



# The Bottom Line in JR?

## Costs practice and procedure

**Jack Parker and Ruchi Parekh**

Thursday, 4<sup>th</sup> July 2024

# Show me the money!



# Overview

01

Costs post-  
settlement

02

Costs Capping  
Orders

03

Aarhus Costs Caps





# Costs post-settlement



# Costs post-settlement: a recap

01

**C wholly  
successful**

02

**C successful  
in part**

03

**Settlement does not  
reflect C's claim**

- R (M) v Croydon LBC [2012] EWCA Civ 595
- See also:
  - R (Bahta) v SSHD [2011] EWCA Civ 895
  - R (Parveen) v Redbridge LBC [2020] EWCA Civ 194
  - ACO Costs Guidance (April 2016)

# Costs post-settlement: a recap

01

**C wholly  
successful**

- (1) C recovers all costs
- (2) Unless there is some good reason to the contrary

02

**C successful  
in part**

- (1) Possibly no order as to costs
- (2) But can consider: whether unsuccessful claim reasonably pursued; its importance; its impact overall costs

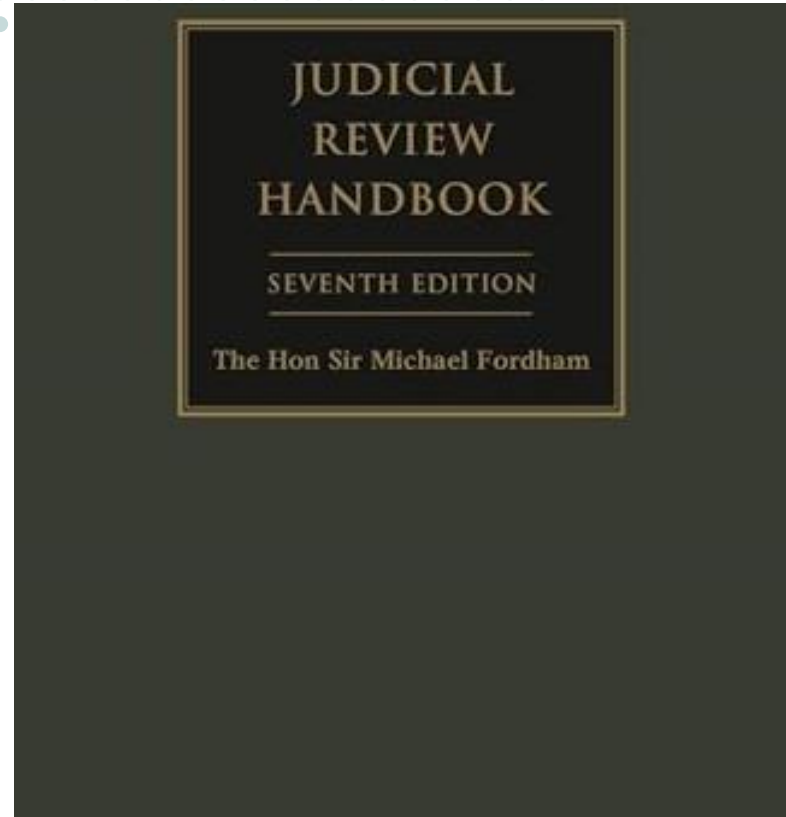
03

**Settlement does not  
reflect C's claim**

- (1) Often no order for costs
- (2) But can consider: if tolerably clear who would have won

# Costs post-settlement: recent cases

- R (Wolverhampton CC) v SSHD [2022] EWHC 1721 (Admin)
- R (Lord) v SSHSC [2022] EWHC 2004 (Admin)
- R (City Portfolio Ltd) v Lancaster CC [2023] EWHC 1991 (Admin)





# Costs Capping Orders





# Cost Capping Orders

Sections 88 & 89 Criminal Justice and Courts Act 2015 and CPR 46.16 – 46.19

‘Complete Code’ for limiting costs liability in judicial review. No power to make order other than in accordance with s.88/89: **R (Ullah) v National Crime Agency [2023] EWHC 1440**

## **Pre-Conditions:**

- Application for CCO made by C (i.e. not D or IP) with specified information: see CPR 46.17(1)(b)
- Permission granted to bring claim
- Must be ‘public interest proceedings’
- C would withdraw claim / cease to participate if no CCO made and it would be reasonable for C to do so

# Cost Capping Orders

'Public interest proceedings' only if:

- Raise issue of general public importance,
- Public interest requires issue to be resolved, and
- Proceedings likely to provide an appropriate means of resolving it

And Court must have regard to factors set out in s.88(8)

**See:**

[R \(the APPG on Fair Business Banking\) v FCA](#) [2023] EWHC 1662 (Admin) – expansive approach

vs

[R \(We Love Hackney\) v Hackney LB](#) [2019] EWHC 1007 (Admin) – restrictive approach

# Cost Capping Orders

## Exercise of power

Matters which Court must consider in deciding whether to make CCO and what terms of CCO should be are also set out in s.89(1):

- Financial resources of parties including resources of person providing/may provide support
- Extent to which applicant / anyone providing financial support may benefit from relief granted
- Whether legal representatives are acting free of charge
- Whether applicant is an appropriate person to represent the interests of other persons or the public interest generally.

# Cost Capping Orders

## Setting the cap

R (We Love Hackney) v Hackney LB [2019] EWHC 1007 (Admin) - Look behind C's identity to determine available financial resources

Crowdfunding - R (the APPG on Fair Business Banking) v FCA [2023] EWHC 1662 (Admin) – cap based on percentage of funds raised

# Cost Capping Orders

## Varying/setting aside the cap

Court has power to vary cap: CPR 46.19

Includes power to vary cap retrospectively: **R(CR (By Her Litigation Friend TI)) v Director of Legal Aid Casework** [2023] EWCA Civ 717 but only in 'exceptional circumstances'

Fact that mandatory criteria are no longer satisfied (e.g. legal aid granted subsequent to CCO) does not of itself mean that CCO should be revoked/varied



# Aarthus Costs Caps



# Aarhus Costs Caps

C

“a claim brought by one or more members of the public by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1), 9(2) or 9(3) of the [Aarhus Convention]”  
(CPR r.46.24)

# Aarhus Costs Caps: The Basics

“Members of the public”

“Relating to the environment”

Where costs cap triggered by one ground (brought “in good faith”), it applies to whole claim

- R (Lewis) v Welsh Ministers [2022] EWHC 450 (Admin)

Default caps (CPR r.46.26)

- C (individual): £5,000; C (all other cases): £10,000
- D: £35,000
- Can be varied on application (CPR r.46.27)

Appeals

See CPR r.52.19A; Supreme Court PD 13, para.2



# Aarhus Costs Caps: Claimants

Address in pre-action correspondence

Seek protection in claim form + SFGs

- Must include financial resources schedule

Consider a full witness statement to address why proceedings would be “prohibitively expensive”

- See CPR r.46.27(2)-(4)
- Court may properly have regard to C’s own costs – R (RSPB) v SSJ [2018] Env LR 13

Timeliness is key

- R (Ibrar) v SSLUHC [2022] EWHC 3425 (Admin)

Change in circumstances?

# Aarhus Costs Caps: Defendants

Clarify position on principle at pre-action stage

Wish to dispute application of Aarhus Convention?

- Address in AoS

Wish to vary default cap?

- Application must be made in AoS
- Must address why it would not be “prohibitively expensive” for C

Significant change in C’s circumstances?

- Entitled to make a variation application

Considering security for costs?

- See Wesson v Cambridgeshire CC [2023] EWHC 2801 (Admin)



# Thank you

