IN THE COURT OF APPEAL, CIVIL DIVISION
ON APPEAL FROM THE COUNTY COURT SITTING AT CARDIFF

Case No H42YJ543

Appeal Ref: CA-2022-001778

B E T W E E N:

MR JAMES CHURCHILL

Respondent

AND

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL

Appellant

AND

(1) CIVIL MEDIATION COUNCIL
(2) CENTRE FOR EFFECTIVE DISPUTE RESOULTION
(3) CHARTERED INSTITUTE OF ARBITRATORS

Interveners

WRITTEN SUBMISSIONS ON BEHALF OF INTERVENERS:

CMC, CEDR and CIARB

FILED IN ACCORDANCE WITH THE ORDER DATED 16 JUNE 2023

[References to the Interveners' Supplementary Bundle will take the form [IA/x] where X denotes the relevant page number]

A: Introduction

1. This is the written submission on behalf of three interveners in the Appeal: the Civil Mediation Council ('**CMC**'), the Centre for Effective Dispute Resolution ('**CEDR**') and the Chartered Institute of Arbitrators ('**Ciarb**'), (together, the '**Interveners**').

2. It is filed in accordance with the order of Andrews LJ, dated 16 June 2023, by which the Interveners were given permission to file and serve written submissions of no more

than 25 pages in substantially the form of the draft skeleton exhibited to the witness statement of Ian Gatt KC.

3. The Interveners are respectfully grateful for the opportunity to make this intervention but are conscious of the limited extent to which it is appropriate for them to seek to assist the court and therefore refrain from addressing issues which are already adequately and more appropriately addressed by the parties. Their intervention is accordingly limited to the issues of principle which fall to be resolved in relation to the status of *Halsey*, and the power of the Court to order:

    a. parties to *"refer their disputes to mediation"*; and

    b. a stay of the proceedings to facilitate Alternative Dispute Resolution.

4. The CMC is a registered charity which was established 20 years ago under the Chairmanship of Sir Brian Neill. It is the recognised authority in England and Wales for all matters related to civil, commercial, workplace and other non-family mediation and liaises with the Government, the judiciary, the Civil Justice Council, the legal profession, different mediation organisations, employers, industry and other stakeholders on mediation issues. The largest mediation trainers and providers, including CEDR and Ciarb are members of the CMC. Although there is no statutory regulation of mediators, all individual mediators and mediation providers registered with the CMC are required to abide by a Code of Conduct, which makes appropriate provision for training, insurance, and accountability through a formal complaints procedure.

5. CEDR is also a registered charity which has, for more than 30 years, provided mediation and alternative dispute resolution services on a not-for-profit basis. It is a body widely regarded as setting appropriately high standards in this field as is acknowledged in the Civil Justice Council's Report on Compulsory ADR dated July 2021 ('**the CJC Report**'). It has also, for more than 20 years, produced a biannual audit, which is the most comprehensive survey of the Commercial Mediation Marketplace in the United Kingdom.

6. Ciarb is a Royal Chartered professional body and registered charity established in 1915 and awarded a Royal Charter in 1979. Its objects are to "*promote and facilitate worldwide the determination of disputes by all forms of private dispute resolution other than resolution by the court*." Ciarb trains mediators, arbitrators and adjudicators and sets professional and ethical standards. Ciarb has over 18,000 members in 150 jurisdictions, with 43 branches, including nearly 5,000 practicing mediators globally, more than 1,000 of whom practice principally in England and Wales.

7. The Interveners do not seek to express a view on the details of the dispute between the parties in this case, or to comment specifically on all of the arguments advanced on behalf of other organisations which have been permitted to intervene. The Interveners' intervention is limited to an important point of principle, namely the status of the *Halsey* case.

8. In summary, the Interveners respectfully submit that the Court of Appeal was led into error in its judgment in *Halsey* in relation to the application of Article 6 of the European Convention on Human Rights ('**ECHR'**) as to whether courts may order a stay for extra-judicial dispute resolution. It is respectfully submitted that was an error which this Court is now in a position to, and should, correct.

B: *Halsey*

9. In two appeals in *Halsey* (one by *Halsey* and one by *Steel*), the Court of Appeal sought to answer the question "*when should the court impose a costs sanction against a successful litigant on the grounds that he has refused to take part in an alternative dispute resolution ("ADR")?"*: see [2] of the Judgment.

10. In *Halsey* the only ground of appeal was whether the judge was wrong to award the defendant its costs, it having refused a number of invitations by the claimant to mediate. In *Steel*, there were two questions before the court. The first related to the judge's conclusion as to causation and is accordingly irrelevant for these purposes. The second was whether the judge was wrong to award the successful second defendant his costs against the first defendant where the second defendant had refused invitations by the

first defendant to mediate. The issue before the court in both appeals related only to costs.

11. The Judgment of the Court by Dyson LJ, as he then was, contained a section headed "General encouragement of the use of ADR", followed by a section headed "The costs issue". The first section included the following comment, which was cited by DDJ Rees in this case:

> *"9. We heard argument on the question whether the court has power to order parties to submit their disputes to mediation against their will. It is one thing to encourage the parties to agree to mediation, even to encourage them in the strongest terms. It is another to order them to do so. It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court. The court in Strasbourg has said in relation to article 6 of the European Convention on Human Rights that the right of access to a court may be waived, for example by means of an arbitration agreement, but such waiver should be subjected to "particularly careful review" to ensure that the claimant is not subject to "constraint": see Deweer v Belgium (1980) 2 EHRR 439, para 49. If that is the approach of the ECtHR to an agreement to arbitrate, it seems to us likely that compulsion of ADR would be regarded as an unacceptable constraint on the right of access to the court and, therefore, a violation of article 6. Even if (contrary to our view) the court does have jurisdiction to order unwilling parties to refer their disputes to mediation, we find it difficult to conceive of circumstances in which it would be appropriate to exercise it.*

Article 6 ECHR

12. The Interveners respectfully submit that the Court of Appeal was led into error in respect of Article 6 ECHR, by argument which was addressed to it only in the course of oral submissions, the Court and the parties not having been given notice of it in any written submission. The Interveners respectfully support the submission that, to order parties to mediate does not, certainly in most circumstances, infringe their Article 6 rights. This is because requiring parties to mediate does not, in most circumstances, impose any obstruction to their right of access to the court, let alone an unacceptable

obstruction. Requiring parties to mediate does not require them to settle their dispute, or deny them access to the court if they are unable to do so.

Misplaced reliance on *Deweer v Belgium ("Deweer")*

13. In our respectful submission, it would be right for the Court now to depart from reliance on *Deweer,* save for those rare cases to which it may be relevant, for the following two reasons:

    a. Reliance on it by the Court of Appeal in *Halsey* was not fully explained and misplaced.

    b. The relevance of Article 6 ECHR has since been clarified. The law is now clear that mandating ADR alongside recourse to the courts does not offend Article 6, provided certain conditions are met.

Reliance on Halsey

14. In relation to the first point, *Deweer*, which was cited to the Court of Appeal in oral argument addressed on behalf of the Law Society, was not even directly relevant to the issues which fell to be determined in *Halsey*. It had concerned an offer made by a regulatory authority to Mr Deweer to avoid lengthy regulatory/criminal proceedings (and the immediate closure of his business until proceedings concluded) by making a payment of what was in effect a penalty.

15. It was alleged that Mr Deweer, a butcher, overpriced beef and pork which was for sale to consumers. The authority decided provisionally to close his business, as well as to impose heavy penalties if he failed to comply. What was perhaps euphemistically described as a "friendly settlement" was proposed at a fixed fee of 10,000F, with 8 days being allowed for the acceptance of that offer. The closure of his business would be terminated the day after the payment was made. As described in the CJC Report on Compulsory ADR, "*in effect, the state had inflicted a penalty on the butcher without a trial*".

16. The "friendly settlement" was therefore not something that had resulted from anything that could be recognised as mediation or any other ADR process: it was an ultimatum presented unilaterally in the context of criminal or regulatory proceedings.

17. The Court cited the Commission's opinion that there had been constraint in Mr Deweer's case, because it considered that he had waived his Article 6 rights *"only "under the threat of [the] serious prejudice that the closure of his shop would have caused him"*: see [50] and concluded that Mr Deweer's waiver of a fair trial was tainted by constraint: see [54].

18. The CJC Report, written by Lady Justice Asplin DBE, William Wood KC, Professor Andrew Higgins and Mr Justice Trower, concluded as follows on the relevance of *Deweer*:

> *"It is fair to say that the Strasbourg Court's decision was focused on the specific circumstances in Deweer, and does not obviously address the broader question of whether parties can ever be compelled to submit to ADR. Various commentators have doubted whether Deweer, properly understood, supported Lord Dyson's conclusions in that regard in Halsey. At the very least, Lord Dyson's reference to arbitration is hard to understand, as the Deweer case was not about arbitration (it merely makes an oblique reference to the Belgian courts' view of arbitration clauses). Arbitration is a "cul de sac" which removes disputes from the court process entirely, unlike the forms of ADR considered here; it raises quite different issues in terms of access to the court."*

19. It is respectfully submitted that the view set out in the CJC Report was (and is) the correct conclusion to draw as to the relevance of *Deweer*. The interveners gratefully adopt that summary; as they equally respectfully do the conclusions of that Report as briefly referred to below.

Subsequent European Case Law

20. In Joined Cases C-317-320/08, *Rosalba Alassini v Telecom Italia SpA*, ('***Alassini***') the Court of Justice of the European Union ('**CJEU**') considered the right to a fair trial

under article 47 of the Charter of Fundamental Rights of the European Union ('**CFR**'), which is substantively the same right as considered by the ECtHR in *Deweer*.

21. In that case, the CJEU considered national legislation under which it was mandatory to attempt to achieve an out of court settlement as a condition for proceedings to be admissible before the courts. The question which the Court considered was *"in so far as the establishment of a mandatory settlement procedure is a condition for the admissibility of actions before the courts, it is necessary to consider whether it is compatible with the right to effective judicial protection"*: see [46].

22. The CJEU considered this to be a matter of the application of the principle of effectiveness. In the context of the specific procedure under consideration, the CJEU held that "*various factors*" showed that that mandatory settlement procedure would not make it "*in practice impossible or excessively difficult*" for an individual to exercise their right to a fair trial, for the following reasons:

    a. The outcome of the settlement procedure is not a decision which is binding on the parties concerned and does not prejudice their right to bring legal proceedings. (We note that a binding decision in this context appears to refer to a decision taken by a body as to the outcome of the case, rather than a consensual agreement between parties which the parties intend to bind them: see the use of "binding" in [10].)

    b. There is no substantial delay arising from the settlement procedure.

    c. For the duration of the procedure, time is suspended for the purposes of limitation.

    d. There were in that case no fees.

23. The CJEU also went on to make findings of wider generality. It held that:

    a. It is settled case-law that fundamental rights do not constitute unfettered prerogatives and may be restricted, provided those restrictions correspond to objectives of general interest and do not involve a disproportionate and

intolerable interference which infringes upon the very substance of the rights guaranteed: see [63].

b. The imposition of an out-of-court settlement procedure was not disproportionate. It was not evident that any disadvantages caused by the mandatory nature of an out-of-court settlement procedure were disproportionate to the objectives pursued: see [65].

24. The features of a scheme requiring an attempt at ADR before providing access to the courts were considered again in *Menini v Banco Popolare Società Cooperativ* [2018] CMLR 15. The Court held that:

> *"61. Accordingly, the requirement for a mediation procedure as a condition for the admissibility of proceedings before the courts may prove compatible with the principle of effective judicial protection, provided that that procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs – or gives rise to very low costs – for the parties, and only if electronic means are not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional circumstances where the urgency of the situation so requires…"*

Principle of Effectiveness and the Costs of Mediation

25. It is noted that in *Alassini* the test of the principle of effectiveness, i.e. that the measure does not make it practically impossible or excessively difficult to exercise one's rights, was met in part because there were no fees applicable in that case.

26. It is accepted that there may be rare circumstances in which the cost of mediation could be so disproportionately high as to make it excessively difficult to exercise one's rights to litigate, if the parties are first forced into ADR. However, in the vast majority of mediation processes, the costs will not be disproportionately high compared with the expense of litigation, if they are borne by the parties at all. By way of example:

a. CEDR's 10th Mediation Audit identified for typical lower value cases the total fee for the mediation, the average case duration and the median hourly rate. For cases with a value under £10,000, the median hourly rate was £150, the average case duration 5 hours and the total fee £750 (which we note would usually be split between the parties). For cases with a value between £10,000 and £25,000, the median hourly rate was £175, the average case duration 7 hours, and the total fee £1,225, while for cases over £25,000, the median hourly rate was £250, the average case duration was 11 hours, and the total fee £2,750.

b. The Audit also gave an indication of mediators' earnings for a typical one day mediation, and put broadly, 59% had fees below £2,500, 32% had fees between £2,501 and £5,000, and 9% had fees of over £5,501.

c. It is recognised that these are the fees for the mediator, not those for any lawyers instructed to attend. Costs for legal representation (if a litigant chooses to be represented in the mediation) will be additional. However, in the rare circumstances in which a mediation is not successful, the costs of engaging in the mediation will not be wasted. Rather, they are costs saved in the litigation since the work done in preparation for a mediation may be used in subsequent litigation. In addition, where a mediation is not successful, it may nonetheless result in the issues between the parties being narrowed.

27. By way of example of such a scheme, the Interveners support the automatic mediation scheme for small claims track cases, as currently proposed by the Ministry of Justice (the '**MoJ**'). That scheme will be freely available to litigants and will be serviced by court-trained staff. An hour's telephone mediation is not the same as an in-person mediation. However, the Interveners recognise the need for proportionality of costs when mediating small claims. The MoJ scheme meets the requirements of *Alassini* in that it is easily accessible, is not necessarily binding, and is inexpensive.

28. It may also be important to note that, if the Court's decision in *Halsey* on this point is correct, a court would not be entitled to require parties to engage in any ADR procedure even if it would not result in any cost to the party whose lawyers were objecting to it.

Subsequent Judicial Comment

29. Both Lord Dyson and Sir Alan Ward, two of the three judges in *Halsey*, have subsequently commented on the case.

30. In a subsequently reported[1] speech delivered at Ciarb's Third Mediation Symposium in October 2010, Lord Dyson maintained his view that the *Halsey* decision was "on the whole correct", that the guidance in relation to costs was sound and that truly unwilling parties should not be compelled to mediate. He went on to make an important comment in respect of the *Halsey* judgment as it related to Article 6. He said this:

> *"What I would now say, however, is that ordering parties to mediate in and of itself does not infringe their art.6 rights. I rather regret, (and I wasn't alone, my two colleagues were with me) that I was tempted by the Law Society to embark upon something which it was unnecessary to embark upon, and venture some views upon art.6. What I said in Halsey was that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction to their right of access to the court in breach of art.6. I think those words need some modification not least because the European Court of Justice entered into this territory in March this year in the case of Rosalba Alassini."*

31. In *Colin Wright v Michael Wright (Supplies) Ltd & Or* [2013] 3 WLUK 769, Sir Alan Ward addressed the question in *Halsey*. In setting out the point, his judgment said:

> *"3. ...Perhaps, therefore, it is time to review the rule in Halsey…, for which I am partly responsible, where at [9] in the judgment the Court (Laws and Dyson LJJ and myself), Dyson LJ said:*
>
> > *"It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court."*
>
> *Was this observation obiter? Some have argued that it was. Was it wrong for us to have been persuaded by the silky eloquence of the eminence grise for the ECHR, Lord Lester of Herne Hill QC, to place reliance on Deweer…?*

[1] Lord Dyson, '*A Word on Halsey v Milton Keynes*' (2011) 77.3 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 337, 340.

> *…Is a stay really "an unacceptable obstruction" to the parties' right of access to the court if they have to wait a while before being allowed across the court's threshold? Perhaps some bold judge will accede to an invitation to rule on these questions so that the court can have another look at Halsey in the light of the past 10 years of developments in this field."*

32. *Halsey* has also been the subject of judicial commentary from those who were not judges in the case. As cited by Sir Alan Ward, Sir Anthony Clarke also commented on *Halsey* at the CMC's Second National Conference in Birmingham on 8 May 2008, as reported[2]. The CJC Report cited his speech in respect of the status of *Deweer*:

> *"45. Sir Anthony then turned to Deweer, and the statement of the Strasbourg Court at [49] of its judgment that "any measure or decision alleged to be in breach of Article 6 calls for careful review":*
>
> > *"13. This statement is a long way away from declaring that mediation is contrary to Article 6 ECHR.""*

33. In his speech, "*Mediation: An Approximation to Justice*" at SJ Berwin on 28 June 2007, Mr Justice Lightman commented on *Halsey*, his first proposition relating to Article 6:

> *"Both these propositions are unfortunate and (I would suggest) clearly wrong and unreasonable. Turning to the first proposition regarding the European Convention, my reasons for saying this are twofold: (1) the court appears to have been unfamiliar with the mediation process and to have confused an order for mediation with an order for arbitration or some other order which places a permanent stay on proceedings. An order for mediation does not interfere with the right to a trial: at most it merely imposes a short delay to afford an opportunity for settlement and indeed the order for mediation may not even do that, for the order for mediation may require or allow the parties to proceed with preparation for trial; and (2) the Court of Appeal appears to have been unaware that the practice of ordering parties to proceed to mediation regardless of their wishes is prevalent elsewhere throughout the Commonwealth, the USA and the world at large, and indeed at home in matrimonial property disputes in the Family Division. The Court of Appeal refers to the fact that a party compelled to proceed to mediation*

[2] Sir Anthony Clarke, The Future of Civil Mediation, (2008) 74 Arbitration 4

> *may be less likely to agree a settlement than one who willingly proceeds to mediation. But that fact is not to the point. For it is a fact: (1) that by reason of the nature and impact on the parties of the mediation process parties who enter the mediation process unwillingly often can and do become infected with the conciliatory spirit and settle; and (2) that, whatever the percentage of those who against their will are ordered to give mediation a chance do settle, that percentage must be greater than the number to settle of those not so ordered and who accordingly do not give it a chance."*

English Case Law

34. The Courts have also made comments on the status of *Halsey* in recent cases. One such case is *Lomax v Lomax* [2019] 1 WLR 6527, in which the Court of Appeal considered the court's power to order Early Neutral Evaluation ('**ENE**') where one of the parties did not consent. Lord Justice Moylan distinguished Halsey and went on to comment:

> *"26. In any event, ENE does not prevent the parties from having their disputes determined by the court if they do not settle their case at or following an ENE hearing. It does not, in any material way, obstruct a party's access to the court. In so far as it includes an additional step in the process, this is not in any sense an "unacceptable constraint", to use the expression from Halsey v Milton Keynes. In my view, it is a step in the process which can assist with the fair and sensible resolution of cases."*

35. In our respectful submission, that reasoning applies equally to mediation. And, since we are all obliged to accept, as the Interveners unhesitatingly do, that this statement of principle by this Court, which was directly relevant to the issue raised in *Lomax*, is correct, it is not easy to see how the contrary view, expressed in a case to which it was not directly relevant (or even properly submitted) should be followed.

36. In *McParland v Whitehead* [2020] Bus LR 699, Sir Geoffrey Vos gave a judgment which raised the possibility of a court making an order for compulsory mediation, following the *Lomax* case.

> *"42. Finally, the court encouraged the parties to proceed to a privately arranged mediation as soon as disclosure had occurred… In this*

> *connection, I mentioned the recent Court of Appeal decision of Lomax v Lomax […] to the parties. The question in Lomax was whether the court had the power to order parties to undertake an early neutral evaluation under CPR r 3.1(2)(m). It was held that there was no need for the parties to consent to an order for a judge-led process. I mentioned that Lomax inevitably raised the question of whether the court might also require parties to engage in mediation despite the decision in Halsey […]. In the result, the parties fortunately agreed to a direction that a mediation is to take place this case after disclosure as I have already indicated."*

37. It is perhaps unnecessary for the Interveners to add a submission that it is indeed right that this Court should now answer the question which it expressly noted in that case as needing to be answered.

C: Professional Commentary

38. Were the Court of Appeal to correct the obiter comments in *Halsey*, that would also be consistent with the approach taken by the Civil Justice Council. The CJC Report considered two questions:

    a. Can the parties to a civil dispute be compelled to participate in ADR? (The "**Legality Question**".)

    b. If so, in what circumstances, in what kind of case and at what stage should such a requirement be imposed? (The "**Desirability Question**").

39. The answers were that:

    a. parties could be lawfully compelled to participate in ADR, and

    b. the authors had identified conditions in which compulsion to participate in ADR could be a desirable and effective development (recognising that compulsory

ADR processes are already in place in the civil justice system in England and Wales, and are successful and accepted).

40. Taking into account the relevant case law and developments, the authors considered that where a return to the normal adjudicative process is always available, appropriate forms of compulsory ADR are capable of overcoming objectives voiced in the case law. The factors requiring consideration when compulsion is considered include the cost and time burden on the parties, whether the process is particularly suitable in certain specialist areas, confidence in the ADR provider (and the role of regulation), whether the parties need access to legal advice, the stage of proceedings and whether the terms are sufficiently clear to encourage compliance and permit enforcement.

D: Court Practice

41. As identified by the various judicial comments that have been made in respect of integrated mediation, the courts already have significant powers which enable it to take a robust approach in making orders relating to ADR. For example:

    a. The court's powers under CPR 3.1(2) are wide. CPR 3.1(2)(m) allows the court directive power to:

        > *"(m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case."*

    b. There is already a power under CPR 26.4, which allows for a stay of a month on a party's request to try to settle the case by ADR, and allows the court to direct a stay if the court considers a stay would be appropriate

    c. The Commercial Court Guide encourages the use of Negotiated Dispute Resolution ('**NDR**'). It includes comment that "*legal representatives in all cases should consider with their clients and the other parties concerned the possibility of attempting to resolve the dispute or particular issues by NDR…*" (G1.2) and makes provision for the Court to set a date by which there is to be a meeting between representatives with authority to settle the case if the Court

"considers that bilateral negotiations between the parties' respective legal representatives is likely to be a more cost-effective and productive route to settlement than other forms of NDR" (G1.7)

d. CPR 44.4 identified factors to be taken into account in making decisions as to the amount of costs, which include the conduct of parties before and during proceedings, and "*the efforts made, if any, before and during the proceedings in order to try to resolve the dispute*".

E: Current Use of Mediation

42. The Interveners hope that it may assist the Court to be informed of some of the figures relating to the increasing use of mediation which reflect the context in which the question of the extent to which courts may order its use may be seen today. By way of example:

    a. In CEDR's Tenth Mediation Audit (1 February 2023), which is a survey by CEDR of civil and commercial mediators, the following statistics were identified:

        i. For the year ended 30 September 2022, the total market for civil and commercial mediations was in the order of 17,000 cases.

        ii. The comparable figures for 2003 and 2005 appear to be around 2,500.

        iii. The overall success rate of mediation is identified as having an aggregate settlement rate of 92% (which includes settlement on the day and shortly after the mediation day). That success rate is not significantly different from the findings of the Audit in 2020.

        iv. The average time spent by a mediator on a mediation is 15.8 hours. Of that a significant proportion of mediator time continues to be unremunerated, and an average of 4-5 hours was unpaid, either because the mediator did not charge for all of the hours incurred or because the mediator was operating a fixed fee arrangement.

b. It is widely recognised that there is a very real public interest in mediation being used, and where necessary ordered, in cases of alleged medical negligence. As set out in NHS Resolution's Annual Report and Accounts for the period 1 April 2021 to 31 March 2022, the following statistics were identified:

i. The NHS introduced a claims mediation service in December 2016. The service has outperformed its target use since inception.

ii. The proportion of claims settled without court proceedings has increased in every year since it was introduced, starting at 68% in 2017/18 and rising to 77% in 2021/22. NHS Resolution attribute this, in part, to the success of mediation in the NHS.

F: Conclusion

43. For all these reasons, the Interveners respectfully submit that the Court of Appeal in *Halsey* was led into error, and that the Court of Appeal in this case should take the opportunity to correct or clarify the obiter comments made in that case in respect of Article 6 ECHR. In the event that the Court considers that there are any other issues in relation to this appeal in respect of which the Interveners may be able to assist the Court, they of course remain willing to do so.

EDWIN GLASGOW CBE KC

edwin.glasgow@39essex.com

020 7832 1135

KELLY STRICKLIN-COUTINHO

020 7634 9085

ksc@39essex.com

39 ESSEX CHAMBERS

Counsel for the Interveners

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