CO/10756/2006

Neutral Citation Number: [2007] EWHC 1883 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 4 July 2007

B e f o r e:

MR JUSTICE BEATSON

Between:
THE QUEEN ON THE APPLICATION OF ALISON HARDY
Claimant

v

MILFORD HAVEN PORT AUTHORITY
Defendant
SOUTH HOOK LNG TERMINAL COMPANY LTD
1st Interested Party

DRAGON LNG
2nd Interested Party

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(Official Shorthand Writers to the Court)

Mr D Wolfe (instructed by Richard Buxton Solicitors) appeared on behalf of the **Claimant**
Mr R Price-Lewis QC (instructed by Morgan Cole) appeared on behalf of the **Defendant**
Mr S Tromans and Ms A Hearnden (Judgment only) (instructed by Taylor Wessing) appeared on behalf of the 1st Interested Party
Miss C Patry Hoskins (instructed by Berwin Leighton Paisner) appeared on behalf of the **2nd Interested Party**

J U D G M E N T
(As Approved by the Court)

1. MR JUSTICE BEATSON: This is a renewal of an application for permission to apply for judicial review. The decision which the claimant challenges is the continuing refusal, including specifically 28 September 2006, by the defendant, the Milford Haven Port Authority, to provide information relating to the safety of proposals for the construction and operation of two liquefied natural gas port terminals at Milford Haven. The developers of these terminals, Dragon LNG and South Hook LNG Terminal Limited, are named as interested parties. The application was made on 22 December 2006. Sullivan J refused permission on the papers on 6 February 2007.

2. I have had the benefit of full argument lasting a day, and a thorough skeleton argument by the claimant and extensive documentation, as well as skeleton submissions by the defendant, and South Hook LNG Terminal Limited. I nevertheless, approach the matter on the basis that one should look to see if there is an arguable point rather than in the way suggested by Keene J (as he then was) in R v London Docklands Development Corporation ex parte Christine Frost [1996] 73 P&CR 199 at 203.

3. The claimant is a resident of Milford Haven. She has previously sought permission to apply for judicial review of the grant in 2003 and 2004 of planning permission for the terminals under the Town and Country Planning Act 1990, and hazardous substances consents under the Planning (Hazardous Substances) Act 1990. The permission and consent were granted to Dragon and South Hook. The claimant's application, launched on 4 March 2005, was refused, as were applications to the Court of Appeal for leave to appeal and, pursuant to CPR 52.17, to re-open the refusal of leave to appeal: see [2006] EWCA Civ 240 and 1008. The defendants in those proceedings were the Pembrokeshire County Council and the Pembrokeshire Coast National Park Authority. The Milford Haven Port Authority, Dragon, South Hook and the Health and Safety Executive were interested parties.

4. In September 2006, the claimant applied for permission to judicially review the County Council's decision to grant South Hook a section 73 consent. On 19 December 2006, three days before the present application was lodged, the claimant's solicitor petitioned the House of Lords seeking to re-open the Court of Appeal proceedings in the earlier judicial review. That application was dismissed on 13 March 2007. The earlier judicial review proceedings challenged the decisions of the County Council and the Parks Authority on the basis that insufficient account had been taken of the marine risks of these developments. It was also argued that the authorities had not themselves considered and taken into account assessments of marine risks, or at least satisfied themselves that appropriate assessments had been made. It was submitted that the planning authorities were arguably not entitled to rely on Milford Haven Port Authority's view and advice to the planning authorities, contained for example in a letter dated 15 May 2003, that there were no concerns regarding safety or navigation. That argument was rejected.

5. Since one of the grounds upon which permission is resisted is that this application is in substance an attempt to re-open matters dealt with in the earlier proceedings, it is necessary to set out the background in some detail.

6. On 23 December 2004, before the March 2005 proceedings were launched, the claimant's solicitor asked the Port Authority for a copy of any risk assessments upon which its advice to the planning authorities was based. The request was refused on 5 January 2005. It was renewed on 7 January and on 15 February. The Port Authority were formally asked by the claimant to reconsider the refusal to disclose these reports. Reliance was placed on Regulation 11 of the Environmental Information Regulations 2004.

7. On 18 March 2005, after the launch of the first judicial review proceedings, the Port Authority refused to disclose the documentation requested. On 23 June 2005, the Port Authority refused disclosure of documents referred to in its summary grounds of resistance in the judicial review proceedings. It appears from a "footer" to those summary grounds of resistance that the grounds were served shortly after 16 June. The documents requested were the risk assessment analysis undertaken by the Authority, specified in paragraph 28 of the summary grounds of resistance, which are set out at pages 17 to 19 of the bundle in this application.

8. On 22 April 2005, the claimant's solicitor asked the Information Commissioner whether the Port Authority is a public authority for the purposes of the Environmental Information Regulations. On the 14 November 2005, the Information Commissioner stated that he considered that the Port Authority is a public authority within those regulations. The claimant's solicitor then asked the Information Commissioner to investigate the refusal to disclose the assessments requested. On 17 May 2006 he wrote to the Commissioner's Wilmslow office complaining about the delay by the Wales office in dealing with the matter.

9. On 26 June 2006, Mr Sangster, the chief executive of the Port Authority, wrote stating that the large majority of the information requested by the claimant in her solicitor's letter dated 23 December previously was information "that has been obtained for clearly operational, rather than environmental purposes, and that the content, particularly of the risk assessments requested also reflects this operational requirement". As Mr Sangster considered the material in them to be 'operational' and not 'environmental' information, he did not consider that the information requested was susceptible to disclosure under the Environmental Information Regulations.

10. The claimant's solicitor replied on 29 June 2006, stating inter alia that:

> "There will be very little if any of the information in the purported 'risk assessments' requested that does not constitute 'environmental information'."

11. Further requests on behalf of the claimant to the Port Authority for the copies of information and the assessments were made on 27 July 2006, when the request was narrowed to two of the documents referred to in the summary grounds of resistance. On 28 September 2006 the Authority refused this request on a number of grounds, including Regulation 12(5)(b) of the Environmental Information Regulations.

12. The Information Commissioner issued his decision notice on 28 March 2007. It suffices to set out the summary in paragraph 1 of the decision:

> "The complainant requested information, later narrowed down to two documents about risk assessments carried out in relation to the development in Milford Haven of two Liquefied Natural Gas (LNG) terminals. The Port Authority withheld the information by virtue of the exceptions at regulations 12(5)(b), (e) and (f). The Commissioner's decision is that, in relation to the first document, none of the exceptions cited are engaged. In relation to the second document, the Commissioner has decided that the exception at regulation 12(5)(e) [concerning confidential commercial information] is engaged but that the public interest in disclosure outweighs the public interest in maintaining the exception. Accordingly, the Commissioner finds that the Port Authority applied the regulations inappropriately in seeking to withhold the information. The Port Authority also initially breached the requirements as set out in regulations 5(2) and 14(2)."

Regulation 5(2) is the time limit of no later than 20 days, but as soon as possible for making available information, and Regulation 14(2) also relates to the time limit.

13. On 25 April 2007, the Port Authority lodged an appeal against the Information Commissioner's decision. I am informed that the hearing before the Tribunal is listed for two to three days, but not before 29 October of this year.

14. The claimant's case in these proceedings, to which I now return, is that she is entitled to the information sought because the Port Authority is under an obligation to supply it as part of its obligations inherent in effective respect for private and family life under Article 8, and its obligations to take steps to protect life under Article 2 of the Human Rights Convention. These obligations include, it is argued, obligations to provide information about the risks in order to enable members of the public to assess the danger to which they will be exposed.

15. Mr Wolfe, on behalf of the claimant, relied on four decisions of the Strasbourg Court: Guerra v Italy [1998] 26 EHRR 357; McGinley and Egan v United Kingdom [1999] 27 EHRR 1; Oneryildiz v Turkey [2004] 39 EHRR 12; and Giacomelli v Italy, decided in November 2006, that is after the earlier judicial review proceedings.

16. Mr Wolfe submits that there are real risks from the terminals. The claimant's concern is informed by a number of matters. The first are preliminary assessments undertaken by the HSE, which recognised the potential for a flash fire arising from a major release from an LNG delivery ship while moored to engulf an area within which there is a significant population, including the claimant. Secondly, Mr Wolfe relied on a statement made by a number of retired local ships' pilots expressing their concerns about the proposals. He also relied on guidance from the Society of International Gas Tanker and Terminal Operators Limited (SIGTTO). This states that, notwithstanding their inherently robust constructions, LNG tankers are vulnerable to penetration by collisions with heavy displacement ships at all but the most moderate of speeds.

17. Finally, Mr Wolfe relies on a submission from the Public Utilities Commission of the state of California in relation to a proposed LNG terminal at the port of South Beach, which recommended a minimum three-mile radius around the terminal to demark the area in which events deemed credible could cause serious injury to the public.

18. Mr Wolfe relies on the fact, which is accepted, that the Port Authority has a duty to regulate the port and that this is a continuing duty. He submits that the dangers and risks in the material to which I have referred arguably engage Articles 2 and 8. In particular he relies on the statement in Oneryildiz v Turkey at paragraphs 89 to 90 in which the Strasbourg Court states:

> "89. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 ... entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life ...
>
> 90. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. Among these preventive measures, particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions."

19. Mr Wolfe accepted at the hearing that environmental information must be obtained under the Environmental Information Regulations. This had not been accepted by the claimant's solicitor or in documents prior to the hearing. At the hearing Mr Wolfe argued that, as a result of the Strasbourg authorities on which he relied, the claimant was entitled to information which was not environmental information. He invited me to grant permission and to adjourn this case until the determination by the Information Tribunal of what information constituted environmental information. Alternatively, and with what can be described as depressing realism given the state of the list in the Administrative Court, he invited me simply to grant permission and wait.

20. The defendant resists leave on a number of grounds. First, the claimant has an alternative remedy and has pursued that alternative remedy to the Information Commissioner and to the information Tribunal under the regulations. Mr Price-Lewis QC, supported by Mr Tromans on behalf of the first interested party, submitted that the regime dealing with public access to information of this sort in those regulations is the means to obtain such information. The regulations contain crafted exceptions and requirements to balance the different public interests which could be avoided in judicial review proceedings. In the light of the inapplicability of the Freedom of Information Act 2000 to the Port Authority, he argued that the Environmental Information Regulations are the means by which environmental information is made available.

21. With regard to information that does not fall within those regulations, the defendant and interested parties submit that the cases relied on by the claimant do not support the contention that an obligation to disclose information has arisen in this case. It is said, first, that public safety has been considered in the context of the planning process and the challenge to that planning process before Sullivan J and the Court of Appeal. Secondly, the European cases concerned events that happened and had, or arguably had, interfered with Convention rights. Thirdly, it is submitted on behalf of the defendants that this claim, in effect, seeks to re-open matters that were before the court in the earlier judicial review proceedings. The Article 2 issues, as well as public safety more generally, were before the courts, and it was abusive for this further application to be made.

22. I should say that, in relation to the evidence and material before me, the defendant's took objection to two witness statements made by the claimant's solicitor: one on 22 June (the Wednesday before the hearing), and the other which reached the court the day before the hearing. I have read these and I have taken account of the material in the first witness statement de bene esse, although it is clear that the requirements of Rule 54 were not observed. No reason was given for introducing such evidence at a late stage beyond the statement that the evidence was deployed in response to the defendant's skeleton arguments.

23. Having taken account of the submissions, I have concluded that this is not a case in which this court should grant permission. In relation to environmental information, Mr Wolfe accepts that the claimant has an alternative remedy under the regulations. That remedy has been pursued and indeed has been pursued since 15 November 2005 -- over a year before these proceedings were launched. To allow judicial review in relation to such material would be duplication and would risk circumventing the system in the regulations, both procedurally and substantively. It would risk doing so substantively because of the limitations to the right of access to information and the exceptions to the right to information set out in Regulation 12.

24. I turn to material which falls outside the regulations. I have concluded that the claimant has not shown that it is arguable, in the circumstances of this case, that there is an obligation to provide the information as part of the positive obligations of the state or the authority under Articles 2 and 8.

25. I accept Mr Wolfe's submission that it is not the case that it is only arguable that those Articles are engaged where, in broad terms, something has already happened in the sense of an accident, or where the activity has commenced in the sense that emissions are arguably polluting the atmosphere. But the level of risk is an important factor in judging whether those Articles are arguably engaged. Notwithstanding the information relied on by the claimant, to which I have referred and which is set out in paragraph 8 of the claimant's skeleton submissions, the present case proceeds on the basis that the planning authorities were entitled to take account of the Port Authority's assessments, and that those assessments properly informed the planning process. That is recognised in paragraph 7 of the claimant's skeleton argument.

26. The information and material relied on by the claimant in the present case, that is, the HSE's preliminary assessments, the pilots' statement, SIGTTO's guidance and the California Public Utilities Commission's submission, was before the court in the previous proceedings. The last of these was only before the Court of Appeal.

27. The authorities on which Mr Wolfe relied refer to a right to information where Articles 2 and 8 are engaged, or in the context of an application for permission, arguably engaged. I have concluded the Articles are not arguably engaged because, notwithstanding the reports on which the claimant relies, the planning process concluded that the risks were so low as not to warrant the refusal of planning permission or hazardous substances consent. The Court of Appeal held the planning authorities were entitled to reach this conclusion: see paragraph 30 of the Court of Appeal's judgment on the first occasion it considered the matter in the previous proceedings: [2006] EWCA Civ 240, and see also paragraphs 21 and 22 of the Court of Appeal's decision on the second occasion it considered the matter: [2006] EWCA Civ 1008.

28. The position in this case is thus very different from that in the cases relied on by Mr Wolfe. They concerned events that had happened and that arguably interfered with Convention rights. A brief reference to the fact situations suffices to show why this is so. In Guerra the court relied on the direct effect of toxic emissions on the applicant. Those emissions were channelled towards the town the applicant lived in: see paragraphs 15, 16 and 57 of the decision. There was a routine release of large quantities of flammable gas. There had been accidents and significant numbers of people had been injured. In McGinley and Egan's case, there had been undoubted exposure to radiation. The question was whether that exposure was to dangerous levels: see paragraph 94 of the judgment and also paragraph 10. In Oneryildiz, a methane explosion had killed 39 people. In Giacomelli, the applicant, who lived very close to the installation (a detoxification plant) had to be re-housed, inter alia, because of contamination of water and other interferences. The Health Authority in that case had stated that the precautions taken by the plant were insufficient.

29. Secondly, given the Port Authority's exemption from the Freedom of Information Act, the only basis for the right to information is either the Environmental Information Regulations or the ECHR. The basis of the rights to information referred to in the Strasbourg cases are either the domestic legislative and administrative regimes put in place which grant them, or, as in Giacomelli, the breach of that regime which meant that it was not possible for the state to establish that it had struck the balance inherent in the requirement of proportionality.

30. The right to information referred to in the Strasbourg decisions is a reference to the legislative and administrative framework designed to provide effective deterrence against threats to the right to life and the right to family and private life. Thus, Guerra was a decision concerned with the failure of Italy to take the steps they were required to by domestic legislation to provide information about risks and how to proceed in the case of a major accident: see paragraph 39 of the judgment. Secondly, the court in that case (at paragraphs 52 to 53) rejected there being a freestanding right to information (albeit in the context of submissions based on Article 10).

31. In McGinley and Egan, the obligation is stated in paragraph 101 of the judgment as follows:

> "Where a Government engages in hazardous activities, such as those in issue in the present case, which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 requires that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information."

In the present case, such procedures are established by the planning regimes, the ability to challenge decisions of those regimes in the courts, and the regime established under the Environmental Information Regulations. It is significant that, in McGinley and Egan, the court stated at paragraph 102 that the procedure in the Pension Tribunal's Rules enabling documents relating to the assertion by the Ministry of Defence that the applicants had not been dangerously exposed to radiation to be submitted, would satisfy the requirements under the Convention.

32. In Oneryildiz, the court in the passage that I have quoted is concerned with the regulations. I accept Mr Tromans' submission that this is clearly seen from the reference to "they" in those regulations. It is also important to note that the context in which the court referred to a duty to give information was in response to the submission of the state of Turkey that the claimants (the applicants in that case) had knowingly set up home illegally in the vicinity of a tip despite the inherent risks. The Grand Chamber agreed with the applicant's submission that the state could not evade its obligations by requiring indigent and uneducated citizens to obtain environmental information about the matters in question.

33. Finally, in Giacomelli, the court refers in paragraph 78 to the application of Article 8. It stated that Article 8 may apply in environmental cases where the pollution is directly caused by the state or whether state responsibility arises from the failure to regulate private sector activities properly. Paragraph 83 refers to a governmental decision-making process and requires that such a process must enable appropriate investigations and studies, and must enable a fair balance to be struck between the various conflicting interests. That was a case in which the original licence for the activity was given in 1989, but there had been no environmental impact assessment until 2000. The assessment commenced seven years after the commencement of the activity and took eight years to conclude.

34. Paragraph 82 of that decision, referring to the decision-making process being fair and affording due respect to the interests safeguarded by Article 8, must be seen in the context of the breach by the Italian authorities of their own regulations. As I have stated, the failure to have the assessment meant that it was not possible for the state to satisfy the proportionality test.

35. I have concluded that it is not arguable on the basis of these authorities that there is a freestanding right to information in such cases. Such a right depends on an arguable

infringement of Articles 2 or 8: for example, in particular, see paragraphs 52 to 54 of Guerra, albeit in the context of Article 10.

36. It is said that the way the claim is made now differs from the way it was made in the context of the previous judicial review proceedings and the requests to the Information Commissioner. I have, however, also concluded that, insofar as the claim seeks disclosure of the assessments requested in those contexts, it is an improper use of judicial review. Mr Wolfe relied on the Port Authority's continuing duty, and submitted that the reports were not said to have been overtaken by events or superseded. But this misses the point. The issue was before the court in the previous proceedings. Both Sullivan J and the Court of Appeal considered Article 2. The reason for the urgency of the claimant's request to the Information Commissioner was to get information for those proceedings: see for example the document dated 6 November 2006, but see also the communications on 7 January and 30 November 2005. Had it been arguable that the claimant was entitled to this information then, although the challenge was a challenge to the planning process, the courts, which were aware of the requests and the refusal, would have dealt with the matter then.

37. I therefore agree with the final reason given by Sullivan J for refusing authority, that is, the defendant had made clear its position as to the disclosure in the letter dated 23 June 2005, a month before the hearing of the application for permission to apply for judicial review in July 2005, and this application is in reality, although not in form, an attempt to re-open that decision. The public safety issues were before the court on that occasion, as was Article 2. The evidence relied on by the claimant in the present proceedings was before the court. The planning permissions were granted in November and December 2003, and April and August 2004. Mr Tromans' skeleton argument states that the South Hook Terminal is at an advanced stage of construction and will be operational in early 2008. Essentially, this application seeks to re-open matters that were canvassed or should have been canvassed in those proceedings. They are thus either out of time or an attempt to re-open a matter that has been decided.

38. Mr Wolfe submitted that it could not be right to consider the claim on this basis because there might be another claimant who had not made an application beforehand. The fact that the assessments were old assessments was not a reason for not granting them. My decision is primarily based on the fact that it is not arguable that the Convention rights are engaged. That was at the centre of Mr Wolfe's submissions. The claimants have made a multifaceted challenge to all aspects of this development. The other grounds upon which Mr Wolfe relies all ultimately depend on his Convention arguments. Those arguments and the cases were, with the exception of Giacomelli v Italy, before the Court of Appeal and Sullivan J. I am not satisfied that the reformulation of the reasons for seeking the information now are sufficiently different or sufficiently compelling to justify these proceedings.

39. MR PRICE-LEWIS: My Lord, on the question of costs, I have two points. Of course, first of all, Mount Cook and exceptional circumstances, and secondly funding matters. My Lord, I appreciate of course under the Practice Direction and Mount Cook that the defendant who has successfully resisted the permission is entitled only to costs of the acknowledgment of service unless there are exceptional circumstances. I seek to put

before your Lordship three: firstly, that this is the fourth appearance before the courts on this matter, and I pray in aid the latter part of your Lordship's judgment in support of that; secondly, that the claimant had made an application for disclosure of these selfsame documents to the Court of Appeal and had failed to secure an order on that application in those proceedings. There was no order in the application; and thirdly, that this is an abuse of the court's process in an attempt to re-open matters. Again, I pray in aid the relevant passages of your Lordship's judgment. Those are the exceptional circumstances I would rely on.

40. So far as funding is concerned, my second point, to the extent that the claimant is in receipt of services funded by the Legal Services Commission, as I understand the position, my Lord, the court, if it is minded to make an order, makes an order and questions of protection then are left to be decided by the costs judge. What I would seek is an order of costs, if your Lordship is so minded, with it not to be enforced without the determination of the costs judge pursuant to section 11(1) of the Access to Justice Act 1999 and that leaves questions of protection then to the costs judge -- the case of Gunn(?) which decides that, I think. That is the approach which the Court of Appeal followed in these proceedings. My Lord, those are my submissions.

41. MR JUSTICE BEATSON: Thank you.

42. MR WOLFE: My Lord, the claimant has the benefit of legal aid, and on that basis I seek detailed assessment of the claimant's legally aided costs. On the question of costs from the defendant, my Lord, on Mount Cook principles I cannot resist, I do not think, an order that the claimant, subject to the LSC position, pays the defendant's costs of the acknowledgment of service in the usual way, but I do resist the suggest that there is any liability beyond that, which I think is the implication.

43. MR JUSTICE BEATSON: It is not the implication; it is quite expressed. Why? Just saying you resist it is jolly good, but --

44. MR WOLFE: The usual Mount Cook order is that the defendant is entitled, on the face of it, to their costs of acknowledgment of service and no more. My Lord, in my submission the facts that Mr Price-Lewis has made out simply do not make the exceptional circumstances that entitle him to go beyond that. Yes, the claimant has failed to get permission, but that is essentially the position that one is always in when there is a Mount Cook order of any sort. Those are not exceptional circumstances. They are simply the basis on which my Lord has refused permission which is not acceptable, it is the starting point.

45. MR JUSTICE BEATSON: Thank you.

46. I give the claimant the assessment of the legal aid costs which he seeks, which he is entitled to. The defendant is entitled to the costs of preparing the acknowledgment of service. I do however consider that, for the three reasons given by Mr Price-Lewis, this case is an exceptional case, and that it thus falls within what was recognised in the Mount Cook case, and especially after a full hearing of the sort that we have had, in the light of the fact that these matters and these documents were sought in the previous

proceedings and refused, that takes this case out of the normal judicial review case. I therefore grant the defendant's application for costs, to be assessed by a costs judge. There is to be no enforcement without an order of a costs judge, pursuant to section 11 of the 1999 Act.

47. I would be grateful if perhaps you or somebody behind you can draw up and submit it both to Mr Wolfe and to me for initialling.

48. MR WOLFE: My Lord, could I raise a consequential question, which is this: I anticipate that the claimant may wish to consider an appeal to the Court of Appeal against my Lord's judgment. In that event, I simply ask about the timing of it and nothing else, and the question of a transcript of my Lord's judgment. I do not know what the position is with that.

49. MR JUSTICE BEATSON: The position is that a transcript has to be provided, and if you request a transcript, then it will be provided. If I am given a transcript to correct, I will correct it with such expedition as I can manage. It is not in my hands. If you decide you are going to appeal, then you can apply for it and you can ask for expedition.

50. MR WOLFE: The critical question is this: we have seven days in which to lodge an appeal, if that is the position, the only issue is whether within that seven days it is possible to have a transcript.

51. MR JUSTICE BEATSON: I just do not know what the delays are at present. (short interchange with shorthand writer)

52. MR WOLFE: My Lord, I did not hear that.

53. MR JUSTICE BEATSON: No, well, I will tell you: because this is a permission application, you have to apply for it and you have to apply for expedition and they will consider that. I am sure you have a note of my decision. I think I am about to be assisted.

54. MS HEARNDEN: My Lord, it is actually a separate point. I just wanted to make sure I did not miss the moment --

55. MR JUSTICE BEATSON: I will make such noises as I can to help you get expedition, but my powers are pretty limited.

56. MR WOLFE: That noise is all I can hope for.

57. MS HEARNDEN: Forgive me for interrupting, my Lord, I appear in place of Stephen Tromans, who sends his apologies for being absent. My instructions are to apply for costs in this matter. I adopt the submissions made on behalf of my learned friend. I appreciate that, as an interested party, there is a degree of distance from the defendant, but those are my instructions.

58. MR JUSTICE BEATSON: You can have the costs of your acknowledgment of service and no more.

59. MS HEARNDEN: I am obliged.