[2012] **EWHC** 3801 (**Admin**)

IN THE HIGH **COURT** OF JUSTICE

QUEEN'S BENCH DIVISION

THE **ADMIN**ISTRATIVE **COURT**

Royal **Court**s of Justice

Strand

London WC2A 2LL

Before:
Mr Justice Haddon-Cave

CO/12174/2010

Between
The Queen on the **Application** of **Banfield**
Claimant
and
Harrow Magistrates' Court
Defendant

The Claimants appeared in Person

The Defendant did not appear and was not represented

Miss K Bond (instructed by Clarke Wilmott) appeared on behalf of the **Interested Party**

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Mr Justice Haddon-Cave

There is before the **court** today two renewed applications for permission to apply for judicial review. The first is in action CO/12174/2010 and the second is in CO/7488/2011. In the first action, Mr and Mrs **Banfield** seek to make a renewed **application** for permission to apply for judicial review, permission having been refused on 9th February 2011 on paper by Lindblom J. It relates to a claim by **Harrow** Council for unpaid council tax.

This matter was originally listed before Parker J on 17th November 2011, who ordered that the hearing be adjourned for the first available date after 26th January 2011 with directions, and therefore the two matters have been listed together.

The claimants, Mr and Mrs Lawrence **Banfield**, in person, seek permission to challenge the decision of **Harrow Magistrates**' **Court**, dated 25th August 2010, granting a liability order in respect of unpaid council tax in respect of the property in which they now live, 37 Dean Drive, Stanmore, Middlesex. They seek to quash the liability order. They did not appeal by way of Case Stated against the decision of the **magistrates**.

The defendant, **Harrow Magistrates**' **Court**, has filed the acknowledgement of service and made submissions. The interested party, the London Borough of **Harrow**, has filed acknowledgement of service. The claimants have lodged a notice of renewal. They subsequently lodged **application** CO/7488/2011 which they seek to challenge the issue of summons for unpaid council tax, for another period, 2011 to 2012, which I will come back to, in the making of a liability order on 15th July 2011, which was refused by Collins J on 15th November 2011 on paper.

Margarete O'Keith, the Deputy Clerk to the Justices for **Harrow** and Uxbridge **Magistrates**' **Court**, has lodged a statement in response to paragraph 2 of the order of Kenneth Parker J on 17th November 2011. The claimants have not amended the claim form, nor made any **application** for permission which might be necessary by virtue of the order of Collins J to amend because they were unsure as to the status of that order.

In the second action CO/7488/2011, permission was refused, on 15th November 2011 on paper by Collins J who found that the claimants are unable to stop issuing hopeless claims and issued an ECRO for 2 years in issue. I will quote what Collins J said:

> "Permission is hereby refused.
>
> Reasons: This claim is as misconceived as the claimants' attempt to avoid payment of council tax last year. The acknowledgement of service from the defendant and the interested party show why this claim is unarguable and totally without merit. The claimant must pay to the interested party £500 costs. The claimants are already subject to an ECRO in respect of different proceedings. This claim shows that they are unable to stop issuing hopeless claims and so an ECRO for 2 years will issue to prevent any further claim in relation to payment of council tax."

An ECRO is an extended civil restraint order. Despite Collins J's order on 15th November 2011 it appears that an ECRO was not in fact formally issued by the office on that date.

In broad terms in the second action the claimants again in person seek permission to challenge the decisions of Harrow Magistrates' Court (now sitting at Brent) to issue a summons in respect of another period of unpaid council tax in respect of their property, 37 Dean Drive, Stanmore, Middlesex. Amongst other things the claimant contends that they did not receive a fair trial.

The background to this matter, very briefly, is as follows. Mr Lawrence St John Banfield and his wife, Mrs Beaulah Banfield, live at 37 Dean Drive, Stanmore, Middlesex. From the documents it appears that Mr Banfield purchased this property from his father in 1984. The Council alleged that Mr and Mrs Banfield failed to pay their council tax in respect of 37 Dean Drive and in the period of 2003 to 2007, a total of some £6,500 of unpaid council tax was owing. The London Borough of Harrow issued numerous demands and reminders. On 13th July 2009 they issued a bankruptcy petition against Mr and Mrs Banfield, processing it along with quite a number of other such cases. That bankruptcy petition was withdrawn on 8th July 2010. However, on 6th August 2010 a summons was issued by the London Borough of Harrow against Mr and Mrs Banfield in respect of

a further tranche of council tax for the year-end 31st March 2011, and on 15th July 2011 a further summons was issued against Mr and Mrs Banfield in respect of the next year's council tax for the year-ending 31st March 2012.

It is worth rehearsing that Mr and Mrs Banfield's original objection to the bankruptcy petition was that liability for council tax order was made out to his father, Mr Lawrence, who shares a first name with him (Mr Lawrence Banfield) and that his father was in residence at 37 Dean Drive, Stanmore. The insolvency officer at London Borough of Harrow in charge of this and many other cases, Miss Harinda Randhawa, looked into the matter and produced a witness statement dated 15th February 2010, in which she pointed out that, as far as she and the Council were concerned, they could confirm that they truly believed that the Banfields, Mr and Mrs Lawrence St John Banfield were resident at 37 Dean Drive for a host of reasons, including:

(a) that when registering their children for education at St John Church of England School from 2000 —2006 they gave the address of 37 Dean Drive.

(b) that they were on the Electoral Roll at that address. (c) that a County Court judgment was entered against them in 2004 at that address.

(d) a default notice was registered by a finance house against them at that address; and.

(e) in his own evidence in these proceedings the defendant had submitted a Letter of Administration dated 30th December made out to Mrs Banfield at that address and their Tax Returns were for the year-ending 2007 were ones which Mr and Mrs Banfield gave 37 Dean Drive as their address.

The witness statement of the insolvency officer, Miss Randhawa, also points out that there was no record of Mr and Mrs Banfield had ever having advised the London Borough of Harrow that his father was occupying the property and it was his father that was liable for the tax.

The position is that since the two summonses were issued by the London Borough of Harrow on 6th August 2010 and 15th July 2011, this has prompted Mr and Mrs Banfield themselves to launch a campaign of litigation against not only the London Borough of Harrow but also against Harrow Magistrates' Court itself. I will come back to that shortly. But in addition to that, Mr and Mrs Banfield sought leave before Roth J, on 27th January 2011, to bring contempt proceedings against Miss Randhawa for an inaccurate description of the procedure by which the liability orders had been issued by Harrow Magistrates' Court. Roth J refused them permission to bring such proceedings personally against Miss Randhawa.

The only other matter I wish to deal with by way of background at this stage is to refer to the fact that on the 20th October MacDuff J was seized of other proceedings involving Mr and Mrs Banfield which had been brought by Leeds Building Society and on 20th October 2009 MacDuff J in action SCCO/PHW/0802440 ordered as follows:

> "Upon perusing the court files herein and in particular the defendant's application to re-open the determination of this appeal (permission to appeal having been previously refused) and upon it appearing that:
>
> (i) the appellants apply for permission to appeal the said orders by Master Howarth.
>
> (ii) permission to appeal was refused without a hearing by Cranston J on 9th April 2009.

(iii) the appellants applied for an oral hearing of the application.

(iv) permission to appeal was refused by Openshaw J after a hearing on 18th April 2009.

(v) the appellants applied upon notice dated 22nd September 2009 to reopen the determination of permission to appeal pursuant to CPR 52.17.

(vi) on the 2nd October 2009 Tomlinson J directed that the respondents be permitted to make representations. The point considering the representations made by the respondents together with the court files and upon it further appearing. (vii) there had been prolonged litigation between the parties and various actions in the County Court and High Court.

(viii) that in the course of said litigation the appellants have made numerous applications and appeals which were wholly without merit and upon it still further appearing that.

(ix) the appellants have issued further proceedings under Part 8 of the CPR in the High Court Justice Chancery Division (HC09CO2432); and

(x) the further proceedings seek to re-open issues already decided by the court (including the Court of Appeal);

(xi) the respondents have issued an application to strike out the proceedings and upon noting that (xii) the respondents have applied to the court for an extended civil restraint order; and

(xiii) unless restrained the appellants will continue to make applications and appeals which are wholly without merit, that upon the court acting on its motion or order, without notices is ordered that Part 1.

(i) the appellant's application on CPR 52.11 was dismissed has been wholly without merit.

(ii) note the appellants may not apply for an oral hearing of this application see CPR 52.17(5). This decision is final —see CPR 52.17 (7).

Part 2 to the appellants Lawrence St John Banfield and Beaulah Banfield, you must obey the terms of the following part of this order. If you do not obey you will be guilty of contempt." (quote unchecked)

Then he set out is an extended civil restraint order:

"... forbidding Mr and Mrs Banfield for a period of 2 years, until 19th October, from issuing any claim, application, appeal or other process in this or any other action in any court in England and Wales, touching upon or relating to on any dispute with Leeds Building Society.

(ii) the property at 37 Dean Drive, Stanmore, HA7 1HB.

(iii) any mortgage or any account with the Leeds Building Society, or

> (iv) any money claimed by or against the Leeds building without first obtaining permission in accordance with the paragraph 4. For the avoidance of doubt you may not issue any new claim or any new application appeal or other process in any past or existing claim including this action." (quote unchecked)

The matter comes before me, as I have said, on two renewed applications by Mr and Mrs Banfield, in relation to the two actions which they issued. The first one, 12174, was filed on 23rd November 2010, and the second one, 7488, filed on 5th August 2011. Both claims are listed for oral permission to be heard together. In both cases permission was refused on the papers and the claims were held to be totally without merit.

Mr and Mrs Banfield are seeking inter alia to quash the decision of the Harrow Magistrates' Court to make liabilities ordered against them on the application of the London Borough of Harrow.

I deal, first, with an application to amend by the London Borough of Harrow. Due to an oversight the Magistrates' Court and the Council misdescribed the process by which summons were issued which ultimately led to the liability orders being made against Mr and Mrs Banfield on 15th July 2011. It had been assumed that the same procedure used in previous years had been adopted and only came to light when new procedures had been put in place by the time of the hearing on 15th July.

In brief, the old procedure was that a batch of hard copies plus a list was sent to the designated legal adviser for consideration. Under the new procedure all that is now electronic, to save public money, and the complaint list is lodged electronically and a digital signature is subsequently affixed.

The London Borough of Harrow, and so far as necessary Harrow Court, seek permission to amend their acknowledgement of service to plead the new procedure. There is no objection to that amendment by Mr and Mrs Banfield, nor could there be. It is, therefore, granted.

I deal with the first claim. A host of different points were raised by Mr and Mrs Banfield in their original applications and subsequently in their skeleton argument and some subsequent to that. In my judgment, for the reasons identified by Lindblom J in his order of 9th February, there is a complete answer to every one of the points raised by Mr and Mrs Banfield. In summary:

(i) They alleged that the magistrates would not allow them properly to explain their case. The Magistrates' Court confirmed in summary grounds and in the witness statement of Margarete O'Keith, dated 16th December 2011, that Mr and Mrs Banfield were present during the proceedings and Mr Banfield was given an opportunity to cross-examine the local authority representatives and to give evidence of his own and make submissions.

It is relevant to consider whether there were any points that might have been raised by them which would materially have altered the justices' decision to give effect to the liability and to the summons. It does not appear that Mr and Mrs Banfield had any defence whatsoever to the substance of the claim by the Council for either of these tranches of council tax.

(ii) They alleged there was a failure to make an application under regulation 34 of the Council Tax (Administration Enforcement) Regulations 1992. It is incorrect to say there was no such evidence. The Council verified that they laid a complaint before the Magistrates' Court and the

Magistrates' Court confirmed in its grounds that complaint was laid and both acknowledgements of service are verified by a statement of truth.

(iii) They allege the authorisation to issue summonses assumes only approves the issuing of the summonses and does not state why 248 summonses were also issued at the same time. The answer to this is that the authorisation clearly covers the designated legal assistant's decision to issue a summons in all of the 248 cases before him or her at the time, in respect of which a complaint was made by the Council. There is no requirement in rule 98 for the summons of the Magistrates' Court Rule 1981 to record the reasons for issuing a summons on its face.

A general complaint is made by Mr and Mrs Banfield regarding the number of summonses that were dealt with at the same time. But I am told by Miss Kelly Bond, on instructions, that last year over 20,000 liability orders were issued by Harrow Council or thereabouts in similar form and it is plain that the courts and councils up and down the country are grappling with very similar problems. The courts and officials have to devise sensible procedures which are efficient and fair in order to process these claims, without over-burdening the public purse. In that regard she helpfully referred me to *R (on the application of) Chief Constable of the West Midlands Police v Birmingham Justices* [2002] All ER, D502, in which Sedley LJ dealt with the question of the exercise of discretion and the power of delegation of authorities, in that case the Chief Constable, and said in relation to an allegation that the Chief Constable should not have delegated his power to issue an ASBO in that case, as follows:

> "But it is for the Chief Constable to decide who is best suited to do it on his behalf and it is not for the court to second guess him unless his choice is irrational or otherwise beyond his powers."

Mr and Mrs Banfield said the Magistrates' Court could not authorise the Council to issue summonses on its behalf. As I have just pointed out, the authorities make it clear that, absent Wednesbury unreasonable, it is open to the court to take a sensible view. It is correct that the decision to issue a summons as a judicial summons but that function can be carried out by a Justices' Clerk or by an Assistant Clerk authorised for the purpose —section 51 of the Magistrates' Court Act 1980, rules 2 and 3 of the Schedule 1, paragraph 2 to the Justices Clerk's Rules 2005.

It is clear designated legal assistant did apply his or her mind to the question and decided to issue summonses in the case including the claimant's case. An authorisation was signed confirming that he had considered the matter and therefore authorised the issue of the summonses. It is perfectly proper for a designated legal assistant having decided to issue a summons to authorise another person, to affix his or her signature to it by way of a rubber stamp —see *R v Brentford Justices ex parte Caplan* [1975] QB 455. This is an administrative or ministerial rather than a judicial act — see *R v Fox* (1958) OJ No 38.

(v) The Banfields said that the Council failed to produce any evidence at the hearing on 25th August of compliance with the regulations 18, 19 and 20. This is incorrect. Both the Council and the Magistrates' Court confirm in their summary grounds that evidence was given on oath as to these matters.

(vi) The Banfields say the Magistrates' Court were obliged to make separate liabilities orders in respect of each individual before it. Again, this is incorrect. Regulation 35 which specifically provides an order may deal with more than one person and more than one amount. I pause there to reflect on, as I have said, vast numbers of such claims come before the courts and they have to be dealt with in a sensible manner.

(vii) The Banfields finally say in relation to the first claim the Council has unlawfully designated different liability order numbers to each individual case to which liability order applies. However, the destination by the Council of an unique number to each case in which a liability order is made is a reference for administrative purposes only. It has no bearing on the decision itself.

As regards the second claim, which I now turn to, I am quite satisfied that the same reasons as those identified by Collins J in his refusal for permission on 15th November, that this claim by Mr and Mrs Banfield is as utterly misconceived as the first claim.

(i) They say there is no evidence pursuant to section 6 of the Local Government Finance Act 1992. There is however no requirement as to liability order hearing for the Council to adduce evidence specifically dealing with the basis upon which the respondent is alleged to be liable under section 6. Neither Mr and Mrs Banfield appear to dispute that they were resident at and had a freehold interest in the chargeable dwelling for the chargeable period. As the Council confirms in its summary grounds, that is what the records show. The Magistrates' Court confirmed in its summary grounds that Mr and Mrs Banfield did not dispute their liability for the tax of the hearing of the liability order, only the process by which the Council sought to enforce that liability.

(ii) Mr and Mrs Banfield say the Council did not comply with regulation 3 of the Council Tax (Administration Enforcement) Regulations 1992. However, regulation 3 permits the Council to send a notice requiring a person who appears to be a resident, owner or managing agent of a particular dwelling to supply certain information to the Council. They are not obliged to send any such notice.

(iii) Mr and Mrs Banfield say the final demand was unlawful because it was issued before the annual bill was sent. This is incorrect as a matter of fact.

(Iv) They say the Magistrates' Court allow the Council to issue summonses on behalf without due process. This is the same point as the fourth point, which they raised under the first action and I have already dealt with that.

(v) They say the Magistrates' Court refused to allow Mr Banfield to cross-examine at the hearing. This again is incorrect as a matter of fact.

The Magistrates' Court confirmed in the summary ground that the District Judge was fully satisfied that Mr and Mrs Banfield had a fair hearing and had ample opportunity to cross-examine the Council witnesses on matters which were relevant. Whilst Mr Banfield did most of the cross-examining, both were able to question the witness and give evidence and make submissions.

(vi) They say that the annual bill did not exist on 29th March, 18th April, 3rd June or 14th June 2011. However, the Council relies on its computerised records to demonstrate that it did indeed issue annual bill.

(vii) They say the District Judge failed to accept evidence showing the Council's witnesses had no authority to act on behalf of the Council. The short answer is that the Magistrates' Court were entitled to rely on the Council witnesses' apparent authority. Any complaint and lack of authority would not lie with Mr and Mrs Banfield but with the Council.

(viii) They allege the District Judge failed to consider the judgments delivered in earlier High Court proceedings. The short answer is that those judgments are not relevant.

The further point I wish to deal with at this stage, which is that it appears that when Lindblom J made his order on 9th February refusing permission, in the first claim, he made an order for costs to be paid to the Magistrates' Court. It was silent on the question of costs of Council. This was

plainly in error since it was the Council who had applied for costs. I give leave to amend the order of Keith Lindblom J under the slip rule to substitute the word "defendant," for the word 'interested parties' and to make that correction. I will return to the question of costs shortly.

Mr and Mrs Banfield have appeared, both of them, today and made detailed oral submissions at length, covering some of the ground which is already covered in the previous documents and their skeleton arguments and other documents in the first and second proceedings which they have issued.

The gravamen of their objection appears to be a suggestion that there is some sort of unlawful collusion between the Council, the London Borough of Harrow, and the court, Harrow Court, both remaining parties to these proceedings, which blurs the separation of powers and has meant that they have not had:

(a) the liability orders that were issued were "illegal"; and (b) they have not had a fair hearing, whilst Mr Banfield seeks to maintain before me that denial of liability to the tax claim 2003 —2007, on the basis that his father is liable, not him. It is plainly apparent from the documents that that is simply untrue and that he makes no submissions on the merits in relation to the two tranches of council tax relating to the two periods in respect of which the two later summons have been issued and in respect of which these two sets of proceedings have been issued by them, Mr and Mrs Banfield, against the Council and the court, namely the year-ending March 2011 and the year-ending March 2012.

The points that have been raised are all points about process and they are all wrong, misconceived, without substance, factually incorrect or a combination thereof.

It is worth noting that, as I have said, the Council and the courts have to deal with large amounts of claims including theirs. Theirs is not the only claim before the courts. There are, as I have said, 20,000 in Harrow alone. But the Banfields have persisted in raising in any way they can every conceivable procedural point in a variety of different forms, all of which have been dealt with at very great cost in terms of time and expense by Harrow Magistrates' Court's representatives and the London Borough of Harrow's legal representatives, Messrs Clarke Wilmott have with a great deal of, if I may say so, fairness and care, met every single one of these unmentioned points. This has all meant a great deal of cost to the public purse. Unfortunately, it appears that notwithstanding Collins J's order on 15th November 2010, in which he said:

> "An ECRO for 2 years will issue to prevent any further claim in relation to payment of council tax"

A formal ECRO was not in fact issued.

It would appear arguable that the ECRO issued by MacDuff J on 20th October 2009, if it had continued, would have prevented any further proceedings being made without leave but it was, it appears, by consent lifted by the Leeds Building Society on 4th February 2010. That was an order which, as I have quoted, recited a whole raft of applications made by Mr and Mrs Banfield, in relation to proceedings that were brought against them by Leeds Building Society in relation to unpaid mortgage arrears. That order forbad for a period of 2 years the issuing by them of:

> "... any claim, application, appeal or other process in this or any other action in any court in England Wales touching upon or in relation to ... the property at 37 Dean Drive, Stanmore ..." (quote unchecked)

The position now reached is as follows:

I have granted leave to the defendant and interested parties in this matter to amend their applications, dated 13th December 2011 and 12th December 2011 to plead the correct procedure.

I have given leave to both defendants to amend the order of Lindblom J dated 9th February 2011, to amend the word "defendant" and insert the word 'interested parties' to rectify the issue of costs he ordered then.

I have refused permission to appeal to apply for judicial review in relation to action CO/12174/2010 and I have refused permission to apply for judicial review in action CO/7488/2011 for the reasons I have enunciated.

Accordingly, all that remains is the following two issues which I would like to be dealt with now very quickly. The first is the question of costs, and I have before me an updated schedule of costs. This is Miss Bond in relation to costs of the interested party, namely London Borough of Harrow, two tranches: work done on documents and other matters from 15th November 2011 and the second, that is £1,556.

MISS BOND: They are in relation to the two separate claims.

Mr Justice Haddon-Cave

Two separate claims, are they?

MISS BOND: One is in relation to —

Mr Justice Haddon-Cave

Thank you. I understand. The first tranche, the first set of costs is £1,556 in relation to action 7488 and the second schedule is £3,434 in relation to action 12174.

MISS BOND: My Lord that is correct.

Mr Justice Haddon-Cave

That overtakes ... there was an earlier schedule which had £1760.

MISS BOND: It does overtake that earlier schedule.

Mr Justice Haddon-Cave

That makes a grand total £4,986 by my maths. That is the first issue I would like you to deal with at the moment. The rules are that if one —as you have seen from Miss Bond's skeleton that there is

provision in the rules and in the case of *Mount Cook v Westminster City Council* [2003] EWCA Civ 1346, that where claims are hopeless and you have persisted in them, then they are declared totally without merit, you could be made liable for costs.

The second point I would like you to deal with, it is my intention to rectify the omission that was made by the office following Collins J's order of 15th November and now to issue an extended civil restraint order, I am afraid Mr Banfield, restraining you from bringing any further claim, proceeding application. It is partly for the protection of the court system, partly for the protection of the London Borough of Harrow, who have many other things, claims to deal with and it is partly for your own protection. Enough is enough. So I would like to hear you briefly on both those points: the question of costs and the question of why I should not now issue the order which Collins J intended to?

THE CLAIMANT: Thank you, my Lord. I didn't realise, I am sorry for not standing up straightaway.

First of all to deal with costs. I take it as you have allowed them to amend the £500. My Lord, that is clearly as to regards to the defendant's costs. It clearly says the defendant's (inaudible) there was no costs in order at all to the interested party. Obviously the defendants would have incurred costs, that is why it is awarded. So to amend that my Lord, in my submissions be wrong, is that saying that the defendant didn't incur any costs. My submission on that first point will be to because there was no order for costs to the interested party, the costs should not be —the first order should not be amended in terms which you've allowed my Lord.

Mr Justice Haddon-Cave

Yes.

THE CLAIMANT: That is the first issue. The issue to do with costs is the two hearing. My Lord, I am sure you are aware of a permission hearing, the Practice Direction 8.5 and 8.6. That is (inaudible) deal with obviously today's hearing. Unless I've got it wrong my Lord, the interested parties were never ordered to attend either the last hearing or today's hearing my Lord.

On that basis and according to the CPR rules my Lord, no costs should be granted in the terms of the hearing of the sedative —I think it is my Lord —and today's hearing because the rules clearly state that where the defendant or any party does attend a hearing, the court will not generally make an order for costs against the claimant. So my submission, if the court had ordered the interested party to attend today, then my submission would be that the court would be entitled to make a costs order but on the premiss they were not ordered to attend and I think counsel actually noted that right at the beginning of submissions that there was no order for them to attend; on their own admission they attended today.

Mr Justice Haddon-Cave

I have that point. Thank you.

THE CLAIMANT: So both cases I don't think costs should be awarded because there was no order in place.

As to the civil restraining order my Lord. The court has disagreed with our argument totally and stated that it is without merit. But, as you can see my Lord, we've made points what I consider point of law. The court today hasn't dealt with whether or not regulation 33 was ever dealt with. That means a notice. I haven't heard in your judgment that that particular regulation had actually been served on us or any evidence of that fact. So therefore my Lord I would say it is not totally without merit. It is quite clear that the Council does not (inaudible) regulations even though we have to accept the court's decision that it is without merit.

Mr Justice Haddon-Cave

Thank you. Mrs Banfield do you wish to say anything?

THE CLAIMANT: (Several inaudible words) wish to make. You quoted the other case and you gave the list of conditions that the judge made on that particular order. My argument is that you're seeing that in isolation, you have no lead up to why both sides came to the decision to have that removed and because of the conditions that we signed I am not at liberty to go into it. What I will say is that on the face of it, it may appear that the information that we lodged or the application that we lodged was without merit. I would like you to take on board the fact that those parties came to a decision to have that removed must indicate to you that there was merit in the case that we put forward in the first place. Otherwise that would not have been removed and there would be no agreement to remove that. I think when you then apply it to this case, it brings it a disjointed look as to that point.

The other point I would like to make is that I think we arrived to challenge any proceeding that had been made. Now when, as my husband has shown, there has been applications to modify the information taken to into court, you are under, rightfully or wrongfully, you are under a function that that led us to the course of action that we took. It wasn't taken lightly, it wasn't taken to cause a particular problem, but we thought that we had the point that we would like to hear: we still stand by the right that the fact that we thought we had the right to challenge what your Honour said. Now you have made your decision and you obviously have come down on their side. That we accept. But we think that to put a restraining order on this particular kind would be a very harsh judgment for something that we thought we had a right to dispute. In view of what you heard today, and there can be no further challenge, for there is no further applications or anything else that we could possibly make, the ruling has been done. The information has been heard in court. We're not stupid to know that we cannot (inaudible) permission again at this court. The decision has been made. And, on that basis, you said you're protecting in the public purse and protecting Harrow Council, I don't think there is a need to protect them from that, because the decision has rightfully been by made by you and we have to abide by that judgment. So I think a restraining order for 2 years to reinforce what the other judge did would be unfair because we've just used our right to come and make an oral application. That has been unsuccessful. There is no further route and we accept that.

Mr Justice Haddon-Cave

Very helpful indeed. Thank you very much Mrs Banfield.

THE CLAIMANT: My Lord, can I just make one more point? And that is to do with the dismissal of the bankruptcy proceedings. No 1, in your judgment you stated that both our names were on that petition. That is incorrect.

Mr Justice Haddon-Cave

It was just one name. Thank you for clarifying that.

THE CLAIMANT: There was one name. Also the decision not to carry it on. We must take that into effect because, if the Council did have in the regulations and order the liability and all the accounts, there would be no decision to discontinue. It would have followed through. So it must have merit in my argument which I put forward in the Bankruptcy Court which you have stated is totally wrong. The issue was totally wrong because there must have been merit for them to discontinue my Lord.

Mr Justice Haddon-Cave

You have both put your points, if I may say so, extremely well and extremely fairly on this issue.

Miss Bond, on the costs side, the test in relation to costs for interested parties is whether it is, reasonable and necessary for the interested party to come along.

MISS BOND: My Lord, we would say that it was necessary and in fact appropriate for us to attend day. You have seen the documents that you have been presented with, you have seen the arguments that you have been presented with. We have had experience, as you have seen, of litigation with Mr and Mrs Banfield, primarily Mr Banfield on previous occasions. The matters before you have been put before you in what is a, in my submission, a scatter gun approach. We are aware of Mr and Mrs Banfield tendency to raise matters which are not in the pleadings which we do not have an opportunity to respond to. It is quite reasonable for the interested party to seek to attend to preserve its orders. Whilst the interested party, by virtue of its name, maybe thought to have less of an interest than the defendant in such an application, in this case the orders were made for our benefit and that benefit accrues to us. So to that extent we are probably the most interested respondent and it was right and proper for us to attend to assist you. I would submit that the court has derived assistance from the manner in which the interested party has dealt with the matter, in particular from the skeleton argument which was lodged in advance of this hearing and a clarification to be provided in relation to various points that have arisen. On that basis, in my submission, exceptionally, you ought to consider awarding costs to the interested party, particularly bearing in mind and both Mr and Mrs Banfield were on notice in fact, that on the papers their points were considered to be totally without merit. That ought to have given them cause to have reconsidered their position, which opportunity they did not take and instead brought us to a long 3 hour hearing to be dealt with at length.

Mr Justice Haddon-Cave

Thank you.

There are two matters that I need to deal with. Firstly is the question of costs. As I have said, I have given leave to amend Lindblom J's order to substitute the words "interested party" for the word "defendants", so as to rectify what is plainly to be a slip because it was the interested party that claimed costs at that hearing of £500 and it was therefore clearly Lindblom J's intention to order costs of £500 to the interested party, not to the defendant, the Harrow Magistrates' Court.

Secondly, in relation to costs generally, Mr Banfield says that under Practice Direction 8.5 and 8.6, costs should not generally be awarded to interested parties. In this case, however, it was plainly reasonable and indeed necessary for the court to have the attendance of the London Borough of Harrow who are seized of this matter and its history. I have been very greatly assisted by the excellent work and skeleton argument of Miss Kelly Bond, which set out in detail the matters that the court had to consider and deal with.

I turn now to the question of extended civil restraint order. I indicated to Mr and Mrs Banfield that it was my intention to make such an order subject to anything which they had to say. Both of them have made submissions to me, very fairly and carefully, as to why such an order should not be made, Mr Banfield saying that not all the points that he had raised had been dealt with and Mrs Banfield saying that the order of MacDuff J should not be seen in isolation, had to be seen in context and that every litigant has the right to challenge every proceeding. She did go on to say that and it is heartening to hear this: that "we are not stupid" and "we recognise that you have made your decision fairly today and rightly have made a decision today which disagrees with our view but we have to abide by that decision", she said "and there is no way or challenging it. We accept that there is no further route" by way of challenge.

As I said, it is heartening to hear her say that. However, the history of this matter and the previous matter which MacDuff J had to deal with convinces me that Collins J was correct in his view that I am afraid Mr and Mrs Banfield are unable to stop issuing hopeless claims in relation to this and other matters connected with 37 Dean Drive, Stanmore, where they live. The court never issues an ECRO lightly but in this case it is manifestly apparent that one is necessary for two reasons. Firstly, to protect the court, the court system, other court users, the London Borough of Harrow and the public purse from continued applications of a variety of form, from these two litigants, and secondly, to protect themselves from themselves in pursuing this campaign, at no doubt great cost to themselves in terms of time and energy and in great effort in preparing these meticulous documents which have in fact been very helpful to the court.

Mr and Mrs Banfield have been on notice for some considerable time, as Miss Bond says, in relation to the answers to the plethora of points which they have raised but it appears when answers are given to those points then simply raise further points and yet further points.

I am afraid all good things must come to an end and it is necessary that both you get on your lives and the London Borough of Harrow get on with their life in dealing with their public duties and coping with the vast numbers of claims which they have to deal with. Also other litigants have access to these courts are entitled for their day in court. It is not only your day in court. It is everybody's. I am afraid that you have occupied a very great deal of time of the court and every point you have raised has been gone over with a fine tooth comb and there is no substance in any of them.

Also I highlight the fact that it is not suggested by Mr and Mrs Banfield that they are not in fact liable for these two tranches of council tax for the year-ending March 2011 and the year-ending March 2012. I am afraid they must pay their council tax like everyone else.

So for those reasons it is my intention now to issue an extended civil restraint order in the form N19A. I will now hand down a draft copy and the court office, one each for Mr and Mrs Banfield and one for... This is a draft. The court will perfect this order as soon as it is able to do so and have it served. Can you give them both a copy and this is a draft. Please can you give them a copy.

So that you can see fairly what the terms of the order are, Mr and Mrs Banfield. This is a draft; it will be perfected (Pause).

Are there any particular submissions you wish to make, Miss Bond, in relation to the draft?

MISS BOND: My Lord, first of all, we do support the making of such an order. What crosses my mind is that of course we are coming up to the next date, the annual bill for new council tax and it occurs to me that I believe —I have not checked Part 3 yet —the court would have powder to determine that no applications are issued in relation to council tax more generally, rather —

Mr Justice Haddon-Cave

It is narrowly defined here or leading to proceedings, touching upon or leading proceedings in which ... there needs to be amended. Here is my intention: that this issue is not one, ie the payment of any council tax whatsoever, which Mr and Mrs Banfield are able to litigate any further including any further liability for council tax in the future. So where would you suggest an amendment?

MISS BOND: I suppose it would be in section 2 after the words "any matter involving or relating to or touching upon or leading to proceedings an order is made" and I suppose if we inserted a comma there and then appropriate wording.

Mr Justice Haddon-Cave

Similar to MacDuff J.

MISS BOND: My Lord, your Associate, there are two typographical errors and which may be of assistance. Mr Lawrence Banfield, I believe it is supposed to have a "W" or "U" before the "R", if Mr Banfield can assist. My Lord, your name in section 2 has an "L" on it.

Mr Justice Haddon-Cave

Mr Banfield, is it Laurence with a "U" or Lawrence with a "W"?

THE CLAIMANT: It is spelt correctly at the top.

Mr Justice Haddon-Cave

With a "W".

THE CLAIMANT: Under the name of the claimant in the top right-hand corner.

Mr Justice Haddon-Cave

Thank you.

THE CLAIMANT: My Lord we obviously we have not had a chance to read through this order, is it possible I just read through it obviously some points—

Mr Justice Haddon-Cave

The only part of the order that is really of any relevance is section 2, there are three lines:

> "It is ordered that you be restrained for issuing claims or making applications in any court specified below concerning any matter, relating to or touching upon or leading to proceedings in which this order is made."

It is my intention to expand that to cover any issue relating to council tax.

THE CLAIMANT: And the permission to (inaudible). If it is means to estate council tax, that will be fine.

Mr Justice Haddon-Cave

Why would that be fine?

THE CLAIMANT: Because it is according to rating. Obviously we are accepting your judgment and that is the minimum they require, that related to council tax.

Mr Justice Haddon-Cave

That is very helpful. Thank you.

THE CLAIMANT: Also my Lord, it seems as though you allowed the total sum of costs; is that correct?

Mr Justice Haddon-Cave

Forgive me, but, as I said in the judgment, it is entirely reasonable and it is my intention and the other matter to be dealt with in addition to this order which the court will make of its own motion, can you draw up an order which deals with:

> (i) the permission to amend both your proceedings to plead the right procedure;
>
> (ii) the amendment to Lindblom J's order; and
>
> (iii) that permission is refused in both actions.

MISS BOND: My Lord may I take it on a totally without merit basis.

Mr Justice Haddon-Cave

On a totally without merit basis if there is any other —

THE CLAIMANT: My Lord, as well, upon reading the order of MacDuff J, surely you direct justice this order as well at the same order.

Mr Justice Haddon-Cave

Justice?

THE CLAIMANT: Setting aside my Lord, that is on the reading upon that it seems as to though you have only read MacDuff's order, surely the order—

Mr Justice Haddon-Cave

Thank you, I will add in "Smith" as well. Thank you.

I am grateful for that, I am sorry we had to sit on but it has been worthwhile completing this matter.

Mr and Mrs Banfield, thank you for your submissions. I would urge upon you to now to put this matter to one side and the position is that the effect of this order is that you will be required only be able to bring in proceedings with the leave of the court. That means that through me, or if through a High Court judge designated by the presider on the Administrative Court, Ouseley J and that you had your day in court and many of them in relation to this matter and I therefore urge upon you to call that a day now and deal with other things.

Is there any anything else I need to deal with?

MISS BOND: My Lord, only to check the position in relation to the costs order. I note it is included in the (inaudible) restraint order. If it is intended that is where the costs order will lie and not be reflected in the order which I will draft. I would ordinarily have put it in, in the order which I draft in the two applications because the costs relating to those applications.

Mr Justice Haddon-Cave

It is more appropriate they go into the other order. This hearing in relation to costs order has been very short. The position is that the costs will come in the actions. I will make no order for costs in relation to the extended restraint order. That is much more satisfactorily. Thank you.

THE CLAIMANT: My Lord, my wife just mentioned something. If it's got to be paid by 28th February. My Lord, are you aware of the hearing on 2nd March, to deal with costs awarded against the Council?

Mr Justice Haddon-Cave

1 I am not and I am not seized of that matter. But if there is —

2 THE CLAIMANT: It is the date, if that could be changed to the 2nd March; it is only a couple of days difference.

3 MISS BOND: Pardon me for interrupting Mr Banfield. My Lord, I understand the hearing on that date is a detailed assessment hearing. It should not have bearing on the costs order that you have made today.

Mr Justice Haddon-Cave

4 I do not think it is relevant. Thank you very much everybody.