Neutral Citation Number: [2025] EWHC 1381 (KB)

Case No: KA-2024-000121

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ON APPEAL FROM ORDER OF MASTER GIDDEN
MADE ON 19 JUNE 2024 in Case No. KB-2023-003198

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/06/2025

Before :

MR JUSTICE KERR

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Between :

SECURITY INDUSTRY AUTHORITY	**Appellant (Defendant)**
- and -	
(1) JOSOEMAG SERVICES LIMITED **(2) EMMANUEL OLANREWAJU JOSHUA** **(3) KOREDE ABIODUN JOSHUA**	**Respondents (Claimants)**

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Mr Bart Casella (instructed by **Womble Bond Dickinson (UK) LLP**) for the **Appellant**
Mr Becket Bedford (instructed by **Duan & Duan UK LLP**) for the **Respondents**

Hearing date: 20 May 2025

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Approved Judgment

This judgment was handed down remotely at 10am on 6 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE KERR

Mr Justice Kerr :

The Appeal

1. The appellant (**the SIA**) is the statutory regulator for the security industry, exercising functions conferred by the Private Security Industry Act 2001 (**the 2001 Act**). The second and third respondents are the directors and shareholders of the first respondent (**JSL**), which provides temporary security staff to businesses, both within and outside the private security sector. JSL's business activities are regulated by the SIA under the 2001 Act.

2. In August 2023, the respondents (the claimants below) brought a claim against the SIA for damages under section 8 of the Human Rights Act 1998 (**the HRA**) asserting that the SIA had, in the course of its regulatory activities, wrongfully interfered with the respondents' right to peaceful enjoyment of their property, contrary to article 1, first protocol (**A1P1**) to the European Convention for the Protection of Human Rights and Fundamental Freedoms (**the ECHR**).

3. This appeal concerns the respondents' attempts to amend the claim form to expand the scope of the damages claim to add alleged violations of articles 6, 8 and 14 of the ECHR, in addition to A1P1. In June 2024, Master Gidden granted the applications to amend and allowed the claim to proceed on the basis pleaded in the particulars of claim, which included reliance on articles 6, 8 and 14. He gave directions for the filing of a defence, which has since been served.

4. The SIA submits that Master Gidden was wrong to allow the amendments, principally because the one year limitation period under section 7(5) of the HRA had expired and the added claims were new claims not arising out of the same or substantially the same facts as were already in issue (CPR rule 17.4(2)). The respondents say rule 17.4 does not apply here because the SIA is at no risk of what is called "relation back prejudice" arising from application of the "relation back" provision in section 35(1)(b) of the Limitation Act 1980 (**the 1980 Act**).

5. Part 52 of the Civil Procedure Rules applies to this appeal. I have all the usual duties and powers in an appeal of this kind. I must allow the appeal (by CPR rule 52.21(3)) if I consider that the decision of the Master was wrong, or that it was unjust because of a serious procedural or other irregularity in the course of the proceedings. The latter is not suggested here. What is said is that the Master misapplied the law and erred in his approach to the amendment applications.

The Claim

6. The particulars of claim dated 4 December 2023 state as follows. The second and third claimants are Nigerian nationals of African descent. They and JSL were licensed by the SIA to provide "licensable services" within the private security sector. In December 2019 they obtained "approved contractor status" for JSL in the security guarding sector. The licence and the approved contractor status were possessions within A1P1. From mid-2021 the SIA, a public authority, conducted "a series of groundless investigations" into the respondents' activities.

7. The SIA investigated whether the application for approved contractor status had been made fraudulently in 2019; and whether a "bounce back loan" from a bank had been fraudulently obtained. The SIA obtained delivery up by the bank of the loan application, under the Proceeds of Crime Act 2002 (**POCA**). The SIA requested information under POCA and interviewed the second and third respondents in October 2021 about suspected supply of an unlicensed person as staff. It requested information under POCA on the subject in November 2021.

8. These investigations were a disproportionate interference with the respondents' private lives and correspondence in that no enquiries or checks were made to verify that the allegations were other than baseless, which they were. The use of compulsory requests for information and documents was excessive and disproportionate. The information could have been obtained without compulsion. The respondents were victims within section 7 of the HRA and article 34 of the ECHR and the individuals were victims of the violations of JSL's Convention rights because they owned and controlled JSL.

9. The ongoing criminal investigations led the SIA to delay considering the second and third respondents' applications for renewal of their individual licences, which had been applied for in September and October 2021. The compulsory demands for information under section 19 of the 2001 Act continued into 2022, substantially duplicating similar demands made in 2021. The respondents were told by the SIA in March 2022 that they were under criminal investigation for offences of supplying unlicensed operatives.

10. In August 2022, the SIA laid an information before Bromley Magistrates' Court against the second and third respondents for failing without reasonable excuse to provide information requested in January 2022 under section 19 of the 2001 Act. The respondents plead that the request was incompatible with their right to respect for their private lives and correspondence and with their privilege against self-incrimination under article 6(1) of the ECHR.

11. The SIA then, it is pleaded, placed the names of the respondents on a publicly available list of persons against whom it had commenced criminal proceedings, in further violation of their article 8 rights. On 19 August 2022, the SIA suspended the second respondent's "front line licence" pending the outcome of the criminal proceedings, knowingly preventing JSL from trading in its main sphere of operations for what would be, as the SIA knew, several months.

12. In January 2023, the SIA withdrew JSL's approved contractor status in the light of the suspension of the second respondent's "front line" licence the previous August. That meant the respondents could not trade. The suspension and subsequent withdrawal of the relevant licences was a violation of the respondents' rights under A1P1 as it precluded them from trading, causing financial loss. The interferences were arbitrary and disproportionate; there were no objective grounds for suspecting dishonesty or misconduct.

13. The repeated criminal investigations and requests for information in 2021 and 2022, the criminal prosecution in 2022 and 2023 and the suspension and withdrawal of the licence and of JSL's approved contractor status constituted "a pattern of targeted behaviour against the claimants amounting to direct discrimination and/or harassment of them … on the grounds of second and third claimants' race or national origin" (particulars of

claim, paragraph 31), contrary to article 14 of the ECHR, read with articles 6 and 8 and A1P1.

14. On 28 February 2023, the Bromley Magistrates' Court acquitted the second and third respondents of any offence under section 19(5) of the 2001 Act and awarded them their costs. On 23 March 2023, the SIA restored the approved contractor status and granted the applications to renew the relevant expired licences, enabling JSL to trade again. However, the second respondent's position was not fully restored; he was not able to make a valid application for renewal of his front line licence after its expiry in December 2022.

15. The claim is for damages within the meaning of article 41 of the ECHR, comprising financial loss of £464,000 as at 4 December 2023 and continuing up to 31 May 2025; and for "non-pecuniary loss", graphically pleaded at paragraph 42 which, it is said, caused a specific deterioration in the second respondent's health, with a diagnosis in 2023 of a nodule on his vocal chord, which needs to be surgically removed and requiring treatment by speech and language therapy. Interest is claimed under section 35A of the Senior Courts Act 1981.

16. In the pleaded defence (served eight months later, on 31 July 2024) much of the above is either denied or not admitted. The SIA does not admit that the second and third respondents are Nigerian nationals of African descent, though it advances no positive contrary case. The licensing position is subject to some dispute. It is admitted that JSL possessed approved contractor status in the security guarding sector. Quite a lot of the detailed factual allegations are disputed to some extent.

17. As for the SIA's investigations, the various requests for information and documents and the bringing of the criminal proceedings are admitted, though some of the details are disputed. It is denied that the investigations were groundless and asserted that the SIA was entitled to consider whether JSL was carrying out its business properly and lawfully. In short, the SIA says it carried out its statutory regulatory functions properly, in good faith and impartially, under the 2001 Act and under POCA.

18. It is said in the defence that the claims arising from 2021 and early 2022 are "statute barred" as the limitation period is one year from the date of the act complained of. Limitation is relied on as a defence "in respect of all claims … in respect of which the act complained of was more than one year from the date of issue of the claim", which was 4 August 2023 (defence, paragraph 11). The SIA accepts that the respondents eventually refused to be interviewed and rely on that as justification for prosecuting under section 19(5) of the 2001 Act.

19. The SIA denies that it withdrew JSL's approved contractor status in January 2023. The SIA pleads that it wrote to JSL saying it had decided to do so but that the licence remained in place pending JSL's appeal because JSL indicated an intention to appeal. The withdrawal never took effect, says the SIA, because JSL's pending appeal was then overtaken by the acquittal of the second and third respondents in the magistrates' court, in February 2023.

20. All the alleged breaches of human rights provisions in the ECHR and the HRA are denied. It is not denied that the SIA is a public authority for the purposes of section 6 of the HRA. The alleged financial and non-financial losses and interest are either

denied or not admitted. And the whole pleading is subject to the SIA's "right to make any application in the future for strike out/summary judgment" (paragraph 1).

Procedural History

21. The original claim form was dated 4 August 2023, but not served till nearly four months later. The respondents said in that claim form that JSL had held an approved contractor certificate (**the licence**) since about December 2019; that the SIA had started criminal proceedings against the respondents in August 2022 and suspended the licence; that the SIA withdrew the licence in January 2023; that the respondents were acquitted of any criminal conduct in February 2023; and that the respondents claimed damages under section 8 of the HRA for breach of section 6 of the HRA and violation of their rights under A1P1.

22. The respondents then amended the claim form and on 4 December 2023 served it on the SIA together with or at about the same time as serving the particulars of the claim, which I have just summarised. The amendments introduced the claims for damages for violations of the respondents' Convention rights under articles 6, 8 and 14 of the ECHR, in addition to the alleged violation of A1P1.

23. In the amended claim form, the text in the original claim form was deleted. In its place, the respondents asserted that the violations were "acts … by the Defendant against them in the form of various criminal investigations, prosecutions and licensing decisions in the period mid-2022 to March 2023 and continuing". Those claims were pleaded in the particulars of claim. On 4 December 2023, the respondents applied for permission to amend the claim form. The SIA contested the application. Both sides filed evidence.

24. On 17 May 2024, the respondents applied to amend the claim form further, seeking to correct "mid-2022" to "mid-2021" as the start of the period during which the various criminal investigations, prosecutions and licensing decisions had been made. In that application, the respondents referred by way of explanation to having previously "amended the Claim Form to include expanded claims arising from the single course of conduct pursued by the Defendant against the Claimants, in violation of the Claimants' Convention rights under A6, A8, and A14, in addition to A1P1".

25. The applications for permission to amend the claim form were listed before Master Gidden, to be heard on 19 June 2024. Both counsel who ably argued this appeal before me also appeared below. It is useful to record what positions they took before the Master. Mr Bedford, for the respondents, tabled a two page skeleton argument, submitting that the amendment applications were made "in accordance with CPR [17.1(2)(b)], to ensure that their claim form is in correct alignment with their particulars of claim".

26. Mr Bedford noted in his skeleton below that the SIA was contending that the application was governed by rule 17.4 because a relevant limitation period had expired and the respondents were seeking to add new claims. He submitted that the HRA is not an "enactment" envisaged by CPR 17.4; where a claim is brought under section 7 of the HRA, the doctrine of relation back has no application to the addition of any new claim brought late under section 7(5). A late amendment therefore cannot deprive the SIA of any limitation defence.

27. Mr Bedford went on to contend below (at paragraph 6 of his skeleton), that alternatively, relying on *O'Connor v. Bar Standards Board* [2017] UKSC 78, "the additional claims arise from a single course of conduct, and the addition [of] new claims by way of amendment was sought within a year of the end of that single course of conduct". In the further alternative he contended that the new claims arise out of the same or substantially the same facts as are already in issue (CPR rule 17.4(2)).

The Master's Judgment

28. Master Gidden gave a short, extempore judgment on 19 June 2024. In the approved transcript, he recorded at [2] what was agreed: first, that the court's permission was required; second, that the relevant limitation period is one year from the date of the act complained of; third, that "no doctrine in relation back applies … equivalent to section 35(1)(b) of the Limitation Act 1980"; and fourth, that rule 17.4 "restricts the Court's powers to permit amendment of a statement of case after a relevant limitation period has expired".

29. The Master noted that the respondents acknowledged that the SIA has an arguable limitation defence but contended that rule 17.4 should not prevent the amendments because it was better to allow them rather than require the respondents to issue a new claim. That corresponds to Mr Bedford's argument below that the right to bring HRA proceedings is itself a Convention right; and "a rule, that requires the claimants to bring separate proceedings … if faced with an arguable limitation defence, must be assessed for proportionality to see whether it serves any legitimate purpose".

30. The Master then noted the SIA's contention that the HRA was clearly an "enactment" within rule 17.4(1)(b)(iii), on the authority of *Parsons v. George* [2004 1 WLR 3264. The SIA was further contending, the Master noted, that the new claims put the claim in a wholly different way and were a significant departure from the way in which the claim had initially been advanced, relying on A1P1 only among the Convention rights in the ECHR. The limitation period of one year having expired, the amendments should not be allowed.

31. The Master's conclusions were in his last three paragraphs, 8 to 10, which I will set out in full:

> "8. The need is to find a way forward, vitally and realistically. It is unlikely to be one that can satisfy both parties. My conclusions are as follows. Having regard to the authorities to which I have been taken including *Parsons v George*, it seems to me clear enough CPR 17.4(1)(b)([iii]) is to be widely interpreted and, on such interpretation, the present application for permission appears to be one to be considered against this framework as it applies to enactments including the Human Rights Act. I do not think its usefulness or its applicability is impacted by anything that has been put before the Court today or in any way diminished by any of the authorities considered today.
>
> 9. The relevant limitation period seems, on its face, to have expired before the amendment to the new claims. There clearly is an arguable limitation defence, so the claimant must show the defendant has no reasonably arguable limitation defence which could be prejudiced by the operation of s35(1) of the Limitation Act and any relation back that is contended[.]

> 10. In light of that Court of Appeal decision in *Chandra* 2013 EWCA Civ 1559 and the decision in *Viegas (2023) EWHC 1896 (Comm)*, it is clearly a requirement that relation back must operate to the prejudice of the defendant. In this instance there is nothing in the arguments put forward by Mr Cassella that have persuaded me that this is indeed the case. I conclude that the permission sought should be granted. On its face, CPR 17.4 applies. And guided by the decisions in *Chandra* and *Viegas* I conclude that it is a proper application for permission to amend. That permission is given."

32. The Master made an order granting permission to amend as sought in the applications dated 4 December 2023 and 17 May 2024. He directed that the SIA must file its defence by 31 July 2024 (which it did, as I have explained above). His order did not include provision for service of a reply to the defence. None has yet been served. Mr Bedford told me he would in the reply, if necessary, plead a request for the limitation period to be longer than one year, on the "equitable" ground under section 7(5)(b) of the HRA.

33. The Master refused permission to appeal against his decision. However, permission to appeal was granted on the papers by Johnson J on 12 February 2025. Counsel then appeared before me on 20 May 2025 and made their helpful written and oral submissions. I reserved judgment.

Issues, Reasoning and Conclusions

The parties' positions

34. There was some uncertainty about the parties' respective positions in this appeal. Ground 5 of the appeal states (as a fallback position) that the Master "erred in deciding that the principle of relation back did not operate to the prejudice of the Appellant." In his skeleton argument, Mr Casella for the SIA submitted that "[t]here is a real prospect that relation back operates to the prejudice of the Appellant".

35. This appears to be based on the amendments (as it was put in the skeleton) producing a "considerably expanded case which would require answers to numerous further allegations …". Mr Casella then submitted at the end of his skeleton that the SIA would be deprived of a limitation defence because "relation back would allow the new claims to be treated as though they had been commenced on 4 August 2023".

36. Mr Bedford submitted that the SIA cannot now argue that it was at risk of relation back prejudice, having conceded below that it was not: see *Commercial Bank of Dubai PSC v Al Sari* [2024] EWCA Civ 643 at [60] (per Males LJ). If the SIA had relied on the risk below, the respondents would have argued differently and sought a decision on whether the new claims arose from a single course of conduct, as in *O'Connor v. Bar Standards Board*; and, if not, whether limitation should be extended beyond one year on "equitable" grounds under section 7(5)(b) of the HRA.

37. Furthermore, Mr Bedford pointed out that in the respondents' notice, they had given a *Viegas* undertaking (see *Viegas v Cutrale* [2025] 1 WLR 1467, CA, decided on appeal after the Master's decision, per Newey LJ at [62]-[63] and [149]) that they will not rely on relation back and will treat the amendments as effective from the dates that they were made. Mr Casella did not advance any convincing argument to me as to why the SIA should be permitted (in ground 5 of the appeal) to resile from what appeared to be its previously made concession.

38. In my judgment, the respondents' *Viegas* undertaking is a complete answer to any suggestion that the SIA is at risk of relation back prejudice if the amendments are permitted. I would also decline to allow ground 5 on the basis that it a *volte-face* from the SIA's apparent concession before the Master that relation back did not apply to these amendments. While Mr Casella did not accept having made that concession below, in substance he must have done since the Master recorded that it was agreed that "no doctrine in relation back applies … equivalent to section 35(1)(b) of the Limitation Act 1980".

Relation back

39. For completeness, I agree with that statement and I agree with Mr Bedford that relation back prejudice could not arise here. Section 35(1)(b) of the 1980 Act provides that post-limitation amendments are "*[f]or the purposes of this Act* … deemed …. to have been commenced … on the same date as the original action" (my italics). But section 39 then provides that the 1980 Act "shall not apply to any action … for which a period of limitation is prescribed by or under any other enactment (whether passed before or after the passing of this Act) … ."

40. Section 39 disapplies the 1980 Act here because the HRA has its own limitation periods in section 7(5). Therefore, I cannot see how section 35(1)(b) bites on the amendments the respondents seek to make: cf. *Parsons v. George*, per Dyson LJ at [28]. However, Mr Bedford very properly referred me to an uncontested ruling of Saini J in *Qatar Airways Group QCSC v. Middle East News FZ-LLC* [2021] EWHC 2180 (QB), mentioned in the White Book vol. 1 (2025) at 17.1.1, suggesting at [15] that "CPR 17.4 and CPR 19.5 inherently operate on the basis of 'relation back' and so bring 'relation back' with them."

41. That reasoning was based on consideration of *Parsons v. George* and the Court of Appeal's decision in *Tatneft v. Bogolyubov* [2018] 4 WLR 14 (see Longmore LJ's judgment of the court at [77]-[87]). But Longmore LJ also said at [71] that relation back under section 35 of the 1980 Act:

> "only applies in the limited circumstances set out, which are reflected in CPR r 17.4. Unless section 35 can be relied upon, there is no relation back and an amendment after the expiry of limitation would be refused as it would serve no useful purpose given the availability of the limitation defence."

42. I was also referred to *obiter* observations of Warby J (as he then was) in *Henderson v. Dorset Healthcare University Foundation NHS Trust* [2016] EWHC 3023 at [9] and [51]-[52]. The claimant unsuccessfully sought to add human rights claims to a pre-existing negligence claim. The 1980 Act did apply to the negligence claim and Warby J thought relation back prejudice would arise if the amendments were allowed, but did not need to decide the point.

Other preliminary matters

43. It was common ground that section 7(5)(a) of the HRA enacts a primary limitation period of one year from the date of the act complained of, within which proceedings under section 7(1) must be "brought". Secondly, section 7(5)(b) enacts an alternative

period within which the proceedings must be brought, namely "such longer period as the court or tribunal considers equitable having regard to all the circumstances".

44. I agree with Mr Bedford that the 1980 Act does not apply to claims brought under the HRA because (as he submitted below) it is disapplied by section 39. But contrary to his unsuccessful submission to the Master, I think the HRA is, (on *Parsons v. George* reasoning) an "enactment" within rule 17.4(1)(b)(iii). That is because in an HRA claim, a post-limitation amendment to add a "new claim" is allowed, i.e. not prohibited. Further, the respondents cannot contend otherwise since they have not sought to challenge the Master's decision to that effect in their respondents' notice.

Submissions

45. There was a disagreement about the impact of *Viegas v. Cutrale* in the Court of Appeal. Mr Casella disputed the respondents' proposition that unless relation back prejudice would arise, the restrictions on allowing amendments provided for in CPR rule 17.4 do not apply. Mr Casella argued that in *Viegas* the amendments were pre-service and the application was that they should be disallowed under rule 17.2. The case did not concern rule 17.4. The first two grounds of the appeal assert that the Master did not properly apply that rule.

46. The claims were new claims within rule 17.4(2), Mr Casella said. They expanded the area of factual enquiry considerably, as explained in the two witness statements of Mr Peter Easterbrook, the SIA's head of criminal investigations. The SIA would have to do a lot more work to prepare its case if the amendments were allowed. There was no single course of conduct. Thus, the article 8 claim concerned intrusive requests for information and documents, while the A1P1 claim concerned removal of approved contractor status; the two were separate. The article 6 and article 14 claims were also separate.

47. In ground 2 of the appeal, the SIA submitted that the Master failed to apply the four stage test propounded by Mr John Kimbell QC (sitting as a deputy High Court judge) in *Re One Blackfriars Ltd (in liquidation), Hyde v. Nygate* [2019] EWHC 1516 (Ch), at [26]: first, whether it is reasonably arguable that the amendments are outside the applicable limitation period; second, whether they seek to add or substitute a new cause of action; third, whether that new cause of action arises out of the same or substantially the same facts as are already in issue in the claim; and fourth, if so, whether the court should exercise its discretion to allow the amendments.

48. Here, Mr Casella submitted, the Master should have found that the answer to the first two questions is yes and the answer to the third question is no; so that the fourth question did not arise. He submitted that the third question should be answered by comparing the pleadings, with and without the proposed amendments; and that only exceptionally would the court consider extraneous material such as evidence (*Akers v Samba Financial Group* [2019] 4 WLR 54, per McCombe LJ at [52]). Consideration of the pleadings would include the defence (see the reasoning of Coulson LJ in *Martlet Homes Ltd v. Mulalley & Co Ltd* [2022] EWCA Civ 32, (2022) Con LR 1).

49. Mr Casella submitted that the Master had failed to answer the third and fourth questions. He had not found that the new claims arose out of the same or substantially the same facts as already in issue in the unamended A1P1 claim. That test is stringent; the words

"same or substantially the same" are not synonymous with "similar": *Ballinger v Mercer Ltd* [2014] EWCA Civ 996; [2014] 1 W.L.R. 3597, per Tomlinson LJ at [37].

50. The third ground of appeal is that the Master failed to undertake any sufficient comparison between the original claim form and the amended version of the claim form. He should also, the SIA submitted, have considered the evidence of Mr Easterbrook, filed in opposition to written evidence from the respondents' solicitors asserting that the facts relied on in the amended claim comprised a single seamless course of conduct.

51. In the fourth ground, Mr Casella submitted that even if the Master had found that the new causes of action arose out of the same or substantially the same facts as those already in issue, he still had a discretion whether to allow the amendments and failed to consider properly how he should exercise it. For the reasons given in Mr Easterbrook's witness statements, the amendments should not be allowed: they greatly expanded the claim and would require much additional work from the SIA to prepare its defence.

52. For the respondents, Mr Bedford submitted that *Viegas v. Cutrale* is binding authority that relation back prejudice is the sole threshold under rule 17.4. Absent any risk of it, the amendments fall to be considered under rule 17.1(2)(b), which permits post-limitation amendments in the exercise of the court's ordinary discretion. He cited Newey LJ's observation in *Viegas* at [31]:

> "The mere fact that there may be an arguable limitation defence will not preclude an amendment. The defendant's position for limitation purposes must be made worse as a result of relation back."

53. Mr Bedford's argument was that where a real prospect of relation back prejudice exists, an amendment without permission is disallowed under rule 17.1(2)(b) and permission can only be given if the rule 17.4 gateways are open; but conversely (per *Viegas*), absent any risk of relation back prejudice, rule 17.4 does not apply and (as he put it in his skeleton in this appeal): "an amendment requested under CPR 17.1(2)(b) may be granted at stage one, even if the new claim does not arise from the same facts".

54. The Master was therefore right, said Mr Bedford, to treat this as an ordinary application under rule 17.1(2)(b). The SIA was wrong to contend that the Master had to apply the full four stage test here, with no prospect of relation back prejudice, for the reason given by Newey LJ in *Viegas* at [32]:

> "There is no evident reason why a new claim should not be permitted if the claimant would be no better off had the claim been made from the outset. … the 'evil' which section 35(3) was passed to prevent was 'prejudice to defendants losing protection from the Limitation Act by the reference back to the date of the original writ of any new claim which might otherwise be added'[1]. That 'evil' cannot exist where there is no danger of a defendant being any worse off as regards limitation as a result of relation back."

55. The other authorities discussed in *Viegas* should, Mr Bedford submitted, be interpreted in the same way, as they proceed by the same logic although without explicitly referring to rule 17.1(2)(b): see *Chandra v. Brooke North (a firm)* [2013] EWCA Civ 1559,

[1] The citation is from Purchas LJ's judgment in *Grimsby Cold Stores Ltd v. Jenkins & Potter* (1985) 1 Const LJ 362.

(2013) 151 Con LR 113 (per Jackson LJ at [63]-[64]); and (under the old Rules of the Supreme Court) *Welsh Development Agency v. Redpath Dorman Long Ltd* [1994] 1 WLR 1409, per Glidewell LJ (judgment of the court) at p. 1425G–H.

56. Mr Bedford defended the Master's decision in the following terms, in his skeleton argument:

> "The structured framework under CPR 17.4 applies only where there is an arguable limitation defence that may be prejudiced by relation back. While the Master considered CPR 17.4 applicable, the absence of prejudice at stage one meant that the case did not progress to stage three. On the conventional analysis, the Master properly exercised discretion under CPR 17.1(2)(b), as no limitation defence was adversely affected by relation back."

57. As for the ordinary discretion to permit amendments under rule 17.1(2)(b), Mr Bedford pointed out that the amendments were served early in the litigation, prior to any defence or directions. There was no fixed trial date. Any ordinary prejudice arising from the amendments could be managed through appropriate costs orders and directions. The amendments "crystallised the real dispute and facilitated proper case management", he said in his skeleton.

58. Furthermore, the one year limitation period under section 7(5) of the HRA is a "complete code", Mr Bedford argued. No statutory defence of limitation can be taken away by relation back because the 1980 Act is disapplied by section 39 thereof and the only operative time bar is in the HRA; relation back cannot shorten the limitation period enacted in the HRA.

Reasoning and conclusions

59. On a conventional reading of rule 17.4, there is force in the SIA's analysis. The court starts by asking itself whether rule 17.4 applies. The answer appears to be that it does, because – leaving aside the possibility of a single course of conduct – the respondents applied to amend their statement of case (rule 17.4(1)(a)); at a time when the limitation period under section 7(5)(a) of the HRA had arguably expired (rule 17.4(1)(b)(iii)); so as to add new claims (rule 17.4(1)(a) and 17.4(2)).

60. A "new claim" is not defined in rule 17.4(2) but if we look at section 35(2) of the 1980 Act, we see that "[f]or the purposes of this section", it includes "any claim involving … (a) the addition … of a new cause of action". Although the 1980 Act does not apply to this case, the rule of court is clearly drafted with that Act in mind and I think the words "new claim" in rule 17.4(2) take their meaning from section 35(2) of the 1980 Act whether or not it applies to the case before the court. I conclude that the amendments seek to add new claims because they invoke Convention rights over and above the right under A1P1.

61. On that reasoning – and again leaving aside a single course of conduct argument – the amendments could only be permitted, as the SIA submits, if they arise out of the same or substantially the same facts as were already in issue in the pre-existing claim founded on A1P1 alone (rule 17.4(2)). There would have to be a comparison between the pleaded case before the amendments and the pleaded case with the amendments, including the particulars of claim and the SIA's written defence to it. That exercise

would have to be done even though no relation back prejudice could arise, because that is what rule 17.4 provides.

62. However, there are problems with adopting that orthodox analysis in this case. It applies the strict "same or substantially the same facts" test when there is no particular reason why that strict test should be applied because there is no risk of relation back prejudice. And it treats the HRA limitation period in the HRA as if it were one year rather than one year or such longer period as the court considers equitable in all the circumstances.

63. By doing so, it impairs or may impair the right to bring a claim under the HRA even though the court might have allowed a longer limitation period than one year, under section 7(5)(b). That would mean that a rule of court – and one derived mainly from a statute which does not itself apply – would be cutting down the scope of a right conferred by primary legislation; a right to which the court is itself obliged by article 6 of the ECHR to give effect.

64. There is therefore force also in the respondents' alternative analysis. It accords with the logic of the cases culminating in *Viegas* in the Court of Appeal that, if there is no risk of relation back prejudice, there is no rationale for applying the strictures found in rule 17.4. The SIA is no worse off than if the claim as now sought to be amended, had been brought at the outset. The SIA may actually be better off because parts of the claim may prove to be statute barred which may not have been had the claim, as now amended, been brought at the outset.

65. There is therefore much to commend the Master's instinct that there was no good reason to withhold permission for the amendments, in the absence of any relation back prejudice. However, the respondents' analysis also suffers from a defect: it arguably gives no or no adequate content to the actual words of rule 17.4(2), enacting the "same or substantially the same facts" test.

66. So, while the SIA seeks to apply the rigour of those words in a case where the mischief at which they are aimed is absent, the respondents seek to wish those words away when, on the face of it, they do appear to apply. Neither side's analysis works. I do not think this case is fully covered by previous authorities. In *Viegas* the issue was disallowance under rule 17.2(1) and the Court of Appeal considered relation back prejudice through the prism of section 35 of the 1980 Act, which does not apply here (see section 39).

67. But rule 17.4 does apply here, if the conditions in rule 17.4(1) are met. I do not think there is any escape from the proposition that the claims are new claims. Even if the facts alleged comprise a single course of conduct (an issue to which I will return shortly), the claim for interference with the respondents' article 8 right is a fresh cause of action; as is the claim for violation of article 6(1) and the claim for direct discrimination under article 14 (read with the other articles relied on).

68. The answer must be, I think, that the relevant limitation period may not have expired, within the meaning of rule 17.4(1)(b), at the time when the application to amend was made. In a claim under the HRA, the period of one year from the date of the act complained of is only the *minimum* period of limitation. It is not a fixed period; nor would I call it a period that is fixed but subject to a discretion to extend it. The actual

limitation period may turn out to be long enough to have not yet expired at the time of the application to amend.

69. If the limitation issue in a claim under the HRA has not been determined at the time of the application to amend, the duration of limitation is at large. The date of the act complained of may turn out to be a date at the end of a single course of conduct, which may have ended less than a year before the application to amend is made. Or the claimant may be rescued by a later decision that the limitation period should be more than a year. There may be more than one act complained of (as the SIA says is the case here); if so, there could be limitation periods of different lengths decided upon for different causes of action.

70. Where there is relation back prejudice, the claimant must show there is no arguable limitation defence before he or she can benefit from an amendment to add a new cause of action, unless it arises from the same or substantially the same facts. The rationale is to protect the defendant's limitation defence. Where there is no relation back prejudice, the claimant should not have to show the absence of any arguable limitation defence. It should be for the defendant to show that any relevant limitation period has clearly expired in order to trigger the "same or substantially the same facts" test.

71. If, as in this case, the limitation issue is at large and the amendments, if allowed, will not put the defendant in a worse position than it would have been if the claim had been brought at the outset with the amendments included, the better view is, in my judgment, that rule 17.4 should be held not to apply because the case is not shown to be one in which "a period of limitation has expired under … any other enactment [etc]" (rule 17.4(1)(b)(iii)). A flexible interpretation of rule 17.4, read with section 7(5) of the HRA, is needed to avoid the rule of court, i.e. secondary legislation, impairing the right conferred by primary legislation.

72. If that analysis is correct, I do not need to decide whether the claims as amended would assert facts amounting to a single course of conduct and, if so, when it ended. I do not propose to decide at this stage whether, if the amendments are allowed, the respondents need a limitation period of longer than a year; nor, if they do, whether one should be granted and if so of what duration. Those are issues to be determined in the future course of these proceedings.

73. I will say only that I think it is arguable that there was a single course of conduct, comparing this case with the factors that weighed with Lord Lloyd-Jones in *O'Connor v. Bar Standards Board*. As in that case, the complaint here is of unjustified heavy handed abuse of regulatory powers. I doubt whether the individual alleged wrongs should be "compartmentalised" as the SIA suggests, with a series of prima facie one year limitation periods running from different dates and overlapping with each other.

74. Nor, if my analysis is correct, is it necessary to decide now whether the claim as amended arises out of the same or substantially the same facts as are already in issue in the existing A1P1 claim. As a matter of factual analysis, that issue may overlap with whether there was a single course of conduct, but the two issues are conceptually distinct. In case I am wrong in my view that rule 17.4 should be held not to apply to this claim, I do propose to address the "same or substantially the same facts" issue.

75. As Hobhouse LJ put it in *Lloyd's Bank plc v. Rogers* [1997] TLR 154: "[t]he policy … was that, if factual issues were in any event going to be litigated between the parties, the parties should be able to rely upon any cause of action which substantially arises from those facts." The correct approach is found in judgments such as Glidewell LJ's in *Welsh Development Agency v. Redpath Dorman Long Ltd* at 1418 and Millett LJ's in *Paragon Finance plc v. DB Thakerar & Co* [1999] 1 All ER 400, at 418; both cited by Tomlinson LJ in *Ballinger v. Mercer Ltd* at [36]-[37].

76. In borderline cases, whether or not a new cause of action arises out of substantially the same facts as those already pleaded is substantially a matter of impression. Other than in borderline cases, it must be a matter of analysis. I treat with great caution the evidence from Mr Leon Chua, the respondents' solicitor, and Mr Peter Easterbrook, the SIA's head of criminal investigations. I find their evidence of little assistance. Both make self-serving observations and engage in argument as well as stating facts.

77. I cannot see any reason to treat this as an exceptional case (as per the reasoning in *Akers v. Samba Financial Group*) where the court would be justified in going beyond the pleadings in order the determine the issue. I turn to the pleadings.

78. The unamended claim form recites the regulatory history starting with the obtaining of an "Approved Contractor Scheme certificate" in or around December 2019. That was pleaded in support of the unamended A1P1 claim. The initiating of criminal proceedings and suspension of the respondents' licence in August 2022 is then pleaded. The failure of the criminal proceedings and the vindication of the respondents is then pleaded.

79. The plea at paragraph 5 of the unamended claim form is that "the Defendant's conduct, in particular, the suspension and withdrawal of the Licence" is a wrongful interference with the right to peaceful enjoyment of the Claimants' property…" and, as such, a breach of the HRA section 6 by a public authority, for which damages are claimed under section 8.

80. In the amended claim form, all those short form allegations are deleted and the claim form is expressed as a general statement of the causes of action relied on, supported by the facts pleaded in the particulars of claim.

81. I have already summarised the particulars of claim above. I consider that all the matters there pleaded would be admissible evidence to support the unamended claim. The regulatory history is relevant to whether the interference with the A1P1 right was disproportionate. The criminal investigations and bringing of proceedings did not happen in a vacuum. They were preceded by requests for information and documents in 2021 and 2022.

82. The respondents' responses to those requests, or the lack of responses, is relevant to the SIA's decision to bring and continue the criminal proceedings and take other regulatory action. Indeed, in the pleaded defence a case is made that the respondents' conduct when faced with reasonable regulatory action helps to justify the action taken by the SIA and to show the proportionality of the decision to prosecute and withdraw approved contractor status.

83. I do not think the regulatory history can be treated as being in "silos", as Mr Easterbrook seeks to do by referring to the names of the various operations he mentions. The causes of action for breaches of articles 6, 8 and 14 are pleaded as breaches occurring in the course of the various investigations and proceedings, evidence of which is admissible whether or not those causes of action are added to the claim under A1P1.

84. As for the allegation of direct race discrimination, it is well established that background evidence of the parties' dealings is admissible for the purpose of discerning any justifiable inference that treatment of a claimant in a particular manner was causally linked to a claimant's protected characteristic; being in this case, race nationality or ethnic origin. If the claim remained unamended, that same evidence would be admissible to support the A1P1 claim.

85. I conclude that the new claims in the amended claim do arise from substantially the same facts as are already in issue in the unamended A1P1 claim. If it were necessary to decide the point, I would find that the requirements of rule 17.4(2) were satisfied. However as I have explained, I do not base my decision in this appeal on that finding unless I were wrong in deciding that, for the reasons given above, rule 17.4 does not apply in the present case.

86. The Master was therefore right to decide that he had discretion to allow the amendments on ordinary principles, as in a case where the application to amend is brought under rule 17.1(2)(b). The factors to be taken into account are conveniently set out in the judgment of Coulson J (as he then was) in *CIP Properties (AIPT) Ltd v. Galliford Try Infrastructure Ltd* [2015] EWHC 1345 (TCC), at [19]; and in the White Book, 2025 edition, vol. 1 at 17.3.8. The Master did not engage in consideration of those factors in any detail.

87. However, had he done so, he would surely have reached the same conclusion as he did: that the amendments should be allowed. I take the same view. I accept the submission of Mr Bedford that the amendments were made early in the litigation, indeed before service of the defence. The SIA is no worse off than if the amendments had been made at the outset, before service of the claim form. If that had happened, the SIA would have had to undertake the work about which Mr Easterbrook complains, to prepare its defence. That is not unfair.

88. My conclusion in this appeal is that the decision of the Master was correct; though my reasoning is different from his and I have had to go into some difficult analytical territory to explain why I agree with his decision. It follows that the appeal must be dismissed. I am grateful to counsel for their helpful submissions and will deal with any consequential issues when drawing up the court's order, or approving a draft produced by the parties.