Neutral Citation Number: [2025] EWHC 6 (KB)

Case No: **KB-2022-003160**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/01/2025

Before :
Mr Justice Dexter Dias

- -

Between :

Josephine Hayes	**Applicant/ Claimant**
- and –	
(1) Dr Mark Pack **(2) Duncan Curley, Alexandra Simpson and Serena Tierney**	**Respondents/ Defendants**

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- -

Josephine Hayes in person
Richard Mott and Lauren Hitchman (instructed by **DTM Legal**) for the **respondents /defendants**

Hearing dates: 9 December 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 2nd January 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 DEXTER DIAS

Mr Justice Dexter Dias :

1. This is the judgment of the court.

2. The judgment is handed down shortly after the close of oral submissions. It could not be delivered immediately thereafter because to expedite matters, the court also took the Pre-Trial Review ("PTR") in the main action and heard submissions on a contingent basis.

A. Introduction

3. This is an oral renewal of permission to appeal applications in two appeals connected to disputes within the Liberal Democrats ("the Party" or "the Association"). The applicant (claimant in the main action) is Ms Josephine Hayes. Ms Hayes appears in person. She is a barrister by profession and appears without representation. The respondents (defendants in the main action) are Dr Mark Pack, Duncan Curley, Alexandra Simpson and Serena Tierney. The defendants are represented by Richard Mott and Lauren Hitchman of counsel.

4. The relevant facts are briefly set out in two judgments of Master Armstrong ("**the Master**") dated 8 May and 22 July 2024. The applicant makes numerous criticisms of these decisions.

5. In very short order, the background facts are that for many years the applicant has been actively involved in the Liberal Democrats, an unincorporated association established in 1988. Members pay an annual subscription fee and are bound by the Constitution. Ms Hayes assumed several important roles on different committees. On 3 February 2022, after a virtual meeting about the selection of a candidate, during which the claimant asked questions and was disconnected from the meeting, Dr Pack made a complaint about her conduct. Although he is President of the Federal Party (part of the complicated internal arrangements of the Party), he chose to make the complaint in his personal capacity. This complaint led to the Party's complaints procedure being activated. By a decision dated 1 September 2022, the applicant was expelled from the Party following an adverse decision of a complaints panel consisting of the remaining three respondents, Mr Curley, Ms Simpson and Ms Tierney. The applicant applied for an injunction to prevent or reverse her expulsion. Johnson J dismissed her application on 5 October 2022.

6. The applicant filed a claim in this court on the next day, 6 October 2022, claiming breach of the multilateral contract that connects members of the Party. By way of relief, she seeks an injunction mandating her reinstatement and/or damages and interest and costs.

7. Her claim is strongly resisted. The defendants realistically concede that Ms Hayes has an arguable claim for breach of contract arising from the applicant's expulsion from the Party under the contract. They will contest that claim at trial. However, her attempt to widen the scope of the claim and embroil the court in

an investigation into the Party's internal governance and affect her reinstatement, even if a breach of contract is established, is said to be misconceived. In short, her expulsion is said to be in accordance with the contract and the Constitution.

B. Appealed decisions

8. There are two decisions by the Master that are impugned by the applicant, one in a judgment handed down on 8 May 2024 ("**Judgment 1**"), the second on 22 July 2024 ("Judgment 2").

9. **Judgment 1**. Following a hearing on 11 April 2024, the Master handed down a reserved judgment on 8 May 2024. On11 April 2024 the defendants had made applications under Civil Procedure Rules 1998 ("CPR"). First, to strike out pursuant to Part 3.4(2) or summary judgment under Part 24.3 in respect of certain paragraphs of the particulars of claim ("PoC"). The offending paragraphs were said to be paras 6-50 and 69-70. These paragraphs were alleged to contain misconceived assertions about the "independence" of the complaints system and a profusion of matters of no or only trivial relevance. The Master granted the applications and struck out all the identified paragraphs of the PoC and gave summary judgment in respect of part of the claim. In doing so, he effectively focused the scope of Ms Hayes's claim on the breach of contract dispute about her expulsion ("**Appeal 1**": KA-2024-000104).

10. That part of the claim, designated by the defendants the "core claim", sits outside the offending paragraphs and will go to trial.

11. **Judgment 2**. On 22 July 2024 the Master delivered an ex tempore judgment in which he declined to set aside his previous decision refusing the representation application. He also refused the application to amend the PoC to expand the relief sought (in the prayer) and amend the title of the claim in line with the applicant's arguments about representation ("**Appeal 2**": KA-2024-000152).

12. The applications for permission to appeal these decisions were considered together on the papers by Sir Stephen Stewart, sitting as a Judge of the High Court ("**the Judge**"). The Judge refused permission on all grounds on both Appeal 1 and Appeal 2. The applicant renews her application for permission on both appeals. This is my decision about each application.

C. Renewal hearing

13. I heard detailed oral argument predominantly, but not exclusively, from the applicant.

14. This hearing was primarily listed as a PTR to be heard on 9 December 2024 in preparation for a trial of the breach of contract itself listed in the trial window opening 29 January 2025. In his refusal order, the Judge directed that the permission renewal applications should heard on the day of the PTR should there be sufficient time. I judged that it was vital to have clarity about whether permission should be granted on any of the grounds in either appeal to assess better whether further applications for a stay or an adjournment should be

granted and to inform better case management. Therefore, due to the PTR listing, the defendants were present by forensic happenstance. Availing themselves of that opportunity, they applied to be heard as respondents on the permission applications. While there was no objection from Ms Hayes, I judged it proportionate to restrict their submissions to new arguments not canvassed in the applicant's two appeal skeletons. Mr Mott made short submissions on discrete points to which Ms Hayes replied. The court is grateful to them both for their oral and written submissions.

15. I subdivide the court's discussion of the applications into three parts (1) Introductory remarks (**Section D**); (2) Appeal 1 (**Section E**); (3) Appeal 2 (**Section F**).

D. Introductory remarks

16. I make seven introductory remarks before examining the grounds in each permission application in turn in the subsequent sections.

17. **First**, the appeal test. CPR Part 52.6 provides that permission to appeal can only be granted if:

> "The Court considers that the appeal would have a real prospect of success; or
>
> There is some other compelling reason for the appeal to be heard."

18. The Court retains a discretion in the granting of permission, the exercise of which must be in accordance with the overriding objective (Part 52.6(1)). Further under Part 52.21(3):

> "the appeal court will allow an appeal where the decision of the lower court was (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court".

19. Therefore, arguability is at the heart of the permission decision. When I say that a ground is or is not arguable, it means the ground has or lacks a real prospect of success.

20. **Second**, the applicant fleshed out her "true case" in oral argument. She said that it was about "wrongdoing in the Party" and is important for "all members of the Party and the public". Whether the complaints panel "slipped up" and made a decision that was procedurally incorrect is "frankly not important". Her case is that the Party is "not being governed properly to the detriment of individual members". The members need to know that large sums of money are being spent on "dirty tricks" and the "dirtiest trick of all" is that the complaints system that masquerades as being "independent" in fact is not. Therefore, what Sir Stephen Stewart decided is "nonsense" as there is no point in her suing "four random members of the Party". What she is trying to do through her action is "to change the Party". She is less concerned with individual "wrong decisions"

like hers, and instead wants to expose "the structural problems with the complaints system". In sum, she says that if the decision of the Master is "allowed to stand" the consequence is that the Party will have "a weapon to use against other members". It is a "dirty trick" by the defendants to deny that the requirement of "independence" for the complaints procedure is not incorporated as a new term of the mutual and multilateral contracts. Dr Pack's complaint was brought against her "because she is a nuisance" and was seeking to expose wrongdoing in the Party. The defendants' stance and the decisions of the Master and the Judge have reduced her claim to a "shadow of its former self". What is important is the "wider governance of the Party."

21. I judge that these submissions reveal with great clarity the fallacy at the heart of these renewal applications. The fallacy flows from a fundamental misunderstanding of the status of the claim. This is a private law claim. It is brought in the King's Bench List. It is not a judicial review in the Administrative Court. This is not a public law challenge akin to impugning state or public authority decision-making or maladministration. The Liberal Democrats form an unincorporated association; that association has no separate corporate identity. Members are tied to "it", such as it exists, and to one another, through contract and Constitution.

22. **Third**, the claim is brought by the applicant against named defendants. She may assert that she sues them as "being representative of all Liberal Democrats" save the applicant (Dr Pack's alleged status), or all members "in England" save her (that of the remaining three defendants), but that does not convert them into that unwanted and unasked-for status.

23. **Fourth**, there is no real prospect of arguing successfully that the Master was "wrong" in construing these two essential realities about the status of the claim and the defendants. Like the Judge after him, the Master interpreted the prevailing contractual status and its legal implications with accuracy. I take this as an introductory point as its significance imbues the arguability of many of the grounds advanced.

24. **Fifth**, the two recent Supreme Court judgments cited by the applicant do not assist her applications. First, *USDAW v Tesco* [2024] UKSC 24 ("*Tesco*") is not about whether or how terms are incorporated into a contract. As is made clear in the judgment, it is about what explanatory or "extrinsic" material is admissible to interpret a contract. At para 5, the court states:

> "It was not in dispute between the parties in this case that various statements made, prior to the collective agreement, as explanations for employees of the express term in question, were admissible as aids to interpretation of that express term.
>
> …
>
> "However, had it been necessary to do so, we would have regarded the pre-contractual material relied on as coming within the exception that explanatory material can be admissible in interpreting a contract: see Lewison, *The Interpretation of Contracts*, 8th ed (2024) ["Lewison"],

> paras 3.38 – 3.42, citing, inter alia, the reliance on the explanatory notes that accompanied the contract in *ICS*."

25. The cited section within Lewison is headed "Explanatory Notes" and the text says at para 3.42:

> "notes must also be distinguished from the parties' subjective declarations of intent, which are inadmissible."

26. It should be observed that in a different section of Chapter 3, Lewison identifies at para 3.121:

> "Where, in the course of the negotiations for a contract, one of the prospective parties states a fact or expresses an opinion, it will be held to be a term of the contract (or a collateral contract) if the totality of the evidence shows that such was the intention of the parties."

27. It is not arguable that this was the position here whereby a "business" motion at the 2018 Conference of the Party was a renegotiation about the mutual contracts. The mechanism for changing the Constitution is set out clearly in standing orders and articles. This was not the specified route.

28. The second Supreme Court case postdates *Tesco* and cites it: *Tyne and Wear v RMT* [2024] UKSC 37. The case is about rectification of a collective agreement. It is cited by the applicant to support her argument about when a representation order is appropriate. The applicant relies on CPR Part 19.8(1), which provides:

> **"Representative parties with same interest**
> **19.8**
>
> (1) Where more than one person has the same interest in a claim –
> (a) the claim may be begun; or
> (b) the court may order that the claim be continued,
> by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest."

29. At para 59, the Supreme Court states that if a judgment is binding "on every employee" then the representative procedure under CPR Part 19 may be appropriate:

> "59. If it were thought necessary to obtain a judgment which is formally binding on every employee, the representative procedure available under CPR Part 19 is designed for just this purpose: see *Lloyd v Google LLC* [2021] UKSC 50; [2022] AC 1217. That procedure was used without any apparent difficulty in a case recently decided by this court involving a dispute about the meaning and effect of terms incorporated from a collective agreement into contracts of employment: see *Tesco Stores Ltd v Union of Shop, Distributive and Allied Workers* [2024] UKSC 28. We see no reason why that procedure could not be used here."

30. The factual context of that case is a world away from Ms Hayes's appeals. It provides no support for the arguability of her permission applications. It is not arguable that the defendants (let alone the court) should identify, nominate and appoint another person or persons as a party to the claim to be representative of other or all the other members. The applicant's proposed "machinery" to effect such appointment is contained in the draft order in her bundle (p.208):

> "The Defendants shall notify the members of the Party that issues of common interest to all members concerning the membership contract and the complaints procedure have arisen and accordingly the Court is minded to appoint one or more members of the Party as additional Defendant or Defendants to this claim to act as Ordinary Members' Representative, and invite expressions of willingness to be appointed, such responses to be received within seven days.
>
> Not less than seven days after such notification the Court will appoint such member or members, if any, as respond to the notification expressing willingness to be appointed as Ordinary Members' Representative provided that the Court is satisfied they are without conflict of interest with the Ordinary Members in these proceedings."

31. As Ms Hayes told the Master, "the court should be preparing for a trial" which is "about the governance of the Liberal Democrats party", and "to open up and subject to judicial scrutiny the acts and failings of the party's Federal Board".

32. Her submissions to this court were cut from the same cloth. Here again one sees the applicant's attempt to widen the scope of her claim to instigate a broader and diffuse examination of the Party's internal arrangements with a view, as Ms Hayes put it, "to change the Party". There is no real prospect of success in arguing that the Master was wrong to reject the expansion of the claim into a species of group litigation exploring maladministration and governance. The Judge with the same justification also found this approach unsustainable and unarguable.

33. **Sixth**, since this is a renewal application and not a final hearing, it is neither necessary nor desirable for the court at this point to definitively rule on these issues. I apply the appeal test, nothing more nor less.

34. **Seventh**, the defendants have conceded that there a clear and clearly arguable claim that requires determination at trial. It involves the tight question of whether in conducting the disciplinary process against the applicant and reaching the decision that she should be excluded from the Party there was a breach of contract. That matter is listed to be heard in the trial window starting 29 January and running to 11 February 2024, subject to the further application by the applicant to adjourn the trial (see **Section G**).

E. Appeal 1

Ground 1

35. It is not arguable that the Business Motion F11 in 2018 amounted to a constitutional amendment or effected a change to the Party's constitution. It is clear from the Party's constitution that an identified and entrenched majority of two-thirds is necessary for constitutional change. Article 2.10 provides:

> "This Constitution may only be altered:
>
> A. by a two-thirds majority of members present and voting at the Federal Conference."

36. At the 2018 Conference such change to the Federal Constitution was made in respect of a different motion (Motion F12 as opposed to F11). However, it is unarguable that the Master was wrong in his conclusion that the motion about complaints procedure fell into a different and distinguishable category. The prime terms of the multilateral contract (a "membership contract", as the Master termed it (Judgment 1, para 30)) are set out in the Constitution. That is one of the Constitution's vital functions. It is not arguable that a further term has been implied or incorporated in the Constitution due to the Conference motion. The Party's standing orders, as the Master correctly observed, materially distinguish between "ordinary" motions and those directed at constitutional amendment. Indeed, before the Master, the claimant accepted that the core terms of the contract were set out in the Constitution. It is not arguable that the "independence" requirement or obligation, as the applicant has variously termed it, has become implied in both the Constitution and the contract (or either of them) without a motion gaining the specified entrenched majority.

37. The Master also made the further point about clarity or lack of it. He stated at para 36 of Judgment 1:

> "Business Motion F11 is littered with references to expressions of belief, recommendations, and conference notes. Such language is inconsistent with the creation of an express contractual term or indeed an implied term. Business Motion F11 is better described as an expression of the conference attendees' subjective hopes about the future."

38. This is undoubtedly correct. It undermines on a practical basis the incorporation of the ordinary motion as a fundamental change to the Constitution.

39. Ground 1 has no real prospect of success.

Ground 2

40. It is vital to retain strict focus on the applicant's pleaded case. It is that the complaints procedure is independent of interference by the Party's "executive functions" (see PoC para 12). The claim is that the complaints procedure should become an "independent standalone process". At para 13 of PoC, it alleges that her expulsion was "invalid" due to the lack of independence. However, as explained in Ground 1, the purported independence term has not been incorporated into the contract.

41. Ground 2 has no real prospect of success.

Ground 3

42. Ground 3 lacks coherence. The Judge is correct that it "adds nothing".

43. Ground 3 has no real prospect of success.

Ground 4

44. The Judge correctly identified the Master's reasoning as beginning at para 30 of Judgment 1. The complaint in Ground 4 fails to identify an arguable error in the Master's reasoning.

45. Ground 4 has no real prospect of success.

Ground 5

46. There is no or no reliable evidence that other members of the Party seek to join her claim. This is a private law claim about her disciplining and consequent expulsion. If there are other parties with sufficient standing, they can apply to be joined. There is no such application before the court and has not been. The joining of parties to a civil claim is regulated by CPR Part 19. Additional parties may be added if their joinder is "desirable" to "resolve all the matters in the dispute" (Part 19.2(2a)). The matter in dispute is the expulsion of Ms Hayes. It is not arguable that it is "desirable" that other party members who may know nothing at all about this dispute, or who take no position in either direction about it, should be joined. Their joinder would do nothing to resolve the dispute between Ms Hayes and the defendants. It is unarguable but that the Master correctly analysed this. Further, he correctly adjudicated on the case as it was before him before Judgment 1 was handed down. The striking out of the Reply followed from the striking out of the elements of the PoC that the Master correctly found to be offending.

47. Ground 5 has no real prospect of success.

Ground 6

48. This ground states that the applicant "seeks declarations in the terms in the draft amended claim form and amended prayer for relief." The ground is misconceived as a ground of appeal as the issue formed no part of Judgment 1.

49. Ground 6 has no real prospect of success.

Ground 7

50. This seeks permission to appeal costs "both as to principle and quantum". The proceeding grounds have no real prospect of success. There is no arguable error of law or procedure by the Master, given all the preceding grounds have been refused permission.

51. Ground 7 has no real prospect of success.

Conclusion: Appeal 1

52. I add that there is no other compelling reason for the appeal to be heard. Therefore, Appeal 1 is refused permission in its entirety.

F. Appeal 2

53. Once more, there are seven grounds of appeal.

54. I concur with the Judge that the skeleton argument confuses rather than clarifies. I take the grounds of appeal from para 46 of the skeleton argument, but emphasise that I have considered both the full contents of the skeleton argument and bundle and the oral submissions of the applicant before me.

Ground 1

55. The ground is that the Master's "refusal to vacate the hearing on 22 July or adjourn the April Applications to the judge dealing with the First Appeal, or stay the claim in the meantime, was wrong." The ground fails to engage with the principle that an appeal does not act as an automatic stay. The Master's decisions encapsulated in the 14 May 2024 order are not arguably wrong. He was not arguably wrong to continue to determine the further applications at the 22 July 2024 hearing, resulting in his decisions in Judgment 2. There is no arguable basis to "stay the claim in the meantime".

56. Ground 1 has no real prospect of success.

Ground 2

57. The ground argues that the Master was "wrong to rule that the court should not scrutinise the internal governance of the association". In substance this is a repetition of earlier failed grounds of appeal. It displays the same evident weakness: failing to appreciate the true nature of the claim – a private law claim that is not directed at a wider interrogation of the Party's governance or an exercise in "chang[ing] the Party". The question of the compliance of the complaints process and expulsion decision with the contract is a separate matter and must be tried.

58. Ground 2 has no real prospect of success.

Grounds 3-5

59. The Judge took these three grounds together. I examine them in the same way as they share common features. It repays restating them here. Ground 3 avers that the Master was wrong not to conclude that "every member of the association has an interest in proper governance of it and that C [Ms Hayes] had standing to complain of departures from its rules." Ground 4 states that the Master "ought to have granted the representation order sought or arranged for an Advocate to the Court (amicus curiae)." Ground 5 avers that the Master should have concluded that "it was incumbent on the Ds to arrange for separate representation, not for individual members to apply for it (especially seeing that there is no evidence that they have been notified of the claim or notified that they are represented in it)." In oral submissions, Ms Hayes said that a

representation order was essential for other members of the Party "to have a voice".

60. What is clear from the particularisation of the complaints in these associated grounds is that they all suffer from the same misconception. It is not the function of this court to add non-parties to an action when they have made no application to be joined. It is not arguable that a further party should be added to represent the interests of other party members. There is no such duty on the defendants, nor the court. The members of the Party number over 80,000 on the applicant's case. In this private law action about the applicant's expulsion, it is untenable to argue that there is no conflict of interest and/or there is an identity of shared interest about the issues that the court must decide to determine the applicant's expulsion claim. It is not arguable that the Master was wrong in his rejection of these assertions (see, for example, Judgment 1, para 38). Consequently, the question of representation order is not arguable: the true scope of the claim is identifiably narrow and does not justify a representation order.

61. Grounds 3, 4 and 5 have no real prospect of success.

Ground 6

62. This ground states that the Master "ought to have given permission to amend the relief sought." The ground is founded on the assumption that Judgment 1 contained material error. I have found that it is not arguable that it did and refused permission on Appeal 1 in its entirety. This ground therefore lacks proper foundation. It is unarguable that the Master was wrong in his conclusion at para 13 of Judgment 2 that:

> "The proposed amended prayer simply bears no relation to the pleaded case in respect of breach of contract. It would be wholly disproportionate to reopen the pleadings and bring a host of unrelated topics and unrelated events to a claim that was issued some 21 months ago and which is set for a trial in February 2025. Those amendments would simply seek to reintroduce matters already determined by this court in the judgment of 8th May."

63. In actuality, the applicant seeks to broaden the scope of the claim in a way that is irrelevant to the true issues and is overall disproportionate. As the Master held in Judgment 1 at para 41:

> "If allowed to stand the knock-on effect of these paragraphs would be to sidetrack the litigation leading to significant waste of resource on disclosure, witness evidence, trial time, trial timetabling, and the like, all to address matters which do not go to the issues in hand or the remedy sought. This cannot be in line with the overriding objective. Indeed, it is noted that Master McCloud has already felt a need to recuse herself from this case following misconceived criticism of her involvement in this case which, at paragraph 12.13 of the particulars of claim, purports to involve gender-critical issues when clearly the claimant's case has nothing to do with gender-related arguments."

64. Before this court, the applicant submitted that even "if there is no direct effect on a member, there should nevertheless be a right for members to bring a claim against the Party as being indirectly affected due to the Association being improperly run". She fleshed out this point by submitting that permission should be granted on the relief ground to restore what the claim was "originally about, which is establishing the rights of members and improvement of the governance of the Party."

65. Once more, this discloses how the vital and inescapably private law character of the claim about the applicant's expulsion has been misunderstood. To the extent that it should range more widely as an investigation into the Party's internal governance or maladministration, it misconceives the function of these proceedings.

66. Ground 6 has no real prospect of success.

Ground 7

67. This ground states that the "order for costs was unjust and should be set aside and an order in C's favour substituted." The applicant has failed on all grounds in Appeal 1. She has failed on all six previous grounds in Appeal 2. It is unarguable that the costs decision was wrong.

68. Ground 7 has no real prospect of success.

Conclusion: Appeal 2

69. Once more, I consider whether there is any compelling reason for the appeal to be heard. None has been brought to my attention distinct from the pleaded grounds. Permission has been refused on each ground individually. I find that permission for Appeal 2 must also be refused in its entirety.

G. Application to adjourn

70. I should add that the applicant made an application to adjourn the trial and remove it from the present listing window. Ms Hayes accepted that the application is predicated on permission being granted on either Appeal 1 and/or Appeal 2. In light of the court's ruling that permission is refused on both appeals, and all grounds within them, the basis for the adjournment application is undercut. It is dismissed.

71. The adjournment application occupied very little time in the wider scheme of the hearing before me. Both parties accepted that the viability of the application is contingent on the outcome of the permission applications. In the defendants' draft order there is provision for the costs of a dismissed adjournment application. I received no oral submissions about that. If the defendants pursue this point, within 2 days of the handing down of this judgment they must provide a concrete quantification of the figure sought on summary assessment along with the draft order reflecting the court's decisions following the PTR hearing on 9 December 2024. The applicant has 2 days to respond after that. The defendants have 1 day thereafter to reply.

H. Disposal

72. I therefore recapitulate the disposal in these two permission applications:

(1) Permission to appeal the decisions in Judgment 1 (Appeal 1: KA-2024-000104) is refused on all seven grounds advanced;

(2) Permission to appeal the decisions in Judgment 2 (Appeal 2: KA-2024-000152) is refused on all seven grounds advanced;

(3) The application to adjourn the trial is dismissed;

(4) An agreed draft order to reflect the terms of this judgment and the court's decisions at the PTR to be filed with the court by 4 pm, 13 December 2024;

(5) Costs of the PTR to be costs in the case, subject to the costs reasonably incurred by the adjournment application and reasonable preparation to meet it.

73. I intend for this judgment to be handed down electronically and published to the National Archives.