take effect from the date of this letter for new students and will take effect for continuing students from 1 September 2025."

It followed an investigation conducted by the Government Internal Audit Agency ("the GIAA"), triggered by "whistleblowing" allegations and by a report from the Student Loans Company ("SLC"), setting out certain "intelligence" which that organisation had received between November 2023 and February 2024. The investigation found irregularities in the courses which OBC was providing on behalf of registered providers, broadly constituted in significant student absenteeism; lack of evidence of students' English language proficiency; and a failure by OBC and the lead providers to adhere to attendance policies.

5. On 20 June 2024, Ms Rimmer, Deputy Director Student Funding Policy Higher Education Oversight, Department for Education, wrote to OBC stating that the Department had received: (1) the SLC's analysis of applications for funding for study on all courses provided by OBC for the academic years 2022/2023 and 2023/2024, which had "revealed concerns about OBC students"; and (2) further allegations regarding practices at OBC which had led the Department to investigate and "confirm unusual

patterns of customer behaviour". She requested a meeting with OBC and stated that the Department might require additional information from it.

6. So far as apparent to OBC, the SLC's investigations into it dated back to November 2023. On 3 July 2024, Professor Fawad Inam, Executive Principal of OBC, responded stating that he was very concerned at the suggestion that public funds might be at risk and that OBC wished to help with the Department's enquiries and to provide the information requested. He asked the Department to provide OBC with the SLC's analysis; written details of the concerns and of the customer behaviour which was considered to be unusual; and disclosure of the allegations made about OBC's practices, so that OBC could properly and effectively provide the information sought.

7. By letter dated 12 July 2024, Ms Rimmer declined to provide any of the documents requested by OBC, citing sensitivities with sharing "all the detail of the SLC reports", and stating that whistleblower allegations contained confidential information relating to individuals which the Department "cannot disclose in full". Ms Rimmer stated that she had "set out the key points from the reports and allegations received that have led to our concerns around your franchise provision on behalf of partner universities", with the express purpose of enabling OBC to identify appropriate members of staff who could liaise further with the Department to discuss the assurances and action which might be required on OBC's part. Paragraphs 4 to 9 of her letter set out the key points:

> "4. In November 2023, the Department received an allegation relating to potential fraud at ... [OBC]. The allegation claimed that:
>
> - Students enrolled in your Business Management BA (Hons) course did not have basic English language skills.
> - Less than 50% of students enrolled in the London campus participate, and the remainder instead pay staff to record them as in attendance.
> - Students have had bank details altered or new bank accounts opened in their name, to which their maintenance payments were redirected.

- Staff are encouraging fraud through fake documents sent to SLC, fake diplomas, and fake references. Staff are charging students to draft their UCAS applications and personal statements. Senior staff are aware of this and are uninterested.
- Students attending OBC do not live in the country. In one instance, a dead student was kept on the attendance list.
- Students were receiving threats from agents demanding money and, if the students complained, their complaints were often dealt with by those same agents threatening the students.

5. The Department were forwarded another allegation that SLC had received from a whistleblowing contact in March 2024 that claimed remote utilities were being used for English language tests where computers were controlled remotely to respond to the questions on behalf of prospective students. A further two separate allegations received from whistleblowing contacts were forwarded to us by SLC, another in March 2024 and a third in May 2024 specific to your Nottingham Campus, claiming that employees and others were demanding money from students for assignments and to mark their attendance to avoid being kicked off of their course. One employee was allegedly quoted as saying 'This is a business and not an educational system.' Concerns surrounding lack of English language proficiency and non-attendance were also repeated.

6. As at the time of writing this letter, the Department have received an allegation directly from a whistleblower contact on 10 July 2024 repeating the claims made against OBC in previous allegations regarding all ... campuses and a number of staff members.

7. SLC conducted an investigative report into student finance applications which they shared with the Department in January 2024. This noted a high concentration of recruitment via agents at OBC. There are multiple occurrences of the same third-party contacts being used at OBC, and analysis of the IP addresses used to submit student

applications has shown that one particular IP address was responsible for 656 applications. There are a number of instances where applications have been received from 1 single property ranging from 2-6 prospective students. Furthermore, across all campuses of OBC, more than 30% of students appear to live more than 30 miles away from their chosen campus and 25% live more than 50 miles away.

8. Whilst the SLC report and evidence collated does not in itself confirm inappropriate or fraudulent activity, it does raise questions about the authenticity of your students and their intent to study.

9. The Department have conducted our own due diligence, including through discussions with a number of your partners. As you may be aware, some of your partners were concerned following the publication of a New York Times Article on 5 June 2023 alleging serious issues with franchised provision in higher education in the UK, and specifically at OBC. The Department are aware that some of your partner universities have since taken steps to investigate their students enrolled at OBC and have conducted independent audits, which have led them to sever ties with OBC. These are all serious causes for concern for the Department." (sic)

8. On 27 August 2024, the Department and OBC attended an online meeting at which the parties discussed whether OBC would consent to being investigated by the GIAA. Later that day, OBC wrote to the Department agreeing to co-operate with the GIAA, which commenced its investigation by writing to OBC on 19 September 2024, making various requests for information. OBC provided information on 30 September 2024. The GIAA attended OBC's Oxford head office and Nottingham campus on 18 and 19 November 2024, respectively. There followed further correspondence between the parties on 21 and 25 November, and on 4 and 5 December, 2024 regarding the collection of attendance and admissions data from OBC. On 5 December 2024, the GIAA asked OBC questions regarding attendance, to which answers were provided on 10 December 2024. OBC also provided in excess of 3,000 documents to the GIAA. On the morning of 13 January 2025, the GIAA sent two emails to OBC in connection with:

(a) student interview forms which had recorded similar or identical responses to questions; and (b) "findings" relating to OBC's processes for verifying documents provided by the 200 students comprising the GIAA's selected sample.

9. OBC responded to the questions raised in both emails by letter dated 17 January 2025. There was no further engagement between the GIAA and OBC regarding the status of the investigation. OBC was not offered an opportunity to comment on the GIAA's proposed findings or on its "interim report", issued to the Department on 17 December 2024 albeit unknown to OBC at that time. OBC was also unaware of the GIAA's "final report", issued on 30 January 2025. The full interim and final reports were not provided to OBC until last week. The final report did not recommend that OBC be prohibited from providing designated courses, instead making recommendations that additional safeguards be put in place to provide assurance regarding the processes and procedures of OBC and its lead providers, extending to "strict documentation protocols for all submitted academic credentials, including mandatory recording of original document verification", "standardising procedures for verification", and "regular audits of the admissions process to identify and address any issues or discrepancies".

10. A Ministerial Submission dated 18 March 2025 ("the March Ministerial Submission") recommended that the Secretary of State urgently take a minded-to decision to remove designation for all courses provided by OBC, currently and in the future, with immediate effect. It did not include any consideration of lesser sanctions, albeit summarising, at Annex F, the GIAA's final report, which had not recommended that OBC be closed down (said to be the effect of the recommendation); nor did it contain any reference to the Department's own decision-making guidance dated December 2024, which set out an escalating scheme of sanctions.

11. On 20 March 2025, Ms Rimmer wrote to OBC stating that the GIAA had completed its investigation and provided the Department with draft interim and final reports. Summaries of the draft reports were provided, the findings of which were summarised at paragraph 2 of the letter as follows:

"GIAA have found that OBC has:

- recruited students without the required experience and qualifications to successfully complete their courses
- failed to ensure students met the English language proficiency as set out in OBC and lead provider policies
- failed to ensure attendance is managed effectively
- failed to withdraw or suspend students that fell below the required thresholds for performance and/or engagement;
- failed to provide evidence that immigration documents, where required, are being adequately verified."

The letter continued:

"3. OBC is not registered with the ... OfS, so the courses it provides are designated for the purposes of student funding as a result of OBC's partners being on the register. Given the seriousness of the GIAA findings, the Secretary of State has informed those institutions, ... , that she is minded to remove designation from all courses provided by these institutions in partnership with OBC with immediate effect in respect of new students. She is also minded to take steps to ensure that any new partnerships entered into by OBC with other institutions designated for the purposes of student support will not be eligible for student funding.

4. The Secretary of State has also told the providers listed above that she is minded to remove designation of all courses provided by these institutions in partnership with OBC with immediate effect for continuing students, unless she receives satisfactory assurances that all students will be checked to determine whether they have been recruited with integrity and are attending and engaging with their courses to an adequate standard before claims for student funding are submitted."

('the Minded-to Decision'). OBC was given until 3 April 2025, being 14 days, to provide representations "and to provide any factual comments on the draft summary reports produced by GIAA" for consideration by the Secretary of State. OBC had been invited to comment on neither the interim nor the final report prior to its issue by the GIAA. It had also not been provided with the representations made by the lead providers prior to the Minded-to Decision.

12. On 23 March 2025, The Sunday Times published an "investigation" entitled "Welcome to the walk-in degree", which referred extensively to OBC and contained apparently leaked details of the Department's confidential investigation. Alongside that article, the Secretary of State published an opinion piece entitled "This appalling misuse of public money must never happen again", in which she referred to "today's revelations of major misuse of public money ...", accused institutions, including OBC, of "targeted abuse of the system", and promised "the firmest action".

13. On 24 March 2025, OBC requested disclosure of the underlying material in the Department's file and an extension of time in which to provide its representations. Both requests were refused. On the due date of 3 April 2025, the Department extended the deadline to 5:00pm on 7 April 2025. On that date, OBC provided the Department with a 68-page letter containing its representations on the Minded-to Decision ("the 7 April Representations") in which it addressed and sought to rebut each of the GIAA's findings and conclusions; emphasised the division of responsibility between OBC and the lead providers, which were responsible for setting entry criteria and verifying documents; identified processes in place at OBC, for example for checking employment documentation and supporting the verification process for which lead providers were responsible; and set out the urgent steps which had been taken by OBC's board of governors, including establishing a task force to verify all current students' recruitment and attendance, reviewing all internal systems and processes, and engaging an independent external auditor; enclosing documentation which had not previously been sought by, or provided to, the GIAA.

14. Immediately prior to the Decision, the Secretary of State was provided with a ministerial submission dated 16 April 2025 ("the April Ministerial Submission") which recommended that the Secretary of State confirm the Minded-to Decision. She was not presented with any less Draconian options for sanctioning OBC. Annex H to the April Ministerial Submission was a four-page note from the GIAA to the Department ("the GIAA Response"), also dated 16 April, which ran to 14 paragraphs and concluded that:

"The majority of the issues raised relate to interpretation rather than factual accuracy. Crucially, we are satisfied that none of the concerns identified have a material impact on our findings, conclusions or overall assessment." (sic)

The attention of the Secretary of State was not drawn to the fact that the GIAA's "overall assessment" had been that various safeguards falling short of de-designation and its consequences for OBC should be introduced. The GIAA Response referred specifically to "attendance"; "document verification"; and "English language checks":

a. In relation to attendance, the GIAA acknowledged mistakes made in the wording of its reports: "There are aspects that could have been made clearer in the report." (paragraph 7) It did not accept OBC's contention that it had relied upon incorrect attendance thresholds, but did not identify or enclose any evidence in support of the thresholds which it had used. The GIAA Response stated, "We are satisfied we have quoted [the attendance thresholds] correctly, and correspondence received from RUL confirms this." (paragraph 8) In these proceedings, on 12 August 2025, the Secretary of State informed OBC that RUL had also made representations to her to the effect that the GIAA had been mistaken about attendance thresholds. Accordingly, the statement in the GIAA Response that RUL had confirmed that the correct thresholds had been used was wrong. As "further context", the GIAA stated that it had "identified five students with absence rates exceeding 90 per cent" and criticised OBC for not having withdrawn those students (paragraph 10). It did not identify the students concerned, or the relevant institutions, or, as a result, the applicable attendance policies. OBC's position is that, for that reason, it was unable to respond to the relevant finding but that, as set out in the 7 April Representations, the decision to withdraw a student is the final stage in an ongoing process of monitoring, warning, and provision of support to those who are not engaging as required by the lead providers.

b. In relation to document verification, the GIAA referred to policies with which it had been provided in the early stages of its investigations and stated that its conclusions were supported by the work undertaken. OBC asserts that the GIAA did not engage with its detailed representations regarding its shared responsibility with the lead providers for verifying documents, or with corroborative representations from the lead providers.

c. In relation to English language testing, the GIAA concluded that, "It is now clear that OBC held, but did not provide, any student's written, listening and reading tests and

we have therefore been unable to assess any of the evidence potentially held." OBC's position is that the GIAA did not engage with its point that the GIAA had never asked it to provide copies of the English language tests, and that it had not considered or acknowledged the English language tests which OBC had provided with the 7 April Representations.

15. On 17 April 2025, the Secretary of State conveyed the decision to OBC, maintaining her position in the Minded-to Decision. All of OBC's present and future courses would be de-designated subject to limited arrangements for the "teach-out" of current students. It was said, at paragraph 5, that:

"Your letter refers on several occasions to GIAA investigations having not uncovered fraud. The Secretary of State's decisions have not been made solely on the basis of whether or not fraud has been detected. She has also addressed the issue of whether, on the balance of probabilities, the College has delivered these courses, particularly as regards the recruitment of students and the management of attendance, in such a way that gives her adequate assurance that the substantial amounts of public money it has received in respect of student fees, via its partners, have been managed to the standards she is entitled to expect."

Neither the standards in question nor the basis for her finding that OBC had not met them were identified.

16. A written ministerial statement dated 22 April 2025 provided additional information about the Decision. The Secretary of State described it as "[having reflected] my determination to stamp out any abuse of the student support system", stating that OBC had "fallen well short of the standards I am entitled to expect" and citing a lack of assurance that "students' prior attainment, including their competence in the English language, has been adequately assessed, or that their attendance on their courses has been adequately monitored". Nothing in the GIAA reports, or in the Decision, had alleged or found substantiated abuse of the student support system by OBC.

17. The result of the Decision, on OBC's case, is to destroy its business with effect from 1 September 2025. It is said that serious damage has already been caused. Of its 5,000

students as at the 17 April 2025, approximately 4,700 have since withdrawn or been transferred out of OBC pursuant to teach-out arrangements required following the Decision. Those students had been registered on courses delivered by OBC who had been expected to continue with their courses for the rest of their usually three- or four-year duration. OBC has also lost 1,500 new students who had been scheduled to commence their studies after 31 August 2025. 500 NCG students had been intending to commence their courses in September 2025, and 1,000 NCD students would have commenced their courses in the same month, and in January 2026. OBC has had to cease marketing its courses to prospective students and recruiting new students to any of its courses. Two lead providers, BNU and NCD, sent OBC notices to terminate their franchise agreements, respectively on 17 April and 2 May 2025. NCG sent OBC a notice of termination on 27 March 2025 as a result of the findings in the GIAA's reports (see the April Ministerial Submission, at paragraph 4.6). RUL sent OBC a notice of termination on the same date, within a month of its receipt of a letter from the Department dated 29 February 2025, which, on the evidence served in these proceedings, set out "concerns that public funding was at risk" and requested a meeting with RUL. Copy correspondence was requested by OBC and provided on the evening of 12 August 2025.

18. Since the Decision, OBC has not received any funds from the lead providers, save for nominal payments. Outstanding receivables total £18,767,472.63, notwithstanding which OBC has been continuing to teach and support existing students, incurring all associated costs. Shortly prior to the Decision, OBC had been engaged in advanced negotiations with a view to entering into a franchise agreement with Southampton Solent University ("SSU"). SSU's Vice-Chancellor Group and the Board of Governors had approved the partnership, and, on OBC's evidence, subject to validation of the courses, the program could have been operational by September 2025. That business opportunity, it is said, is no longer available to it.

The grounds of challenge

19. Of the seven pleaded grounds of challenge, only four are pursued (the last of which on a contingent basis), identified in the order in which they were addressed by the parties.

a. **Ground 3:** the Decision was ultra vires regulation 5(11) of the 2011 Regulations insofar as it purported to prohibit OBC from providing unspecified designated courses in the future, and, so OBC submits, because it was taken for the improper purpose of putting OBC out of business. [The Secretary of State responds that this ground follows from a misreading of the Decision. No decision has been taken for the future. She further submits that its second limb cannot be advanced because it has not been pleaded and that, in any event, there is no evidence to support it.]

b. **Ground 1:** the Decision contravened essential requirements of procedural fairness. Key materials and representations upon which the Secretary of State relied were not provided to OBC in order that it could know the evidence against it; neither was it informed of the criteria to be applied or the reasons for the Decision. [The Secretary of State responds that OBC has, at all material times, known the substance of the allegations made; been in possession of the relevant documentation, having supplied most of it itself; and known the findings which led to the Decision. In the course of the investigation, it had provided responses and comprehensive representations. It had been entitled to a "fair crack of the whip" and had received much more than that.]

c. **Ground 4:** the Secretary of State has unlawfully interfered with OBC's right under Article 1 of the First Protocol to the European Convention on Human Rights ("A1P1") to peaceful enjoyment of its possessions. [The Secretary of State responds that this ground is unarguable, having regard to *R (Guildhall College Limited) v Secretary of State for Business, Innovation and Skills* [2014] EWCA Civ 986, in which it was held that designation of a course is not a possession for the purposes of A1P1. In any event, the ground is said to lack substantive merit.]

d. **Ground 7:** the Secretary of State has failed to comply with the public sector equality duty for which section 149 of the Equality Act 2010 provides ('the PSED'). [The Secretary of State responds that this ground does not engage with the decision-making documentation, in which the PSED was expressly considered, including by reference to the brief representations made on the point by OBC in the 7 April Representations.]

Permission

20. I consider each of the above grounds to be reasonably arguable and, therefore, grant permission to advance them. I turn to consider their substantive merit.

The merits

Ground 3

21. At the outset of the hearing, in answer to questions from the Court, Mr Glenister stated that the Secretary of State had made no decision on the provision of any future courses by OBC. His position was that regulation 5(1) of the 2011 Regulations operated automatically to designate a course, and that, under regulation 5(10), OBC could run a designated course itself. There was nothing, he submitted, to prevent OBC from entering into fresh franchise agreements to provide the same, or different, courses in the future as a sub-contractor. A lead provider could set up a course tomorrow and would not require prior approval for OBC to deliver it as franchisee. In that event, he said, the basis for the Decision would be a material consideration and the Secretary of State would then be likely to scrutinise whether to revoke the course designation under regulation 5(11). She would be on high alert given the Decision and would need to understand what had changed and why, though the considerations relating to the provision of any future course might be different.

22. Contrary to Mr Coppel KC's submission, Mr Glenister submitted that the above did not mark a change of position by the Secretary of State, whilst acknowledging that the Decision was "open to more than one interpretation" and that "the interpretation adopted by OBC was not unreasonable". There had been no decision to prohibit OBC from operating. The Decision indicated no more than that "as at that time", the Secretary of State had taken a view that she would not in the future designate any courses provided by OBC. As a matter of law, were OBC to enter into a contract tomorrow with a registered provider, the course would be designated and subject to any decision to revoke. In practice, he submitted, it would be sensible for OBC to liaise with the Secretary of State regarding what might happen and any changes which it had made to its practices. Any new franchise agreement would start from a position of deemed designation and it would be for the Secretary of State to revoke that, if given reason to do so.

23. I have no hesitation in considering that submission to mark a change of position on the part of the Secretary of State:

a. Paragraph 3 of the Minded-to Decision stated that the Secretary of State was, "... minded to remove designation from all courses provided by these institutions in partnership with OBC with immediate effect in respect of new students. She is also minded to take steps to ensure that any new partnerships entered into by OBC with other institutions designated for the purposes of student support will not be eligible for student funding." That was consistent with the March Ministerial Submission, which, at section 2.1.1, recommended that the Secretary of State, "Take a 'minded to' decision to remove designation for student finance for all future courses provided by OBC, with the effect that no new students at OBC will be able to receive student funding. ... We would need to make sure that other potential future partners of OBC were aware of this decision."

b. Paragraph 9 of the Decision stated, unequivocally, that the Secretary of State, "... will not designate any new courses delivered by [OBC] in partnership with the five current providers, or with any new providers." That was consistent with section 4.1 of the April Ministerial Submission, which stated, with reference to OBC's representations that it had not been at fault and had been delivering the lead provider's policies, that, "If it were not OBC's fault in any way, then OBC might have an argument about the proposal to prevent them entering new partnerships for the delivery of courses goes too far, but that is not what GIAA have identified." (sic)

c. In its pre-action protocol letter dated 17 April 2025, OBC made clear that the decision under challenge was, "... from 17 April 2025, to not designate any new courses delivered by OBC in partnership with their Lead Providers or with any new providers; and, from 1 September 2025, to remove the designation of all courses provided by OBC in partnership with their Lead Providers or with any new providers for continuing students." The Secretary of State's response, dated 20 May 2025, stated, at paragraph 79, "The Secretary of State took the Minded-to Decision on 19 March 2025 to remove designation for all future courses provided by OBC and all current courses with immediate effect." Nowhere in the response was it said that

the Decision had not extended to the provision by OBC of designated courses in the future.

d. At paragraph 4 of its Statement of Facts and Grounds, OBC framed its challenge in the following way:

"This claim concerns the Secretary of State's decision of 17 April 2025 to prohibit OBC from delivering designated courses on behalf of the Lead Providers (the "Decision") ... The Decision involves two distinct components:

4.1 to remove designation in respect of all courses provided by OBC's existing five partners in conjunction with OBC to take effect immediately in respect of any new students and to take effect from 1 September 2025 in respect of existing students ("the De-Designation Decision"); and

4.2 not to designate any new courses provided by OBC, whether in partnership with the five current lead providers or with any new providers, at any future time ("the Prohibition Decision").

As explained further below, the Secretary of State does not grant designation; rather, a course is "designated" if it falls within the relevant regulatory definition (see paragraph 68 below). Accordingly, by this element of the Decision the Secretary of State is purporting to exercise a power to prohibit OBC from ever again providing designated courses; it is in substance and effect a permanent prohibition on OBC acting as a provider of publicly-funded higher education courses."

At paragraph 98, OBC pleaded that the Secretary of State's statutory powers did not extend to prohibiting a provider from providing designated courses in the future. At paragraph 120.3, it sought a quashing order of "both elements of the Decision as set out above".

At paragraph 1 of her Summary Grounds of Resistance, the Secretary of State pleaded, "It was also decided not to designate any new courses delivered by OBC with existing providers or any new providers." At paragraph 51, she pleaded, "... OBC asserts the Secretary of State does not have a power to prohibit a provider

from providing designated courses in the future. ... It follows that she clearly has a power not to designate courses provided by a particular provider in the future." Indeed, paragraph 48 pleaded the contrary position to be unarguable.

The response to that assertion came at paragraphs 2 and 3 of OBC's Reply, which took issue with the legal basis for the Secretary of State's contention, stating "... A power to revoke designation of a course does not comprise a power to ban a business (presumably in perpetuity) from operating in the publicly funded higher educational sector, as the Secretary of State claims at paragraph 51 SGR. The Secretary of State has simply failed to engage with this important legal argument as set out at paragraph 98 SFG. ... The Secretary of State does not have an untrammelled executive power to ban educational provision by a specific provider as she has purported to do in the Decision."

e. At paragraph 1 of her Detailed Grounds of Resistance, the Secretary of State repeated the assertion first made at paragraph 1 of her Summary Grounds, recited above. At the end of paragraph 63, she repeated her statement, first made at paragraph 51 of her summary grounds, "It follows that she clearly has a power not to designate courses provided by a particular provider in the future." Paragraph 64 was in the following terms:

"In its Reply, OBC points out that, by regulation 5(2), particular courses provided by a registered provider are automatically designated and, as such, to implement the Decision as it applies prospectively the Secretary of State would have to revoke courses where OBC is the franchisee. As set out in the Decision, it is her present position that she 'will not designate any new courses delivered by the College'; to the extent that requires a further decision (either to designate or revoke), then that further decision would need to consider relevant matters that prevail at the time."

I am satisfied that that mealy-mouthed position, immediately preceded as it was by the reiteration of the Secretary of State's power not to designate courses provided by a particular provider in the future, maintained the position that she had both the power "not to designate courses ... in the future", and that her then present position was that she would not designate any new courses delivered by OBC. In my

judgement, the words "to the extent" were designed to hedge her position. Certainly, there was no unequivocal acknowledgment of the need to make a separate decision in relation to any course to be provided by OBC as franchisee in the future, or disavowal of the wording used in the Decision and in the opening paragraphs of the Secretary of State's statements of case.

f. In her witness statement dated 1 August 2025, at paragraph 68, Ms Rimmer simply omitted to refer to that aspect of the Decision whereby the Secretary of State had stated that she would not designate any new courses delivered by OBC in partnership with the five current providers or with any new providers. She did not disavow it or suggest that it had been misinterpreted by OBC.

g. At paragraph 1 of their skeleton argument served on behalf of the Secretary of State, Counsel restated the proposition that, "The Decision further explained that the Secretary of State would not designate any new courses delivered by OBC". Nevertheless, paragraph 3(c) of that document asserted that the relevant element of ground 3 of OBC's challenge "relie[d] upon a misreading of the Decision." The point was addressed at paragraphs 59 and 60 as follows:

"59. Second, OBC asserts the Secretary of State was acting ultra vires where she stated she 'will not designate any new courses delivered by the College in partnership with the five current providers, or with any new providers.

60. This ground appears to misinterpret that sentence when read in context. She plainly has the power not to designate future courses provided by OBC, whether that is to refuse to designate a course (by regulation 5(10)), or revoke a course designated by regulation 5(1) (by regulation 5(11)). However, as a matter of basic public law (i.e. the context), that would require a further decision and would need to consider relevant matters that prevail at the time. The Decision is limited to setting out the Secretary of State's present position."

It was that statement, similarly equivocal to paragraph 64 of the Detailed Grounds of Resistance, which led me to seek clarification of the Secretary of State's position at the outset of the hearing.

24. As Mr Glenister ultimately acknowledged, either a decision has been taken as to the future, or it has not. A present position as to the future would constitute such a decision, but Mr Glenister accepted, on behalf of the Secretary of State, that any future agreement under which OBC was to provide a designated course as franchisee would need to be the subject of an independent future decision based upon the circumstances as they prevailed at that time. For his part, Mr Coppel acknowledged that it would then be for OBC to challenge any adverse decision on its merits at that time. For current purposes, the Secretary of State's eleventh hour acknowledgment that she had not made the so-called prohibition decision means that the vires of any such decision need not be addressed further at this stage, though it may well have a bearing upon consequential orders to be considered following this judgment.

25. I turn to the second limb of Ground 3 which Mr Coppel seeks to advance; that the Secretary of State acted with the improper purpose of putting OBC out of business, in contravention of the *Padfield*[1] principle — that public authorities must exercise their discretionary powers in a way which aligns with the purpose and policy of the enabling legislation. The first question is whether the issue arises for determination on OBC's pleaded case. Mr Coppel relies upon those parts of paragraphs 2 and 3 of its Reply which I emphasise below:

"The S/S does not have power to prohibit OBC from providing higher education services to registered providers [Ground 3]

"2. The S/S has wholly failed to engage with the legal position as it stands after the introduction of the Higher Education and Research Act 2017 ("HERA"), namely that save in the case of 'alternative providers' the S/S does not 'designate' courses. Rather, where courses are provided by or on behalf of registered higher education providers, their courses are 'deemed' to be 'designated' pursuant to the 2011 Regulations as amended: see §§68-69 SFG. Thus, the S/S cannot take a decision 'not to designate any new courses delivered by OBC with existing providers or any new providers', as she states at §1 SGR. A power to revoke designation of a course does not comprise a power to ban a business (presumably in perpetuity) from operating in the publicly funded higher

[1] *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, HL

educational sector, as the S/S claims at §51 SGR. The S/S has simply failed to engage with this important legal argument as set out at §98 SFG.

"3. Pursuant to the statutory scheme, the OfS is the regulator of higher education provision and has powers in relation to higher education providers, including by way of conditions of registration, to ensure standards of educational provision, including financial management. The S/S does not have an untrammelled executive power to ban forever educational provision by a specific provider as she has purported to do in the Decision."

Paragraph 98 of the Statement of Facts and Grounds had pleaded:

"Even assuming the S/S has a power to 'revoke' course designation under Regulation 5(11) instead of this being a matter for the OfS under s. 17 HERA, the power in reg. 5(11) does not extend to a power to prohibit a provider from providing designated courses in the future. In that regard, the Decision is ultra vires."

Paragraph 51 of the Summary Grounds of Resistance had responded to that assertion.

26. Mr Glenister submits that the paragraphs upon which Mr Coppel relies are inadequate to their purpose. First, they do not assert a breach of the *Padfield* principle. Secondly, and in any event, grounds of challenge are not advanced by way of Reply, and there has been no application to amend the grounds themselves. Thirdly, procedural rigour is important in public law litigation: see *R (Talpada) v Secretary of State for the Home Department* [2018] EWCA Civ 841, at paragraphs 67 to 69, per Lord Justice Singh:

"67. ... In my view, it cannot be emphasised enough that public law litigation must be conducted with an appropriate degree of procedural rigour. I recognise that public law litigation cannot necessarily be regarded in the same way as ordinary civil litigation between private parties. This is because it is not only the private interests of the parties which are involved. There is clearly an important public interest which must not be overlooked or undermined. In particular, procedure must not become the master of substance where, for example, an abuse of power needs to be corrected by the court. However, both fairness and the orderly management of litigation require that there must

be an appropriate degree of formality and predictability in the conduct of public law litigation as in other forms of civil litigation.

68. In the context of an appeal such as this it is important that the grounds of appeal should be clearly and succinctly set out. It is also important that only those grounds of appeal for which permission has been granted by this Court are then pursued at an appeal. The Courts frequently observe, as did appear to happen in the present case, that grounds of challenge have a habit of 'evolving' during the course of proceedings, for example when a final skeleton argument comes to be drafted. This will in practice be many months after the formal close of pleadings and after evidence has been filed.

69. These unfortunate trends must be resisted and should be discouraged by the courts, using whatever powers they have to impose procedural rigour in public law proceedings. Courts should be prepared to take robust decisions and not permit grounds to be advanced if they have not been properly pleaded or where permission has not been granted to raise them. Otherwise there is a risk that there will be unfairness, not only to the other party to the case, but potentially to the wider public interest, which is an important facet of public law litigation."

27. I am satisfied that Mr Glenister's position is correct. Grounds of challenge are not advanced by way of Reply, and, in any event, paragraphs 2 and 3 of that document do not plead the *Padfield* issue; they assert that the Secretary of State has acted ultra vires the 2011 Regulations in making the so-called prohibition decision, because those regulations confer no such decision-making power. That is a contention distinct from that which Mr Coppel now seeks to advance, being that the Secretary of State acted for an improper purpose. If it had been intended to advance that, serious, allegation, it ought to have been pleaded as a ground of challenge, to which the Secretary of State would then have been entitled to respond in her grounds of resistance and in evidence. Perhaps in recognition of such matters, there is no application to amend the Statement of Facts and Grounds. Acknowledging that the instant circumstances are not on all fours with those of *Talpada*, the need for procedural rigour remains, and Mr Coppel did not submit to the contrary. Lord Justice Singh's observation that "grounds of challenge have a habit of 'evolving' during the course of proceedings, for example when a final skeleton argument comes to be drafted" are apt here. In some respects, the need for procedural

rigour in relation to an expedited, rolled-up hearing is the greater, as parties are obliged to prepare their evidence and arguments within a truncated timescale. Having regard to all such matters, I am satisfied that the *Padfield* point does not arise on OBC's pleaded case, from which it follows that no question of permission to advance it, or substantive consideration of the issue, arises for determination.

28. The same analysis applies to the interesting question, raised in the course of the hearing, as to whether regulation 5(11) of the 2011 Regulations enables the Secretary of State to revoke the designation of a course, or courses, by reference solely to the identity of the provider of that course. There is simply no pleaded challenge to the vires of the Decision on that basis, and, as before, the question of permission to advance it and its substantive determination does not arise in these proceedings.

29. Accordingly, on the basis that the Secretary of State no longer maintains her position that any decision has been taken as to the future, Ground 3 (as pleaded), need not be determined.

Ground 1

The parties' submissions

For OBC

30. OBC submits that the Secretary of State has acknowledged her duty to act in accordance with general principles of procedural fairness, a matter which is context-specific: see *Bank Mellat v HM Treasury (No 2)* [2014] AC 700 [30]. The critical features said to have framed her duty in this case, and to have required a high standard of procedural fairness, are: the gravity of the allegations made against OBC, amounting to fraud and/or deliberate abuse of the student finance system; the prospectively grave consequences for OBC, entailing the destruction of its business and its permanent closure; and the absence of any countervailing reason of public policy operating to reduce the procedural protections to be afforded to OBC. Only the names of the whistleblowers justifiably required redaction, it is submitted. It is said that no, let alone any good, reason for declining to provide OBC with the fullest opportunity to respond to the serious allegations made against it, and with associated disclosure, has been proffered by the Secretary of State. OBC contends that it had been entitled to full disclosure of the evidence and findings against it, and of the materials relied upon by the Secretary of

State and the GIAA; a full explanation of the criteria and standards which the Secretary of State would apply in taking her decision, so that it could know the "target" at which its representations should aim: see *R (Citizens UK) v Secretary of State for the Home Department* [2018] 4WLR 123 [90]; and reasons which would enable it to understand why the Decision was adverse to it and the conclusions reached on the principal controversial issues, disclosing the way in which any issue of law or fact had been resolved: see *South Bucks District Council and another v Porter (No 2)* [2004] 1 WLR 1953, [36]. It is submitted that the circumstances called for a structured and rigorous process, whereas the process in fact adopted had been hasty and haphazard.

For the Secretary of State

31. The Secretary of State does not dispute that she was under a duty to act with procedural fairness, but challenges the asserted scope of that duty in this case. She emphasises the distinction to be drawn between procedural and substantive fairness, in turn determining whether the Court is to adopt a rationality approach, submitting the former to be limited to the rule against bias and the duty to provide an opportunity to a person whose legally protected interests may be affected by the decision of a public authority to make representations to that authority before — or, at least, usually before — that decision is taken. Simple unfairness, she submits, is not a ground of review: *R (Gallaher Group Ltd) v Competition and Markets Authority* [2019] AC 96, [31] to [41]. A statutory power includes a discretion, both as to the substance of the relevant decision and the way in which it is made. Procedural fairness is said to be context-specific, to include consideration of the relationship of those involved on either side: *Council of Civil Service Unions v Minister for The Civil Service* [1985] AC 37, at 411H. The test to be applied is not whether best practice was adopted, but whether there had been unfairness. The Secretary of State emphasises the following dictum in *R v Secretary of State for the Home Department ex p Doody* [1994] 1 AC 531, SC, at 560H to 561A:

"... it is not enough for [the claimants] to persuade the court that some procedure other than the one adopted by the decision-maker would be better or more fair. Rather, they must show that the procedure is actually unfair. The court must constantly bear in mind that it is to the decision maker, not the court, that Parliament has entrusted not only the making of the decision but also the choice as to how the decision is made."

She further draws from *Doody* that a party must be given sufficient information to enable the making of proper representations, and that, "Fairness will very often require that [the claimant] is informed of the gist of the case which he has to answer" (emphasis added). A party should have a fair crack of the whip (see, for example, *Spitfire Bespoke Homes Ltd v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 958, at [49]).

32. By reference to the above principles, the Secretary of State makes two preliminary overarching submissions, said to provide a complete answer to Ground 1. First, relevant context here is the lack of any direct financial or regulatory relationship between the Secretary of State and OBC, given OBC's status as a subcontractor of lead providers. Acknowledging that the Decision has an impact upon OBC's business interests, the latter are said to be born solely of the commercial contractual relationships which it has negotiated with lead providers. OBC's reliance upon student finance has never been based upon any financial or regulatory relationship with, nor any other expectation generated by, the Secretary of State. In light of that, it is said to be unsurprising that the Department placed greater weight upon the actions of, and responses from, lead providers with which it has a direct relationship and which are responsible for the relevant courses. Secondly, it is said that OBC's challenge fails to particularise a single material finding of which it had had no notice, or in relation to which it had been unable to make representations. The Secretary of State submits that OBC was heard. The GIAA had engaged with it in respect of individual concerns during the investigation. It had then been provided with versions of the GIAA reports on which the Decision had been based, which set out findings and the reasons for them, and it had been able to make detailed representations running to 68 pages, which it had described as "comprehensive" and which had been duly considered by the Secretary of State.

33. As to the specific allegations made, in so far as pursued by OBC in argument:

a. First, OBC argues that it did not have a "proper opportunity to respond to allegations within the GIAA investigation". The Secretary of State submits the question to be whether, in light of the Decision, OBC had had a fair crack of the whip, asserting that it clearly had done so: (a) it had been provided with details of the allegations which had prompted the Secretary of State's decision to initiate an investigation,

albeit that the allegations themselves did not form the basis of the Decision; (b) the GIAA had engaged with OBC during the investigation regarding specific concerns on the basis of documentation which OBC had provided, and OBC had been given an opportunity to comment and to raise concerns with GIAA; and (c) it had then been given an opportunity to make representations in relation to the Decision, including by reference to the GIAA reports, making 68 pages of representations. Plainly, OBC had had a proper opportunity to deal with the issues giving rise to the decision.

b. Secondly, in response to OBC's assertion that it had not been provided with underlying documentation, the Secretary of State submits that her duty was to have provided such information as is considered to have been fair, and that, in some cases, that can be "the gist". There is said to be no duty to provide every decision-making document, certainly outside a court, or decision taken in a formal dispute. OBC had received sufficient information and the documentation required to enable meaningful representations to be made. In order to establish Ground 1, it is said, OBC must set out those documents which it was unfair for it not to have seen, and has cited three, none of which arguably rendered the Decision unfair. The SLC investigation report had formed no part of the reasoning for the Decision, and had not been put before the Secretary of State with the April Ministerial Submission. There is no rule that representations — here, as made by the lead providers in response to the Minded-to Decision — must be disclosed to others: *R v Secretary of State for Health, ex parte United States Tobacco International Inc.* [1992] QB 353, at 370F-G. In any event, (a) the context is submitted to be relevant here, being that OBC had been jointly engaged with the lead providers in providing courses and, thus, ought to have been aligned with their position (albeit a position from which Mr Glenister rowed back in oral submissions); and (b) none of the lead providers' had raised anything requiring of further input from OBC. As to the summaries of the GIAA reports, the versions with which OBC had been supplied had been provided with the April Ministerial Submission, and had formed the basis of the Decision. Those summaries had included only limited redactions, immaterial to the substantive basis for the findings.

c. Thirdly, as to OBC's contention that its ability to make representations had been hampered:

i. the assertion that the GIAA reports had been drafted without OBC having been heard was factually wrong — the GIAA had engaged with OBC regarding its concerns during the investigation and OBC's responses had been recorded in the reports. Even if they had not been recorded, OBC had had an opportunity to make representations on those reports to the Secretary of State;

ii. the GIAA reports had been clear in their findings and OBC had been able to respond, and had responded, to them, in detail;

iii. the time within which a response had been required had been fair, and OBC's assertion that it had not been had been belied by its ability to have made submissions running to 68 pages.

d. Fourthly, it is submitted that OBC has failed to cite any legal basis for the asserted legal duty to give reasons, and that there is no general duty as a matter of common law: *Dover DC v CPRE Kent* [2018] 1 WLR 108 [52]. The point is said to fail on that basis alone. In any event, any such duty is said plainly to have been discharged — the Decision had provided detailed reasons on the points made by OBC in its representations, which were to be read in the context of the GIAA reports. The basis upon which the Secretary of State had taken the Decision is said to be plainly obvious. It is submitted that OBC's argument fails to recognise the very significant failings which had been found, not least in relation to English language assessments and attendance. Whilst OBC identifies a failure to have given reasons in relation to less Draconian options, that matter had been addressed at paragraph 7 of the Decision.

Discussion

34. So far as pursued at the hearing, on OBC's case there were three duties incumbent upon the Secretary of State arising from the gravity both of the allegations which OBC was facing and of the consequences were those allegations to be found to have been

established: (1) to give full disclosure of the evidence and findings made against OBC, and of the materials relied upon by the Secretary of State; (2) to provide a full explanation of the criteria and standards which she would apply in taking her decision, so that OBC would know the target at which its representations should aim; and (3), to give reasons which would enable OBC to understand why the Decision was adverse to it and the conclusions which had been reached on the principal controversial issues, disclosing the way in which any issue of law or fact had been resolved.

The legal principles

35. Per Lord Sumption JSC in *Bank Mellat (No 2)*, at paragraphs 29 to 31 of his judgment, in a passage with which Lord Neuberger agreed at paragraph 178:

"29. The duty to give advance notice and an opportunity to be heard to a person against whom a draconian statutory power is to be exercised is one of the oldest principles of what would now be called public law. In *Cooper v Wandsworth Board of Works* [1863] 14 CBNS 180, the defendant local authority exercised without warning a statutory power to demolish any building erected without complying with certain preconditions laid down by the Act. 'I apprehend', said Willes J at p 190:

'that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects is bound to give such subject an opportunity of being heard before it proceeds, and that that rule is of universal application, and founded upon the plainest principles of justice.'

30. In *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, 560, Lord Mustill, with the agreement of the rest of the committee of the House of Lords, summarised the case law as follows:

'My Lords, I think it unnecessary to refer by name, or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not

immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.'

31. It follows that, unless the statute deals with the point, the question whether there is a duty of prior consultation cannot be answered in wholly general terms. It depends on the particular circumstances in which each directive is made ..."

36. At 179, Lord Neuberger stated:

"In my view, the rule is that, before a statutory power is exercised any person who foreseeably would be significantly detrimentally affected by the exercise should be given the opportunity to make representations in advance, unless (i) the statutory provisions concerned expressly or impliedly provide otherwise or (ii) the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity. I would add that any argument advanced in support of impossibility, impracticality or pointlessness should be very closely examined, as a court will be slow to hold that there is no obligation to give the opportunity, when such an obligation is not dispensed with in the relevant statute."

37. The above, and related, case law on procedural fairness was reviewed and summarised in *Balajigari v Secretary of State for the Home Department* [2019] EWCA Civ 673, at [45]ff, in the context of applications made by migrants for indefinite leave to remain in the UK. At [46], the court observed that the question of whether or not there had been

procedural fairness is an objective question for the Court to decide for itself. The question is not whether the decision-maker has acted reasonably, still less whether there was some fault on the part of the public authority concerned. In *Spitfire Bespoke Homes Limited* (ibid), Andrews J (as she then was) put the matter in this way, at [49]:

"The principles of natural justice apply as much to written appeal processes (such as the one adopted in the present case) as they do to oral hearings. All cases in which a breach of these principles is alleged will turn on their own facts, but the real issue, viewed objectively, is whether the party making the complaint has had a 'fair crack of the whip'. In this context, as in any other case where a breach of the rules of natural justice is alleged, the questions for the Court to decide are whether the complainant (i) knew the case it had to meet and (ii) had a reasonable opportunity to adduce evidence and/or make submissions to meet it: *Hopkins Developments Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 470 at [62]."

38. In *Doody* [18], Lord Mustill held:

"I accept without hesitation, and mention it only to avoid misunderstanding, that the law does not at present recognise a general duty to give reasons for an administrative decision. Nevertheless, it is equally beyond question that such a duty may in appropriate circumstances be implied, and I agree with the analyses by the Court of Appeal in *Reg v Civil Service Appeal Board, ex parte Cunningham* [1991] 4 All ER 310 of the factors which will often be material to such an implication."

39. In *Cunningham* itself, at 318E-H, Lord Donaldson held:

"I accept that however desirable it may be that decision-makers shall give reasons, and even more essential that they shall have them and know what they are, that is not the same as being required by statute or the common law to communicate such reasons to those affected. However, I do not accept that, just because Parliament has ruled that some tribunals should be required to give reasons for their decisions, it follows that the common law is unable to impose a similar requirement upon other tribunals, if justice so requires. As Lord Bridge put it in *Lloyd v McMahon* [1987] 1 All ER 1118 at 1161, [1987] 1 AC 625 at 702-703:

'My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.'

40. The requirements of procedural fairness were recently summarised by Sweeting J in *R (AK) v Secretary of State for the Home Department* [2025] EWHC 1651 Admin, at [78] to [79]:

"The common law readily implies requirements of procedural fairness into statutory frameworks, even where the legislation is silent. When assessing questions of procedural fairness, the court's function extends beyond merely reviewing the reasonableness of the decision-maker's judgment of what fairness required. The court must determine for itself whether a fair procedure was followed, and its function is not limited to a *Wednesbury* review. Fairness requires that procedures provide a fair opportunity for individuals to present their cases properly. The principle of natural justice includes the requirement that an individual be given a fair opportunity to correct, contradict, or explain evidence relevant to a decision concerning them."

41. In *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812, [2018] 4 WLR 123, the Court of Appeal confirmed that it is possible to challenge a system, and not merely an individual decision, as being unfair. In the same case, Singh LJ set out general principles concerning the duty of fairness at common law, including when reasons must be given and their adequacy:

"i) What fairness requires depends on the particular legal and factual context. As observed by Lord Mustill in *Doody* [1994] 1 AC 531, [1993] 3 WLR 154, it sometimes may not be possible to give a person the opportunity to make representations before a

decision is taken and that opportunity may have to be given afterwards, eg for reasons of urgency or the need to maintain confidentiality [§85];

ii) The fact that adverse decisions were sometimes taken because a person is not believed reinforced the view that procedural fairness did apply to the SSHD's operation of the expedited scheme [§87].

iii) Fairness requires that a person is provided with reasoning such that they have a meaningful way of knowing how to achieve a different outcome; fairness requires that a person knows what the 'target' was to aim at [§90].

iv) One of the fundamental reasons why the law imposes a duty to act fairly is to provide for the ability to challenge the legality of a decision and so to vindicate the rule of law [§91]."

42. As was held in *R v Health Secretary, ex parte US Tobacco International Inc* (ibid), at 370D-E:

"It is well established that the claims of natural justice are particularly strong where a party is being deprived of a right previously enjoyed, especially if it involves loss of livelihood. See *McInnes v Onslow-Fane* [1978] 1 WLR 1520, and *R v Barnsley Metropolitan Borough Council, ex parte Hook* [1976] 1 WLR 1052."

The legislative framework in this case

43. The Secretary of State has responsibility for the funding of education through student finance. Student loans are administered on her behalf by the SLC, a body sponsored by the Department. The Secretary of State is not responsible for the quality of higher education, which falls within the regulatory remit of the OfS, as set out in HERA. Under section 3 of HERA, the Office must establish and maintain a register of higher education providers. The lead providers are registered higher education providers under HERA and are obliged to meet the initial and ongoing conditions for registration laid down by the OfS. OBC is not, nor is it required to be, a provider registered under HERA.

44. Under section 22(1) of THEA, regulations shall make provision authorising or requiring the Secretary of State to make grants or loans for any prescribed purposes to eligible students in connection with their undertaking higher education courses designated for the purposes of that section by, or under, the regulations. The relevant regulations are the 2011 Regulations.

45. So far as material, regulation 5 of the 2011 Regulations provides:

"**5.—** (1) ... a course is a designated course for the purposes of section 22(1) of [THEA] ... if it is --

"(a) mentioned in Schedule 2;

(b) one of the following —

(i) a full-time course;

(ii) a sandwich course; or

(iii) ...;

(c) of at least one academic year's duration…or, in the case of a postgraduate pre-registration course, of at least two academic years' duration;

(d) either —

(i) wholly provided by a registered provider, or provided by a registered or unregistered provider on behalf of a registered provider in England;

...

(da) substantially provided in the United Kingdom; and

(e) for a course beginning on or after 1st September 2012 which falls within paragraph 1, 2, 4, 7, 8, 9, 10 or 11 of Schedule 2 —

(i) a course which leads to an award granted or to be granted by a body falling within section 214(2)(za), (zb), (a) or (b) of the Education Reform Act 1988; and

(ii) the teaching and supervision which comprise the course has been approved by that body.

(2) In paragraph (1)(e) 'award' means any degree, diploma, certificate or other academic award or distinction.

...

(2ZA) A course is not a designated course if its designation has been revoked or is suspended under paragraph (11).

...

(7) For the purposes of paragraph (1)(d) —

(a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;

(aa) a course is substantially provided in the United Kingdom where at least half of the teaching and supervision which comprise the course is provided in the United Kingdom;

...

(10) For the purposes of section 22 of the 1998 Act and regulation 4(1) the Secretary of State may designate courses of higher education which are not designated under paragraph (1)….

(11) The Secretary of State may revoke or suspend the designation of a course which is designated under this regulation."

46. The power which was invoked by the Secretary of State when taking the Decision was that conferred by regulation 5(11). It is common ground that the effect of regulation 5(1) is that courses delivered by OBC on behalf of lead providers are automatically designated, on the basis that they are provided on behalf of the registered lead providers which have met the OfS' conditions of registration, and that there is no requirement that application be made for designation by the Department, or by any other body. The regulatory remit of the OfS covers registered providers' policies and practices relating to student recruitment; admissions; English language assessments; and attendance monitoring. The OfS monitors the compliance of each registered provider with conditions of registration, and has the power to suspend registration or deregister the provider altogether. Sections 16 to 19 of HERA set out the powers of suspension and deregistration vested in the OfS and the procedure to be followed in each case.

Section 20 provides for a right of appeal to the First-Tier Tribunal against a decision to deregister.

47. On the evidence of Professor Inam, at all material times OBC has only recruited students who possess "home fee status" and does not hold a Tier 4 visa license for recruiting international students. It delivers its higher education programmes through franchise agreements with the lead providers, which confirm to the SLC the attendance of those who study at OBC, allowing those students to apply for funding administered by the SLC. The lead providers receive funding directly from the SLC, from which they pay fees to OBC. Professor Inam's evidence is that, if the Decision is not overturned, "It effectively signals the end of OBC as a viable educational institution. The Decision immediately prevents any new students from accessing student finance if they wish to study at OBC. This has halted all future recruitment and has profound implications for the College's financial sustainability and its ability to plan for the future. Perhaps even more devastatingly, from 1 September 2025, our currently enrolled cohort of approximately 4,632 continuing students will also lose their eligibility for student finance. For the vast majority of these students, continued access to student loans and grants is essential for them to be able to afford their tuition fees and living costs. Without this support, most will be unable to complete their courses of study." Professor Inam goes on to state that the livelihoods of OBC's dedicated staff members are directly threatened and that the reputation of OBC, built over nearly four decades, has been severely damaged by the Department's actions and associated public statements, including those made by the Secretary of State. He says that the significant investments which OBC has made in its campuses; modern facilities; dedicated staff; and the continuous improvement of the student experience, are now at risk of being lost entirely.

48. Even leaving aside the evidence just summarised, the character of the decision-maker; the legislative framework within which she operates; the nature of the decision to be made; and its self-evidently far-reaching consequences, in my judgement collectively point to the need for a high level of procedural fairness (see *Cunningham*, citing *McMahon*, above). Furthermore, whilst Mr Glenister submitted that, to his knowledge, the Secretary of State had not known, at the time of the investigation, that all students were publicly funded, paragraphs 23 and 287 of the 7 April Representations had made clear that, were the Minded-to Decision to be implemented, it would put OBC out of

existence. On any view, the implications of any de-registration of the courses which it provided, and within a short period of any such decision, must, and certainly ought to, have been appreciated. Mr Glenister informed me that, "to an extent, [he] accept[ed] the need for a high standard of procedural fairness where a franchisee may close as a result of a decision", whilst submitting that the specific circumstances of OBC would not require a procedure which differed from that applicable to any other franchisee. As was held in *R v Health Secretary, ex parte US Tobacco International Inc,* the claims of natural justice are particularly strong where a party is being deprived of a right previously enjoyed, especially if it involves loss of livelihood.

49. Furthermore, the nature of the allegations faced by OBC, extending to fraudulent activity on its part, with all that that would entail if established, of itself and in combination with the factors already identified called for a high degree of procedural fairness. It is against that standard that the procedure in fact adopted falls to be judged. Before turning to consider the requisite constituent elements, I note the following matters:

a. At no point, including in the Decision itself, did the Secretary of State identify the criteria and standards by reference to which OBC's conduct was to be judged, in particular in the absence of any finding of fraud. I accept Mr Coppell's submissions that, in that sense, the 'target' at which any representations were to be aimed was unknown to OBC.

b. The Decision was to be taken on the basis of the findings made by the GIAA, following its own review of the material and representations with which it had been provided. Nevertheless, the Department refused OBC's request for a copy of the SLC's analysis and of the whistleblowing allegations which had given cause for concern (suitably redacted to protect the relevant individuals' identity), whilst granting to the GIAA access to such material, citing confidentiality and data protection sensitivities. In fact, following its late disclosure in these proceedings, it is clear that such sensitive information as the SLC report contained related to students of OBC, which would have had access to their data in any event. At the very least, the analysis could have been provided with limited redactions. Similarly, the identity of any whistleblower could have been protected by redaction.

c. By letter dated 26 September 2024, OBC was informed that:

"GIAA's investigation is expected to take place in phases. The initial phase is expected to begin this or next week. GIAA will then report emerging findings to the Department. This will determine the nature and scope of any additional investigation activity needed. The format in which the GIAA report on its investigation will be decided based on the findings.

The GIAA will report to the Department on the matters to which the allegations relate; the scope is set out in my letter of 11 September 2024. This will be a formal report in Word or PDF format for the internal use of the Department to provide an assessment on the risk to public funding. The report will not contravene any safeguarding principles or GDPR principles. A draft of the report will not be shared with OBC, but the Department will provide OBC with a summary of the key findings. The Department will share details with SLC, the OfS and your partner organisations only where it is necessary and relevant to any additional steps the Department takes following the conclusion of the GIAA audit."

d. In the event, however, OBC was provided with redacted versions of a summary of each of the full interim and final GIAA reports. The full, unredacted reports were not disclosed to OBC until the Friday before the hearing, for reasons which were not satisfactorily explained, and at a time which Mr Glenister acknowledged to be "not ideal". They were included within a supplementary hearing bundle in which the text which had been removed from the summary reports with which OBC had previously been provided was highlighted:

i. In the interim report, it included all references to 12 appendices, running to hundreds of pages of data from which the GIAA's conclusions had been drawn and to the index of those appendices, such that even their existence could not be discerned; the criteria by reference to which the sample of 200 students (representing 4 per cent of OBC's student body), had been selected by GIAA for analysis, being those giving greatest cause for suspicion rather than a randomly selected sample; the identifying reference for a student in respect of whom an attendance record was said to have been blank, together with the relevant date,

which was considered to indicate either that it was possible for a lecturer to submit an attendance register containing blank entries, or that the record had been amended after submission; the identifying references for two students whom, it was said, had been unable to respond in English to questions asked by representatives of GIAA, "and [who] in all probability did not understand our questions"; and the next steps which the GIAA had recommended.

ii. In the final report, the following recommendation was redacted from paragraphs 4, 7 and 8 of the executive summary:

> "4. Immediate remedial actions, including strict documentation protocols, consistent verification procedures, and strengthening the admission process for mature students, are needed to ensure compliance with stated policies. To address these concerns, DfE may wish to consider ensuring that OBC take corrective actions that include developing standardised procedures for obtaining and validating employment references, producing clear guidelines for accepting alternative documentation, and conducting regular audits of documentation compliance.
>
> …
>
> 7. To improve processes, DfE should request that OBC take immediate corrective actions to address these concerns.
>
> 8. Additionally, DfE should consider extending any further assurance activity to include OBC's partner organisations. This will help to determine whether they are aware of any issues, such as those highlighted within this report and identify whether their processes for managing admissions, especially regarding those students attending OBC, are robust and fit for purpose."

Additional redactions included the recommendations made by the interim report; the identity of a student who had been withdrawn from a course on 16 November 2004, having failed to attend 98 per cent of that student's classes; the fact that the GIAA's analysis of documentation had identified 55 interview

forms presenting strong indications that interviewers had recorded identical, or close to identical, responses to questions, as set out in a redacted appendix, and the examples given; the remedial actions which might be considered to address concerns raised in relation to the academic documentation and verification processes at OBC; the recommendations made as to the strengthening of verification procedures and to ensure consistent policy implementation in relation to students' employment history documentation; the identity of three students who were considered not to have provided evidence of settled status and the recommendations made to improve controls and governance arrangements in relation to immigration status; the recommendations made in relation to checks for valid proof of address documentation and adherence to catchment area requirements; and the next steps in policy enforcement which had been recommended and which, notably, did not include de-designation of any course. As with the interim report, all of the 12 appendices, together with the index identifying them, had been redacted.

Strikingly, in each summary, all of the excised material had simply been removed, rather than redacted in a form from which it was possible to see that a redaction had been made. Paragraphs beneath the deleted text had been renumbered so that they followed sequentially from the previous unredacted section. The effect, in each case, was the provision of a document which was materially different from that which would be considered by the Secretary of State and her officials, and where OBC had no means of appreciating that prior to disclosure in these proceedings, made late last week. Mr Glenister informed me that the redactions had been made by the GIAA and that the Secretary of State had taken legal advice on the redacted elements. The March Ministerial Submission informed the Secretary of State that OBC would "be provided with a redacted version of the GIAA report and given an opportunity to correct any factual errors before you and/or the Secretary of State reach any final decisions on removing designation of courses provided by OBC". It did not indicate the position summarised above.

e. At paragraph 47 of her witness statement, Ms Rimmer stated as follows:

"On 20 March 2025, I wrote to OBC confirming that GIAA had completed its investigations. I provided OBC with summaries of the interim report and final report ('the GIAA Reports'), as had been promised to OBC in earlier correspondence. There was a cover note on each that the original report had been redacted 'either to protect the personal data and identity for those involved in the investigation or to protect the confidentiality of the methods of investigation to preserve the integrity of ongoing and future investigations undertaken by Counter Fraud & Investigations'. A small number of further redactions were made to information that was not relevant to or outside the scope of the investigation, such as recommendations from GIAA. The reports provided were detailed, running to 21 and 18 pages. Thus, while OBC was not provided with the same exact reports as the GIAA provided to the Department, it received all the information on the relevant findings that were required for it to respond in full."

That statement was materially misleading; there had been extensive redactions made, including of all of the underlying data and the method by which the student sample had been selected for analysis. Mr Glenister informed me that, in the course of preparing the full GIAA reports for disclosure during the latter half of last week, it had become apparent that they had been accompanied by appendices and that, when Ms Rimmer prepared her statement, that had not been something which she had realised. Prayed in aid was the "pressure resulting from the attenuated timetable following the order for expedition, the evidence having been filed within 11 days of that order". That does not explain why, at paragraph 49(b) of the Detailed Grounds of Resistance, it was pleaded that the summaries of the GIAA reports had "included only limited redactions, and which were immaterial to the substantive basis for the findings", a contention repeated in identical terms at paragraph 48(b)(ii) of the skeleton argument submitted on behalf of the Secretary of State.

f. There was no good reason for the redactions made, or for the withholding of the material to which the GIAA had access. Whether or not the GIAA's terms of reference extended to the making of recommendations, the recommendations made served to indicate the gravity of any failings identified and the proportionate sanction therefor. As Mr Glenister acknowledged in the course of the hearing, "I do not say that there is anything which could not have been provided at an earlier stage.

Inevitably, as things progress in Court, there is greater scrutiny on what can and cannot be provided. The Court needs to be satisfied that there was a good reason for withholding information, but that is not the test; the test is whether OBC had sufficient information to respond." Yet the fact that there was no good reason for withholding material to which the investigating body and the decision-maker would have regard, tells heavily against the fairness of the procedure. In *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649, a case concerned with the fairness of a consultation process preceding a decision to reduce the amount payable to criminal defence solicitors under the litigators' graduated fee scheme, the Divisional Court held, at [73] and [74], that:

"73. In principle and consistently with these authorities, in judging whether non-disclosure of particular information made a consultation process so unfair as to be unlawful, relevant considerations in our view include: (1) the nature and potential impact of the proposal put out for consultation; (2) the importance of the information to the justification for the proposal and for the decision ultimately taken; (3) whether there was a good reason for not disclosing the information; and (4) whether consultees were prejudiced by the non-disclosure.

74. In relation to the last of these matters, whilst it is no part of the court's function to assess the merits of the arguments for or against the proposal, it is relevant in our view in judging whether the process was fair to consider whether the non-disclosure of information has prejudiced consultees by depriving them of the opportunity of making representations which it would have been material for the decision-maker to take into account."

I shall address the sufficiency of the information in fact provided and the question of prejudice to OBC in due course.

The requirements of a fair process in this case

50. Having regard to all of the above, I am satisfied that, viewed objectively, on the facts of this case, absent any countervailing reason of public policy, fairness dictated that OBC be entitled to full disclosure of the evidence and findings against it, subject to minor

redactions, for example, of the name of any whistleblower. As Sweeting J put it in *AK*, "The principle of natural justice includes the requirement that an individual be given a fair opportunity to correct, contradict, or explain evidence relevant to a decision concerning them." That was particularly important given the reach of the decision which the Secretary of State then considered that she had power to make, but required in any event. It is only on that basis that OBC could be afforded a fair crack of the whip. That is not, as Mr Glenister urges, to adopt an impermissible counsel of best practice. OBC could not address the evidence on which heavy reliance was placed, or, hence, understand the full case which it had to meet, unless told what it was. In order that it could address that evidence, it was necessary that OBC be informed of the target at which its representations ought to be aimed, including the criteria and standards which the Secretary of State would be applying when making the Decision. Furthermore, having invited and received detailed representations from OBC ranging over numerous allegations made against it, including of fraudulent activity, fairness dictated that the reasons for: (1) rejecting those representations which she did reject; (2) considering that her unspecified standards had not been met; and (3), rejecting any lesser sanction or step recommended by the GIAA and/or sought by OBC, be adequately explained in order that there be an effective means of detecting the kind of error of fact and/or law which would entitle the Court to intervene: see *Dover DC v CPRE Kent* (ibid), at [51].

51. In my judgement, the following documents and information were necessary to enable OBC properly to respond to adverse findings by the GIAA or the Secretary of State:

a. the GIAA's full reports, which had been placed before and considered by the Secretary of State. They were provided to the Secretary of State as attachments to the March Ministerial Submission which preceded the Minded-to Decision, and the advice to the Secretary of State in that submission had relied extensively upon the GIAA's conclusions, as did the advice in the April Ministerial Submission. Like Sweeting J, in *AK* at [83], albeit in a different context, I consider that fairness is not satisfied merely by allowing OBC to answer questions based on the investigator's view of the material. Effective participation requires OBC or its representatives to engage directly with the investigation's conclusions. That position is a fortiori, where the summary reports provided omitted material information and did not detail or append the evidence on which reliance was placed. It is no answer to submit, as

does the Secretary of State, that OBC had been the original source of the data. First, if that were so, there could be no objection to its provision on the grounds of confidentiality or sensitivity. Secondly, at the very least, OBC had not been the source of the SLC report, or of the whistleblowing allegations. Thirdly, whilst it had been the source of over 3,000 documents, in the very short time which it was accorded to make representations, it could not be expected to trawl through that material with a view to identifying possible sources of the summary conclusions with which it had been provided, and, in any event, could not know how the GIAA had analysed that material. I am further satisfied that: (1) the full interim GIAA report ought to have been provided to OBC before the Minded-to Decision was taken, affording it the opportunity to comment on the GIAA's provisional conclusions before they became final; and (2), that OBC ought to have been provided with both of the full GIAA reports before, rather than after, the Minded-to Decision had been taken, at which point OBC was in a far weaker position: see *R (Bloomsbury Institute Ltd) v The Office for Students* [2020] ELR 653, at [72];

b. the GIAA's notes of the meetings which it had had with OBC staff members and students during its site visits, without which OBC was unable properly to respond to the findings derived from those meetings;

c. specific details of the single attendance record which the GIAA had concluded to have been blank — OBC's own checks had revealed no such record;

d. the GIAA's analysis of raw data supplied by OBC. For example, the GIAA had said that its "review of attendance data established that 67 per cent of our sample had missed more than 60 per cent of their respective courses". Absent details of GIAA's methodology, OBC was not even in a position to comment on the factual accuracy of that finding, which the Department had invited it to do;

e. details of the 15 BNU students who were said by the GIAA to have had more than 20 consecutive unauthorised absences. OBC had reviewed the student records which it had provided to the GIAA and had been unable to identify even one BNU student who had had 20 consecutive unauthorised absences. Without that information, OBC was unable to provide context in any individual case, or to identify any data input

errors in the course of submission. Before me, Mr Glenister made clear that the GIAA had drawn no distinction between authorised and unauthorised absences. It would have been appropriate so to have informed OBC at the time of the investigation;

f. details of the 28 students who had responded to the GIAA's random survey of 200 OBC students. All that OBC had known was that, of the 28 respondents, nine were in London, 17 were in Nottingham and two were in an unspecified location. Since OBC teaches multiple lead providers' classes at its various locations, it could not engage with the GIAA's finding that students did not attend classes, for example by identifying each student's course attendance requirements, which varied according to lead provider;

g. details of the students whom the GIAA had found to have fallen below attendance thresholds and whom OBC had failed to withdraw or suspend. In the absence of such detail, OBC had no opportunity, for example, to explain that a student's lack of attendance had been authorised, or to identify mitigating circumstances for particular students;

h. the representations made by lead providers in response to the Minded-to Decision. As Mr Glenister accepted in the course of his oral submissions, the interests of the lead providers in the context of the allegations made were not necessarily aligned with those of OBC. I am satisfied that his objection that another party's representations need not be circulated, prompting a further round of consultation, other than when a new point arises, misses the point. At paragraph 66 of her witness statement, Ms Rimmer stated that, "When considering the representations, the Department put most weight on the views submitted by the Lead Providers, as those are the organisations who are ultimately most responsible for the students and for the oversight of the policies and processes in place at OBC." At paragraph 67, she continued, "The Lead Providers did not contest the findings of the GIAA reports and acknowledged the severity of the findings ..." First, in circumstances in which the greatest weight was to be put on material which OBC had not been shown, it cannot be said that the requirements of natural justice had been satisfied. Secondly, in fact, albeit unknown to OBC at the time at which it had made the 7 April Representations,

RUL had raised similar concerns about the accuracy of certain data, yet that fact had not been communicated to OBC;

i. the IP address referred to at paragraph 4.3 of the March Ministerial Submission, which was said, in the Department's letter of 12 July 2024, to have been responsible for 656 student applications to OBC, details of which would have enabled OBC to have made focused enquiries.

52. In the course of their oral submissions, both parties took me through a lengthy navigation of the material which, as the case may be, OBC did, and did not, have at its disposal, and the representations which, respectively, had and might have been made. Albeit that I have considered all such points with care, I have concluded that, ultimately, OBC was deprived of the opportunity to respond to serious allegations by reference to the material with which the investigating body and the Secretary of State had been provided, and to the analysis of the investigating body. The matters to which further representations would have gone are set out at paragraphs 26 to 39 of Professor Inam's fourth witness statement. They are extensive and it cannot be said that they would have made no difference to the outcome, including as to the appropriate sanction in the event of adverse findings made against OBC. I accept Mr Glenister's submission that OBC was consulted during the investigation and was given an opportunity to provide representations, but both opportunities were afforded in the context of inadequate, incomplete and misleading information, and over a very short period, certainly by comparison with that which was accorded to the GIAA to analyse the relevant material. In those circumstances, it cannot be said that the requirements of natural justice in this case were satisfied.

53. I also reject Mr Glenister's further submission that OBC ought not to be heard to complain about a dearth of information in relation to allegations on which ultimately no adverse finding was made. He exemplified that submission by reference to the redacted footnote in connection with which the GIAA had concluded that it was possible to manipulate records after the register had been submitted, observing that no finding of manipulation had been made in the Decision. His position was that, having noted the GIAA's conclusion that manipulation was possible, OBC could have made representations to the effect that it was not, and had had no need to know the identity of the particular student in order to address that "binary question". Mere assertion, without

an understanding of the material which was said to have given rise to the investigator's finding and an opportunity to meet it, would have been unlikely to have availed OBC. In practice, Mr Glenister's example served simply to underline the lack of procedural fairness in the Secretary of State's approach. Mr Glenister further emphasised that, in the event, no finding of fraudulent conduct had been made. That, too, is to miss the point, in particular in the context of the following submission made at paragraph 2 of his skeleton argument:

"The Decision followed an investigation which found wholesale irregularities in courses being delivered by OBC on behalf of registered providers. For example, within a sample of 200 students who were being taught by OBC under the responsibility of a Lead Provider, 134 had missed more than 60% of their classes (23 students had missed over 90% of their classes); only 2 students had provided documentation to prove they had completed an English assessment; and attendance policies were not being followed by either OBC or Lead Providers. At the time of the Decision, the Secretary of State noted a lack of recognition by OBC of any failings at all on its part. It is notable that, even now, that remains the case."

In my judgement, Mr Coppel rightly characterised that stance as Kafkaesque — OBC had received the Minded-to Decision and had set out the detailed basis of its disagreement with it, having been invited to comment and raise factual challenges, yet the material provided was viewed as indicative of a lack of recognition by OBC of its failings.

The reasons given by the Secretary of State

54. In particular against the above background, but in any event, the reasons given for the Decision, set out in paragraphs 5 to 8, were inadequate:

"5. Your letter refers on several occasions to GIAA's investigations having not uncovered fraud. The Secretary of State's decisions have not been made solely on the basis of whether or not fraud has been detected. She has also addressed the issue of whether, on the balance of probabilities, the College has delivered these courses, particularly as regards the recruitment of students and the management of attendance, in such a way that

gives her adequate assurance that the substantial amounts of public money it has received in respect of student fees, via its partners, have been managed to the standards she is entitled to expect.

6. You argue that, insofar as GIAA may have found weaknesses in the management and/or delivery of courses by the College, that this is solely the responsibility of the lead providers. The Secretary of State considers, however, that the GIAA report identifies numerous instances where it is not possible to provide assurance that the College has implemented these policies, whether or not they are adequate, for instance, in respect of admissions and attendance monitoring. The Secretary of State has passed the GIAA reports to the OfS, the regulator of the College's partners, so that it may consider whether further regulatory action in respect of those partners is required.

7. The Secretary of State has considered whether the alternative approach proposed by the College's Board of Governors (paragraph 282 of your letter) would provide her with the assurance in respect of public money she requires. She notes that this plan is not set out in any detail by the College but would require her to accept that the Board, which has presided over the current problems, can deliver the necessary changes. She considers that, at the very least, the Board has shown a consistent lack of curiosity and has presided over the multiple failings of internal processes identified by GIAA. She also notes that the College has not provided a detailed response on actions designed to address the identified weaknesses. On this basis, she does not consider this would be an adequate, proportionate response, as it would not provide the assurance she requires.

8. GIAA has carefully considered the points raised in your letter. In GIAA's view, most of the issues raised relate to interpretation rather than factual accuracy. GIAA is satisfied that none of the concerns identified have a material impact on its findings, conclusions, or overall assessment."

55. In the context of the inadequate material provided to OBC, that explanation did not suffice. The weaknesses identified by the GIAA had derived from evidence and analysis of which OBC had not been suitably informed and to which it had not been in a position comprehensively to respond. The Secretary of State's stated view of OBC's asserted multiple failings was inevitably tainted by that issue. The criteria and standards which

she had applied had not previously been, and were not in the Decision, identified. Whilst observing that OBC had not provided a suitably detailed response regarding the actions required, the Secretary of State had failed to record the fact that the GIAA's own recommendations had not extended to removal of course designation, and, generally, to explain why the recommendations which the GIAA had made, or other lesser sanction, would not represent a proportionate response. Paragraph 8 dismissed in four lines the 68 pages of representations on which the Secretary of State now places such emphasis, relying simply upon the GIAA's own reasons and failing to explain its rationale for the sweeping final sentence of that paragraph, or why she had adopted it.

56. From all of the above, it is clear that OBC was prejudiced in its ability to understand and respond to the matters of the subject of investigation, including as to the appropriate sanction, and to understand the reasons for the Decision. Ground 1 succeeds. I shall address disposal at the end of this judgment.

Ground 4

The parties' submissions

For OBC

57. OBC asserts two categories of possession, being its five contracts with its lead providers and the marketable goodwill in its business (of which those contracts are said to constitute one aspect, along with the value of its name, brand, employee and student relations, and the partnerships into which it has entered with others). It is said that a signed and part-performed commercial contract is, prima facie, a possession: see *Solaria Energy UK Ltd v Department for Business, Energy and Industrial Strategy* [2020] EWCA Civ 1625, at [34], and that its contracts with lead providers are analogous to the concluded contracts identified as possessions at [47] to [56] of *Breyer Group v Department of Energy and Climate Change* [2015] 2 All ER 44, and at [76(3)] to [76(5)] of *Breyer* in the TCC. *R (Bloomsbury Institute Limited) v OfS* [2020] EWHC 580 Admin, at [321] and [325] is said to be distinguishable on the bases that:

a. cases on intangible rights, such as a licence or its equivalent, are "of no real relevance" where goodwill is said to comprise concluded contracts: *Solaria* at [31];

b. whilst registration with OfS is not marketable, OBC is able to market its business, including its existing contracts, to other providers or potential acquirers of its business. It is permitted to assign its rights, or to subcontract under each of the franchise agreements with the consent of the university. (See, for example, clause 37.1 of the NCG franchise agreement; clause 20.1 of the NCD franchise agreement; and clause 23.5 of the RUL franchise agreement.);

c. the Decision affected all of OBC's students, including the 5,000 students who had been studying at OBC as at 17 April 2025, many of whom had been enrolled on courses which OBC would have delivered to them for years to come;

d. OBC's case is not that its goodwill derives from the designated status of the courses which it teaches (such status being of primary concern to the lead providers whose courses they are), rather from its past efforts to have built up its business to the point at which it had stood prior to the Decision.

58. The Decision is said dramatically to have interfered with OBC's possessions. Aas previously noted, its lead providers have given notice of termination of the current contracts and all of OBC's existing students will need to be transferred away by 1 September 2025. OBC will no longer be entitled to teach those students, or receive payment for so doing. De-designation of all courses for current students, effective from 1 September 2025, will also, it is said, compel OBC to close and cause its goodwill to be worthless. The position is said to be a fortiori that in *Breyer*, in which a proposal to reduce public funding on which concluded contracts had depended was held to have constituted an interference with those contracts and with the goodwill which depended upon them. In this case, each of the franchise agreements is said to be premised upon the designation of courses provided by OBC, with the consequence that SLC funding will be available for them. (See, for example, the RUL franchise agreement, at clause 26.1, and Schedule 1 to the NCG agreement, at paragraphs 8.4 to 8.5.) The Decision is submitted entirely to have removed access to public funding upon which the relevant contracts depend, though the present case is said to be on all fours with *Breyer* to the extent that the practical reality for OBC is "a decisive and catastrophic effect on its business, which the defendant intended to bring about": *Breyer* in the TCC, at [124].

59. OBC submits that the interference with its rights was unlawful under domestic law by reason of the matters the subject of Grounds 1, 3, and 7. It is further said to have lacked the requisite degree of clarity and foreseeability, and so the requisite quality of law. The discretionary power in regulation 5(11) of the 2011 Regulations is said to be uncircumscribed and to have been applied in a wholly opaque manner. The standards of assurance and expectation to which the Decision refers are said to have been entirely subjective and unconstrained by law: see *R (P) v Secretary of State for Justice* [2020] AC 185, at [17]. Alternatively, if justification is a relevant consideration, OBC submits that the Secretary of State cannot satisfy the Court that the termination of its business of providing higher education bears a proportionate relationship to the statutory purpose of regulation 5(11), being the protection of public funds:

a. The GIAA did not find any fraud or abuse of public funds on the part of OBC, or even any particular instance of public funding having been misdirected, and neither did the Secretary of State;

b. The essential reasoning in the Decision was flawed and could not be justified, underpinned as it was by adverse findings against OBC in respect of attendance and admission requirements. As to the former, OBC now knows that RUL's representations to the Department had pointed out that the GIAA had applied the wrong attendance thresholds, such that its conclusions were "not supported by the evidence, and we ask that it be corrected". Albeit corroborative of OBC's position, the GIAA stated, wrongly, that, "correspondence received from RUL confirmed" that the correct conclusion had been reached. As to admissions, the GIAA had made a significant finding that there was no evidence that 198 of 200 students had completed an English assessment, which it had declined to modify notwithstanding that OBC had provided copies of English tests which disproved that conclusion;

c. It is said that less intrusive measures could and should have been taken in line with the GIAA's recommendation, and as the Department's decision-making guidance also suggested. The Secretary of State was not advised about either matter. The only explanation given in evidence as to why the most severe sanction was called for — that OBC had failed to make changes to its procedures during the GIAA investigation — was misconceived for the reasons previously given;

d. The treatment of other providers who had faced allegations similar to those levied against OBC but whose cases had not featured in The Sunday Times, had been more measured. For that submission, Mr Coppel relied on the third witness statement of Professor Inam, at paragraph 97.

60. Damages for wrongful interference are said to be necessary to provide OBC with just satisfaction. On the appropriate counterfactual, which is said to be that the Decision had not been taken (see *Mott v Environment Agency* [2020] Env LR 6 [6]), the Secretary of State had caused OBC substantial economic harm for which it ought to be compensated in damages. It is submitted that a quashing order alone will not suffice. The Court is invited to order that, in principle, OBC is entitled to damages, to be assessed by reference to the diminution in value of its possessions.

For the Secretary of State

61. The Secretary of State submits that there has been no breach of OBC's A1P1 rights. First, it is said, there was no interference with a "possession" falling within the ambit of A1P1, a point submitted to have been conclusively determined in *Guildhall College*, at [72] to [73]:

"72. Like the judge, I do not regard the designation of the two courses as any form of possession within [A1P1]. Any right that the College may have to receive the payment of fee loans derives from the fact that students have enrolled on and begun a designated course. The entitlement to a loan is an entitlement of the student derived from his falling within the scheme of student support and signing up for a designated course. The designation itself gives no right to funds; nor does its absence preclude the College from providing educational services. It is something without which the College cannot expect to attract students who are not privately funded and with which it could expect to do so — as was the case with the Tier 4 licence which would enable or assist overseas students to acquire a visa.

73. The case is to be distinguished from *R (Infinis Plc) v Gas and Electricity Markets Authority* [2013] EWCA Civ 70 where the accreditation under the Renewables Obligation Order 2009 that was refused would give the electricity provider who

possessed it an absolute right not to pay a charge. In the present case the designation cannot be purchased, nor can it be sold. If the business was sold the designation would have to be renewed. ..."

62. OBC's attempt to circumvent *Guildhall College* is submitted to be misconceived for the following reasons:

    a. The agreements between OBC and the lead providers do not, nor could they, provide any contractual right to the designation of a course, given that the Secretary of State is not a party to them. The courses upon which the Decision has an impact are those of the lead providers. It is they, if anyone, who have a "possession", not OBC. Accordingly, there is no possession belonging to OBC which relates to designation. OBC's argument, it is said, marks an attempt to reframe that which was rejected by the Court of Appeal in *Guildhall College*;

    b. The conclusion in *Guildhall College* is consistent with the principles articulated in relevant authority. The touchstone for whether something counts as a possession for the purposes of A1P1 is whether it can realistically be described as an "asset" (*Murungaru v Secretary of State for the Home Department* [2008] EWCA Civ 1015, at [58]). It is said that OBC can point to nothing which is affected by the Decision which, realistically, may be described in those terms;

    c. OBC's pleaded position, that regulation 5 of the 2011 Regulations "automatically designates courses", whereas, at the time of *Guildhall College*, designation of specific courses was the subject of application, is said not to have been material to any of the reasoning in paragraphs 72 and 73.

63. Secondly, OBC's reliance on "goodwill" as a possession is, in substance, said to constitute the hope of future income: see *R (Bloomsbury Institute Limited) v Office for Students*, at [325]), which is not a possession for the purposes of A1P1: see *Breyer*, at [43]).

64. Thirdly, it is submitted that, even if there were a possession, there is no breach of A1P1 on the facts. The principle of lawfulness is satisfied. The fact that a discretion is

conferred upon the Secretary of State is said not to be inconsistent with the requirement for legal certainty: *R (Core Issues Trust) v Transport for London* [2014] EWCA Civ 34, at [58]). The Decision is submitted to have been a proportionate means of ensuring that public funds were properly used. In such a case, the decision-maker is rightly accorded a wide margin of appreciation: *Burden v United Kingdom* [2008] 47 EHRR 38, at [60]). OBC was wrong to assert that the Decision involved "preventing the teaching out of existing students". The position of existing students had been subject to specific consideration by the Secretary of State, and the delayed revocation until 1 September 2025 had been implemented to ensure that those students were able to be "taught out". Furthermore, the Secretary of State had considered a less intrusive measure, but rejected it for understandable reasons.

Discussion

65. A1P1 provides:

"**Protection of Property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties."

66. The Secretary of State advances *Guildhall College* as a complete answer to Ground 4. In that case, under an earlier regime now largely revoked, the designation of certain courses in business and in computing was withdrawn by the Secretary of State with immediate effect. Amongst the issues raised by the College, which had offered those courses to students, was whether the designation of courses for the purpose of SLC funding was a possession within the meaning of A1P1 of which the College had been deprived illegally. The argument was advanced on the basis that designation was something which entitled the College to the benefit of State funding for the payment of

tutorial fees, of which the College was entitled not to be deprived except in the public interest and subject to conditions provided for by Law. At first instance, the judge had been provided with a letter from the College's accountant, to the effect that the designation contributed some £2 million to its capitalised value. The Court of Appeal first observed that the term "possessions", within A1P1, was to be given an autonomous meaning which was not confined to physical things, or land, or choses in action. Following an exegesis of the caselaw to that date, at [72] and [73] Christopher Clarke LJ held as recited above.

67. OBC argues that the possessions asserted in *Guildhall College* are to be distinguished from those advanced in this case, in which it is not designation per se which is said to constitute the relevant possession, but the contract which OBC has with each of the lead providers, and the goodwill of that business which those contracts represent, submitting that *Solaria* supports it in that contention. In *Solaria*, the claimant company had entered into a sub-contract for the supply of solar panels to a company which had been engaged by a local authority to supply and instal such panels to hundreds of commercial and residential premises. During the currency of the sub-contract, the Department of Energy and Climate Change had published a proposal to reduce the subsidies payable by electricity supply companies for power generated by solar panels. Whilst ultimately ruled unlawful and, thus, not implemented, that proposal had a significant adverse impact on the solar energy industry. The claimant brought a claim against the Department's successor under section 7 of the Human Rights Act 1998, seeking damages for wrongful interference with its possession, being the sub-contract, in breach of its A1P1 rights. In particular, the claimant contended that, as a result of the proposal, it had been obliged to renegotiate the sub-contract at a lower rate. At first instance, so far as material for current purposes, the judge granted the defendant's application to strike out the claim, holding that the sub-contract was not a possession within the meaning of A1P1 because it was not capable of assignment. The meaning of the term possession was analysed on appeal by Coulson LJ, with whom the rest of the Court agreed. At [24], he observed that the earlier European authorities concerned with the meaning of possession had been concerned, primarily, with licences and that UK caselaw had held that inclusion of a medical practitioner on the defendant NHS Trust's performers list from which he had been suspended was not a possession for the purposes of A1P1, rather, in effect,

a licence to render services to the public which was non-transferable and non-marketable, noting that Auld LJ had held at paragraph 40:

"The licence itself is not the 'possession' and ... whether the economic interests that flow from it are a possession depends on the facts, one of which may be the marketable goodwill that can flow from the exercise of a licensed trade ..."

Coulson LJ observed, at [26], that authorities involving an alleged interference with existing contracts were far fewer in number, perhaps because a contract may prove a rather more obvious possession than a licence or placement on a register. He noted that the starting point in domestic law was *Murungaru* (on which, as I have noted, the Secretary of State relies in this case). In *Murungaru*, the Court of Appeal had held that, "The fact that possessions can include contracts does not mean that all contracts are possessions." It had further held that the distinction between goodwill and loss of future income was not always easy to apply, but that, in its view, the judge below had been right to see a clear line separating possible future contracts from existing enforceable contracts. Contracts which had been secured might be said to be part of the goodwill of a business because they were the product of its past work. Those which the business hoped to secure in the future were no more than that. Coulson LJ cited paragraph 58 of *Murungaru*, which was in the following terms:

"58. In the present case, Dr Murungaru's contractual rights have none of the indicia of possessions. They are intangible; they are not assignable; they are not even transmissible; they are not realisable and they have no present economic value. They cannot realistically be described as an 'asset'. That is the touchstone of whether something counts as a possession for the purposes of A1P1. In my judgement Dr Murungaru's contractual rights do not."

68. Coulson LJ set out his own analysis at [30] to [41], which bear reciting in full:

"30. I have previously observed that the law relating to what is and is not a possession under A1P1 is, in places, counter-intuitive to a common lawyer. That is partly because future income is not a possession, but marketable goodwill is, and the dividing line between the two is murky, at best. If Lord Bingham of Cornhill was prepared to admit

that he did not find the jurisprudence on this subject very clear (see para 21 of his speech in *Countryside Alliance* [2008] AC 719) then it can safely be assumed to be difficult. However, that said, I venture to suggest that some of the potential problems in the present case may be more imaginary than real.

31. As noted above, most of the authorities on this aspect of A1P1 are not concerned with claims for wrongful interference with an existing contract. They are concerned with less tangible rights, like a licence or inclusion on a register. In my view, that is of no real relevance to the situation where there is an existing contract. In this way, the only authorities which are of any direct relevance to the present case are *Murungaru* and *Breyer*.

32. In *Murungaru* …, the court accepted that a contract could be a possession, and the only issue was whether that particular contract was a possession within the definition in A1P1. For the reasons set out at paras 45 and 58 (para 26 above), the court concluded that the contract with the medical provider, which was entirely personal to Dr Murungaru, was not a possession. One, but only one, of the indicia of a possession which the contract failed to meet was that of assignability. In any event, to the extent that it is material, there could never have been a claim for loss of marketable goodwill in that case, because the claimant was an individual suing in a personal capacity, not a business capacity.

33. In *Breyer* …, it was accepted that a contract could be a possession, and the real issue was which of the thousands of alleged contracts could properly be categorised as possessions, and which could not. That assessment was carried out by reference to certainty. The question of assignability did not arise for consideration either way because it was assumed that the concluded contracts could be assigned (see para 51 of the judgment in *Breyer* [2015] 2 All ER 44 at first instance), whilst incomplete contracts were inchoate and had not yet created rights that could be assigned as a matter of law (see para 59 of the judgment at first instance).

34. In the absence of clear guidance in the authorities, any analysis must start with basic principles. Whilst not all contracts are possessions within the meaning of A1P1, the starting point must be that a signed and part-performed commercial contract is, prima

facie, a possession. Indeed, that was the central assumption in *Breyer*. On that basis, the subcontract into which Solaria had entered with GBBS was a possession. It was a commercial arrangement which was of value to Solaria. It had a value in monetary terms without the need for it having first been converted into money. On the face of it, if the Department wrongly interfered with the performance of that subcontract without justification, then that could trigger a claim for wrongful interference by reference to A1P1.

35. For completeness, however, I should say that I consider that the judge was right to find that the 300 potential future installations (para 6 above) were too speculative to be a possession: they would at best give rise to a claim for future income, and they therefore fell the wrong side of the line drawn in the European authorities and *Breyer*.

36. The argument that found favour with the judge in support of the proposition that, despite being completed and partially performed, Solaria's subcontract with GBBS was not a possession within A1P1 was that the subcontract was not capable of being assigned. The Department submitted that, because assignability was one of the indicia of a possession noted in *Murungaru*, the inability to assign meant that the subcontract between Solaria and GBBS could not be a possession for the purposes of A1P1. In my view, there are three flaws in that submission.

37. First, it is not correct on the facts. The subcontract could be assigned: it was simply that the assignment required the prior consent of GBBS. That qualification might affect the value of the contract, but it did not mean that the contract was incapable of assignment in law and could not therefore mean that it was not a possession. In addition, the subcontract was capable of being sub-let, subject only to the limited qualification that GBBS's consent to any sub-letting should not be unreasonably withheld. These provisions, certainly when taken together, seem to me to indicate that, even on a strict application of the indicia referred to in *Murungaru*, the subcontract was a possession.

38. Secondly, I consider that the judge was wrong to elevate assignability into a black and white test for whether a package of contractual rights was a possession under A1P1. *Murungaru* rightly says that it is one of many factors which must be applied to test whether a contract was a possession within the meaning of A1P1. But *Murungaru* is not

authority for the proposition that, if a commercial contract is not assignable, it is somehow automatically outside A1P1. The test is much more nuanced than that.

39. Thirdly, I am not convinced that, even if the subcontract had contained a complete bar on sub-letting or assignment, it would mean that there was no A1P1 claim in principle. I accept that such a bar might have an effect on the quantification of any claim, but that is a separate point. After all, as I have already noted, in *R (RJM)* [2009] 1 AC 311, a disability premium was held to fall within the ambit of A1P1, and it was an accepted fact that that premium could only be of value to the person claiming it.

40. I consider that, in the present case, there has been a potentially unhappy elision of principle and quantification. In its particulars of claim Solaria had sought to mimic the language of *Breyer* in defining its loss: see para 3(a) above. That may have been a mistake. Each case is different. For present purposes, the issue is simply whether Solaria have a realistic prospect of demonstrating that their subcontract with GBBS was a possession for the purposes of A1P1, not how any wrongful interference with that possession may fall to be quantified.

41. In summary, therefore, I consider that Solaria possessed a package of contractual rights which, on their case, were wrongly interfered with by the Department. Restrictions on assignability might go to their value, but on the facts of the present case, they do not go to whether or not in principle Solaria had an arguable claim by reference to A1P1. I therefore conclude that the judge was wrong to strike out the claim simply because the subcontract was the subject of restrictions as to assignment and sub-letting. ..."

69. I bear in mind that Lord Justice Coulson was concerned with a strike-out application, and, hence, with whether there was an arguable claim. I am concerned with whether such a claim should succeed. Although the franchise agreements were not all framed in identical terms, the structure in accordance with which each operated was that the relevant university would collect tuition fees which it would pay to OBC, and OBC would make an agreed payment to the university each year. Each contract permitted the assignment of OBC's rights and the ability to subcontract with the consent of the relevant university. Whilst each contract could only be profitable in the event that the courses

provided by OBC continued to be designated, it was the contract — a commercial agreement — which constituted the possession, not the designation per se. In that respect, and having regard to the dicta in *Solaria* [34], I am satisfied that this case is advanced on a basis materially distinguishable from that of *Guildhall College*. I am not satisfied that OBC has demonstrated a separate possession for A1P1 purposes in the form of goodwill. The evidence on which it relies from DR Associates Limited, Chartered Accountants, is general in its terms and appears heavily to rely upon "strategic direction"; that is, in my judgement, the prospect of future income (cf *Bloomsbury Institute*, at [325]). Moreover, under the heading "Post-decision goodwill valuation", it is said that:

"The decision by the DfE to de-designate courses taught by OBC means that after 31 August 2025, OBC will no longer be able to operate from 1 September 2025. All value save for OBC's fixed assets will be lost, including its goodwill. The only value will be fixed tangible assets."

That is, in essence, a statement to the effect that the designation was itself a marketable asset, having a monetary value. Albeit less scanty than the evidence rejected in *Guildhall College*, I consider it to be inadequate to its purpose. As in that case, no accounts were produced to support the approach adopted; indeed, as the letter acknowledges, none of the elements of goodwill which its authors identify has been reflected in OBC's balance sheets or statutory accounts for the relevant periods.

70. OBC's primary case on unlawful interference is that it is established by the success of any public law ground of challenge. In the course of the hearing, it became clear that that principle was controversial. Mr Laird drew my attention, in particular, to a decision of the Divisional Court handed down on 25 July 2025: *R (FTDI Holding Limited) v Chancellor of the Duchy of Lancaster in the Cabinet Office* [2025] EWHC 1992 Admin, contending that the position was more nuanced than Mr Coppel would have it. Mr Coppel responded that that objection had not been pleaded by the Secretary of State, advancing a goose and gander argument as to the need for procedural rigour. Whether or not the point has been specifically taken, I cannot take as read the merit in a submission of law in relation to which I am informed that there is relevant authority which casts doubt on its correctness. Both parties acknowledge that it is unnecessary for this aspect of the claim, going as it does primarily to the question of damages, to be

determined before 1 September 2025, in particular given the time constraints under which the parties and the Court have been operating. In those circumstances, any further argument required in relation to this aspect of Ground 4 will need to be listed to be heard in term time with directions requiring the parties first to address the point in written submissions and by reference to all authority which is said to have a bearing on it. In my judgement, the alternative bases upon which interference is said to have been unlawful are intrinsically bound up with the matters the subject of that analysis, and I do not consider it sensible or appropriate to determine them on a freestanding basis.

Ground 7

71. In his oral submissions in reply, Mr Coppel stated that, were at least one of his public law grounds of challenge to succeed, he would not press for a decision on Ground 7. In light of my conclusions on Ground 1, I, therefore, do not need to decide it.

Disposal

72. There is no challenge by Mr Glenister to the order sought by Mr Coppel in relation to Ground 1, namely, that the Decision be quashed. I am satisfied that that is the appropriate order, and I make it.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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