Neutral Citation Number: [2025] EWHC 1678 (Admin)

Case No: AC-2024-LON-002639

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/07/2025

Before :

Timothy Corner KC
Sitting as a Deputy High Court Judge

- -

Between :

The King (on the application of John Morley)	**Claimant**
- and -	
Surrey Heath Borough Council	**First Defendant**
-and-	
Guildford Magistrates' Court	**Second Defendant**

- -

The Claimant (acting in person)
Ruchi Parekh (instructed by the solicitor to Surrey Heath Borough Council) for the **First Defendant**
The **Second Defendant** did not appear and was not represented.

Hearing date: 10 June 2025

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Approved Judgment

This judgment was handed down remotely at 4pm on Thursday 3 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Timothy Corner KC :

1. In this claim for judicial review, the Claimant did not complete (or I have not seen) sections 3 and 8 of the claim form, which indicate the decision or decisions complained of and the remedy sought. However, it appears that he seeks to challenge:

   i) the decision of the First Defendant ("**the Council**") to institute proceedings for the recovery of unpaid council tax by issuing a summons dated 8 March 2024 and, in particular, by demanding in that summons payment of "collection costs" incurred by the Council in the sum of £80.50. The key issue relates to the costs charged by the Council at the summons stage.

   ii) the decision of the Second Defendant on 28 March 2024 to make a liability order based on the summons, on the Council's application.

2. The Council's case, in summary, is that the claim is misconceived and that it has a lawful and rational basis for charging an "average" sum for costs, in accordance with settled legal principles. Further, and in any event, says the Council: (i) the Claimant has failed to pursue alternative remedies which were conveniently and effectively available to him; and (ii) even if the Council's approach is wrong (which is denied) the outcome for the Claimant would have been exactly the same and/or the claim is now academic so relief should be refused. The Second Defendant has not participated in the case.

3. Permission to apply for judicial review was refused on the papers by Mr CMG Ockleton sitting as a Deputy High Court Judge on 14 October 2024, but at a renewal hearing on 5 February 2025, Mr Benjamin Douglas-Jones KC sitting as a Deputy High Court Judge granted permission to proceed in the claim against the Council and adjourned the claim against the Second Defendant to a rolled-up hearing. Both claims come before me today.

4. I will allow the Claimant's application to amend the name of the Second Defendant to Guildford Magistrates' Court from Guildford Law Courts. CPR 17. 4 (3) allows amendment of statements of case to correct a mistake as to the name of a party, where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question. These conditions are in my view met in this case.

FACTUAL BACKGROUND

5. The Claimant resides at – and is liable to pay council tax in respect of – 6 Kirkstone Close, Camberley, Surrey GU15 1BJ ("**the Property**").

6. As a result of outstanding arrears, the Council sent the Claimant a council tax reminder letter on 20 February 2024, stating that if payment was not received within a further seven days, he would be required to pay the full outstanding balance for the year of £280 and court proceedings would follow for the recovery of the balance as well as costs of £80.50. No payment was received.

7. On 8 March 2024 a summons was issued which required the Claimant to attend Guildford Magistrates' Court, and further informed him that the Council would be seeking a liability order against him in respect of the unpaid council tax. The summons included collection costs of £80.50.

8. On 28 March 2024, following continued non-payment, the Magistrates made a liability order against the Claimant in the sum of £360.50, which included the collection costs of £80.50.

9. The Claimant's claim was received by the Administrative Court Office on 3 June 2024, but the claim was only issued on 5 August 2024. I was not told the reason for this delay. The time limit for filing of claim forms is three months from when the grounds to make the claim first arose (in this case, issue of the summons), as set by CPR 54.5. However, I was told by counsel for the Council that the Council did not oppose the claim on the ground that it was out of time.

LEGAL FRAMEWORK

10. The *Local Government Finance Act 1992* ("**the Act**") confers on local authorities the power to levy and collect council tax payable in respect of dwellings situated in its area.

11. Schedule 4 to the Act provides at paragraph 3:

> "(1) Regulations under paragraph 1(1) may provide that-
>
> (a) the authority concerned may apply to a magistrates' court for an order (a 'liability order') against the person by whom the sum is payable:
>
> (b) the magistrates' court shall make the order if it is satisfied that the sum has become payable by the person concerned and has not been paid.
>
> (2) The regulations may include provision that the order shall be made in respect of an amount equal to the aggregate of-
>
> (a) the sum payable; and
>
> (b) a sum (of a prescribed amount or an amount determined in accordance with prescribed rules) in respect of the costs incurred in obtaining the order."

12. The *Council Tax (Administration and Enforcement) Regulations 1992* ("**the Regulations**"), made pursuant to the Act, make provision among other things for the recovery of unpaid council tax. Under the Regulations a local authority is entitled to recover its costs "*reasonably incurred*" in the process of applying to a magistrates' court for a liability order in respect of any unpaid sums, which the authority may do after following the preliminary steps prescribed by the Regulations. Reg. 34, in so far as is relevant, provides:

> "34. Application for a liability order
> 1) If an amount which has fallen due … is wholly or partly unpaid, or (in a case where a final notice is required under regulation 33) the amount stated in the final notice is wholly or partly unpaid at the expiry of the period of 7 days beginning with the day on which the notice was issued, the billing authority may, in accordance with paragraph (2), apply to a magistrates' court for an order against the person by whom it is payable.

(2) The application is to be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to that person to appear before the court to show why he has not paid the sum which is outstanding.
…
(5) If, after a summons has been issued in accordance with paragraph (2) but before the application is heard, there is paid or tendered to the authority an amount equal to the aggregate of-
(a) the sum specified in the summons as the sum outstanding or so much of it as remains outstanding (as the case may be); and
(b) a sum of an amount equal to the costs reasonably incurred by the authority in connection with the application up to the time of the payment or tender,
the authority shall accept the amount and the application shall not be proceeded with.

(6) The court shall make the order if it is satisfied that the sum has become payable by the defendant and has not been paid.

(7) An order made pursuant to paragraph (6) shall be made in respect of an amount equal to the aggregate of-
(a) the sum payable, and
(b) a sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the order.

(8) Where the sum payable is paid after a liability order has been applied for under paragraph (2) but before it is made, the court shall nonetheless (if so requested by the billing authority) make the order in respect of a sum of an amount equal to the costs reasonably incurred by the authority in making the application."

13. In *R (Nicolson) v Tottenham Magistrates' Court* [2015] EWHC 1252 (Admin) ("***Nicolson***"), Andrews J considered reg. 34 in the specific context of the matters of which a magistrates' must be satisfied prior to awarding costs. While in that particular case it was concluded that the magistrates had not had sufficient information before them to ascertain whether the costs sought had been reasonably incurred, Andrews J made the following obiter comments:

"42 It seems to me that in principle the intention in the Regulations is to enable the local authority to recover the actual cost to it of utilising the enforcement process under regulation 34 , which is bound to include some administrative costs, as well as any legal fees and out of pocket expenses, always subject to the overarching proviso that the costs in question were reasonably incurred. However, bearing in mind the court's inability to carry out any independent assessment of the reasonableness of the amount of those costs, the Regulations should be construed in such a way as to ensure that the costs recovered are only those which are genuinely attributable to the enforcement process…

45 I bear in mind the practicalities of the enforcement system; time in the magistrates' court is limited and given the large number of summonses issued, it would not be practical for the local authority to carry out and provide a detailed calculation of the actual costs incurred in each and every case (save possibly where the actual costs are well in excess of the norm, for example if the local authority

has to instruct counsel to turn up and argue specific points of law raised by the taxpayer in defence).

46. In principle, therefore, provided that the right types of costs and expenses are taken into account, and provided that due consideration is given to the dangers of double-counting, or of artificial inflation of costs, it may be a legitimate approach for a local authority to calculate and aggregate the relevant costs it has incurred in the previous year, and divide that up by the previous (or anticipated) number of summonses over 12 months so as to provide an average figure which could be levied across the board in "standard" cases, but could be amplified in circumstances where there was justification for incurring additional legal and/or administrative costs."

14. In *Nicolson v Grant Thornton UK LLP* [2016] EWHC 710 (Admin), the court dismissed an appeal under the Audit Commission Act 1998 against a decision of the local authority's auditors in the context of council tax enforcement. The court noted the guidance provided by Andrews J in *Nicolson*, and gave the following summary:

> "26. In accordance with that guidance, administrative costs, legal fees and out of pocket expenses may be taken into account in determining what costs are reasonably incurred in obtaining the liability order. Further, in light of the practical difficulties of calculating the costs incurred in an individual case, it may be legitimate to seek to recover an average sum calculated by taking the total costs reasonably attributable to enforcement and dividing that by the number of summonses issued."

SUBMISSIONS

The Claimant's case

15. The Claimant's key concern is the fact that the Council charges a single average sum under the reg. 34 process. As summarised by the Claimant: "*At the point of issuing the summons they have not incurred any cost in obtaining a liability order and cannot claim any such cost or any part of any such cost*".

16. The Claimant contends that there are two events. First, the issue of the summons, which requires a specific set of circumstances and for which the local authority concerned will incur a specific cost relevant to the issue of the summons for all those individuals to whom the summons has been issued. Secondly, obtaining the liability order which requires a specific set of circumstances and for which the authority will incur a specific costs relevant to obtaining the liability order. At the point of issuing the summons the authority cannot demand the cost of issuing the summons plus the cost of obtaining the liability order. They are specifically prohibited from doing this by the provisions of reg. 34 (5). It is only if the arrears are not paid prior to the court hearing that reg. 34(7) then permits the authority to recover both the cost incurred in issuing the summons and the cost incurred in obtaining a liability order.

The Claimant adds that other local authorities, for example the London Borough of Haringey, separate out the costs of issuing the summons and the additional costs of obtaining a liability order.

The Council's case

17. The Council says that the Claimant's argument is misconceived for two reasons.

18. First, it fails to recognise that the act of issuing the summons *is* the act of issuing proceedings, and that much of the work for which the costs are being claimed has already been done at the date on which the summons is signed. Contrary to the Claimant's characterisation of events, a liability order may only be applied for by a local authority by requesting a magistrates' court to issue a summons. Thus, the costs incurred in such enforcement proceedings are necessarily front-loaded within the period leading up to the issue of the summons.

19. Secondly, it is accepted that there are some further costs which are incurred in the final stages of the making of the liability order, which comprise the costs of Council officers attending court proceedings. However, the Council is entitled to aggregate all relevant costs, including the court attendance costs, and to divide that sum by the number of summonses, in order to arrive at an average figured which can then be levied across the board. This approach is in accordance with the principles set out in *Nicolson*, which expressly took account of the practical difficulties of requiring local authorities to carry out detailed calculations in each individual case.

20. The Council contends that the costs charged under reg. 34 by the Council reflect the actual administrative expenses incurred, as explained in the statement by Ellie White, a Revenues Officer employed by the Council. Ms White produces the detailed "Calculation of SHBC Council Tax Summons Costs" ("the Council's Costs Schedule"), which averages out at £83.71 per summons. No issue is taken by the Claimant with the types of costs charged, but merely that a single average is used across the reg. 34 process as opposed to a staged costs approach. However, the Council's approach of using a single average is consistent with the *Nicolson* principles and there is no error of law. Moreover, as explained by Ms White, the Council's costs figure has been benchmarked against other local authorities as well as internal financial audits, which further demonstrates the reasonableness of the Council's approach. It is also relevant that the collection costs are not used as a means of generating revenue and that these costs were last assessed in the financial year 2018/2019 and the figure used has not been adjusted upwards for inflation.

21. In any event, irrespective of the merits, this application for judicial review should be dismissed on the basis of alternative remedies which are "conveniently and effectively" available to the Claimant: see for example *R (Watch Tower Bible & Tract Society of Britain) v Charity Commission* [2016] WLR 2625 ("*Watch Tower*"), at [19]. The Council submits that it was open to the Claimant to make representations on costs directly to the Second Defendant. If his representations had been unsuccessful, he would have been entitled to apply to the court to state a case under s.111 of the Magistrates' Court Act 1980. Indeed, says the Council, it is instructive that in *Nicolson*, the claimant had made an application under s.111, but that the magistrates decided not to state a case on the basis that the application was futile (*Nicolson*, [24]); and it was *that* refusal which was the subject of the judicial review ([4]). It is therefore clear that the Claimant in this case had a similar alternative remedy, which he failed to pursue.

22. Yet further, argues the Council, even if the Council's approach was unlawful, the outcome for the Claimant would not have been any different. Even if the Council should

have charged a lower amount when issuing the summons, in this case it was necessary to make a liability order, as the Claimant did not pay the Council tax due until after the Second Defendant had made a liability order. It follows that relief must be refused by reason of section 31 (2A) of the Senior Courts Act 1981 ("the 1981 Act"), and/or because the claim is academic.

ASSESSMENT

23. I begin by clarifying the sum in dispute. The total costs claimed in the summons was £80.50. However, of that sum, £0.50 was the court cost of issuing the summons. The Claimant accepts that this cost is incurred when the summons was issued, so he accepts that he was liable to pay that sum. His dispute is with the £80 costs claimed by the Council for "authority costs."

Was it lawful for the Council to issue a summons claiming £80.50 costs?

24. In my judgement, the starting point is the wording of reg. 34. Reg. 34(5) provides that if, after a summons is issued but before the application for a liability order is heard, the person liable pays to the authority an amount equal to the aggregate of the council tax due plus "an amount equal to the costs reasonably incurred by the authority in connection with the application up to the time of the payment", the authority shall accept that amount and is not to proceed with the application. Reg. 34(7) provides that a liability order shall be made in respect of a sum equal to the amount of the aggregate of the council tax payable and "an amount equal to the costs reasonably incurred by the applicant in obtaining the order." Reg. 34 (8) provides that where a council tax sum payable is paid after a liability order has been applied for but before it is made, the court shall nevertheless (if so requested by the billing authority) make the order in respect of a sum equal to the costs reasonably incurred by the authority in making the application.

25. As Andrews J said in *Nicolson* at [34], as a matter of straightforward construction reg. 34 (7) means that the magistrates making the liability order must be satisfied that the authority has actually incurred those costs, that the costs in question were incurred by the authority in obtaining the liability order, and that it was reasonable for the authority to incur them.

26. Andrews J went on to say at [46] that it may be a legitimate approach for an authority to calculate and aggregate the relevant costs it has incurred in the previous year, and divide that up by the previous (or anticipated) number of summonses over twelve months so as to provide an average figure which could be levied across the board in standard cases, but that this could be amplified where incurring additional legal and/or administrative costs was justified. The Claimant does not quarrel with such an averaging approach as a way of reaching a justifiable figure for authorities to claim.

27. However, such an averaging approach cannot override the wording of reg. 34. Reg. 34 only entitles the authority to the costs it has (reasonably) incurred, whether payment of the council tax due is made before the liability order application comes before the court (reg. 34 (5)) or when the court hears the liability order application (reg. 34 (7), or after the liability order has been applied for but before it is made (reg. 34 (8)). As the Claimant says, the amount of such costs will depend on when, if at all, the person liable pays the council tax due. Again, as the Claimant says and the Council accepts, it can be

expected that there will be costs of obtaining a liability order which are additional to the costs of issuing a summons.

28. If, therefore, a person liable who received a summons pays the council tax due before the application for a liability order is heard (the situation in reg. 34 (5)), I cannot see that it would be legitimate for the authority to seek to recover costs based on a calculation made in accordance with the approach set out by Andrews J at [46] of *Nicolson*, if that calculation included cases where liability orders had been applied for at a hearing before the magistrates. This is because the average cost derived from that approach would include cases where it had been necessary to go beyond the stage at which the person liable had paid the council tax due.

29. In the present case, the Council accepts that the Council's Costs Schedule includes cases where liability orders had to be applied for at a hearing before the magistrates' court because the council tax owing had not been paid before the hearing. The Council accepts that although much of the work for which the costs are being claimed has already been done at the date when the the summons is signed, there are some further costs which are incurred in the final stages of the making of the liability order, which comprise the costs of Council officers attending court proceedings.

30. However, says the Council, the Council is entitled to aggregate all relevant costs including court attendance costs, and divide that sum by the number of summonses, to arrive at an average figure which can then be applied across the board.

31. I disagree. As I have said, the averaging approach approved by Andrews J in *Nicolson* does not override the words of reg. 34 and there is nothing in Andrews J's judgment which suggests that she thought otherwise. The Council accepts that there are added costs of applying for a liability order at a hearing, and it cannot be legitimate to demand such costs at the stage when the summons is issued, because they have not yet been incurred and will not be incurred if payment is made before the hearing. It follows that it cannot be legitimate for the Council to demand, at the stage of issuing a summons, costs based on an average which includes cases where liability orders have had to be applied for at hearings.

32. I appreciate that in contemplating an averaging approach, Andrews J said at [45] that it would not be practical for a local authority to carry out and provide a detailed calculation of the actual costs incurred in each and every case. However, it was not suggested to me by the Council that it would be impractical to calculate an average of the costs incurred at the stage of issuing a summons, and another average of those costs plus the extra costs incurred when liability orders had to be applied for.

33. The summons issued by the Council states:

> "The amount due shown above includes £80.50 costs incurred by this authority in instituting proceedings for the recovery of Council Tax. If payment is not made in full, including costs, before the Court hearing an application will be made to the Magistrates for a Liability Order to be granted. If you pay in full includng the costs we will not apply for a Liability Order."

34. The summons plainly states that £80.50 costs are the costs incurred in instituting proceedings for the recovery of council tax, and demands payment of those costs if the

recipient of the summons is to avoid application being made by the Council for a liability order. It was not reasonable for £80.50 to be demanded, in my judgement, because that sum derived from an average which included cases where payment was not made before the magistrates' court hearing and a liability order had to be applied for.

35. It would not be appropriate to use the Council's Costs Schedule for a reg. 34 (5) case, where the person liable pays the council tax owing before the liability order application hearing. The average would be distorted by cases where liability orders had had to be applied for at the magistrates' court. No reasonable local authority could issue a summons demanding payment of a sum of costs which was distorted in this way, as a pre-condition of avoiding a liability order being applied for, because the demand was for payment of costs which would only properly be due if the Council had to go to court to apply for a liability order. It follows that it was unlawful for the Council to issue the summons which it did.

36. I think my view on this matter is consistent with the judgment of Mr John Cavanagh QC (as he then was) sitting as a Deputy High Court Judge in *R (Morley) v Surrey Heath Borough Council* [2017] EWHC 2506 (Admin) when refusing permission to the Claimant to apply for judicial review in a previous attempt to challenge the costs claimed by the Council when recovering council tax.

37. In that case, the Claimant received a summons for arrears of council tax from the Council, including in the summons a claim for £80 in respect of the Council's own costs and £3 for the court's fee for issuing the summons. As the judge explained at [5], the Claimant challenged this figure:

"…on the basis that this may well be the appropriate figure for costs if the matter went to court and the court issued a liability order but since he had paid the outstanding council tax as soon as the summons was received the only cost that the council has actually incurred would be the cost of drafting, printing and sending a summons, which would be considerably less than the £80, and indeed he quantifies it at around £3. He points out that there is difference in time between the date of issuing the summons and the court date. He also points out that half the people who are summonsed pay the arrears between the summons and before the court date takes place. He also points out that the back of the summons document says the following:

> 'The amount due is shown on the front of this summons, including £83 cost incurred by this authority in instituting proceedings for the recovery of council tax. If payment is not made in full including the costs before the court hearing an application will be made to the magistrates for a liability order to be granted.'"

38. After setting out the relevant provision of reg. 34 of the Regulations and referring to *Nicolson*, the judge said:

"[11] Mr Morley's point is that subparagraph (5) makes clear that the individual is only liable to pay the costs reasonably incurred up to the time of payment or tender and he says that if the matter has not got as far as a court order the costs would be lower and so the figure of £80 plus £3 is not a reasonable figure for the costs actually incurred.

> [12] I agree that it is clear from Regulation 35 (5) [sic] that the local authority is only entitled to the costs actually incurred up to the time of payment or tender; however, in my judgement, there are no valid grounds for suspecting that this is not what Surrey Heath Council has done. The point is that the costs that the council incurs in enforcement proceedings are front-loaded and they are incured within the period leading up to the issue of the summons.
>
> [13] Helpfully, the defendant council has included a breakdown of the way in which the charges are calculated in an appendix to the acknowledgement of service. This appendix shows that the council's approach to the calculation of costs is on an averaging basis along the lines proposed by Andrews J.
>
> [14] Moreover, the appendix shows that the figure of £80 is calculated by reference to the cost to the council of issuing a summon [sic]. The bulk of the costs are staff salaries and general overheads. The sum of £3 is the court fee for issuing the summons and those courts costs are incurred on the date that the summons is signed not on the date subsequently when the court makes the order if that becomes necessary.
>
> [15] In light of the above, it seems to me to be clear that the approach taken by the council in calculating costs is the right one and is consistent with Regulation 34 (5). It is not right to think that the only costs actually incurred in Mr Morley's case were the costs of printing the summons, putting it in a letter and postage."

39. I have not seen how the figure of £80 council costs was arrived at in the 2017 case. Given the evidence before me from the Council's Costs Schedule, it would be somewhat surprising if the average figure of £80 was reached without inclusion of the costs of applying for a liability order in cases where that had to be done. It may be that such costs were included, but that this was not clear from the figures produced. However, in any case, I have to make my decision on the basis of what is before me, and the Council's Costs Schedule provided to me makes clear that cases where application had to be made to the court for a liability order were included in the figures on the basis of which the Council sought costs in the summons. For the reasons I have set out, I think that was unlawful.

40. To avoid the unlawfulness I have identified, the Council may wish to consider adopting in its summonses wording which differentiates between the costs due if payment of the council tax due is made before the liability order hearing and the costs due if no such payment is made and the Council has to apply to a magistrates' court for a liability order.

Should the summons and/or liability order be quashed?

41. Although he clearly considered the summons to be unlawful, the Claimant did not pay the council tax due before the Council's application for a liability order was heard by the court. The Council therefore applied for and obtained a liability order against the Claimant at a hearing before the Second Defendant.

42. When the liability order application came before the Second Defendant, the Claimant attended court but did not argue that the summons was unlawful. It appears from the documents he submitted as part of his judicial review claim that he "saw no point in putting [his] case to the Magistrates." Had he not succeeded in persuading the Second

Defendant of his case, he could have applied to the Second Defendant to state a case under section 111 of the Magistrates' Court Act 1980, contending that the liability order was unlawful because the summons on which it was based was unlawful.

43. The Council contends that I should refuse relief because the Claimant had an alternative remedy which he did not pursue. Instead of arguing before the Second Defendant that they should not make a liability order because of the unlawfulness of the summons, and then if they rejected his argument and made the liability order, applying to them to state a case, he just waited for the Second Defendant to make the liability order and then sought judicial review.

44. I agree. I should refuse to quash the Council's unlawful summons and the liability order made by the Second Defendant. Judicial review is meant to be a last resort, where there is no alternative remedy. In the words of Lord Dyson MR in *Watch Tower* at [19]:

"If other means of redress are 'conveniently and effectively' available to a party, they ought ordinarily to be used before resort to judicial review…It is only in the most exceptional case that a court will entertain an application for judicial review if other means of redress are conveniently and effectively available."

45. It cannot be known if the Claimant would have succeeded in persuading the magistrates not to grant the liability order, but it appears that he did not try. He would have been able to raise the unlawfulness of the Council's summons in the proceedings before the Second Defendant; see *Boddington v British Transport Police* [1999] 2 AC 143. If the Claimant had failed to persuade the Second Defendants not to grant the liability order, he could have asked them to state a case, and if (as happened in *Nicolson*) they refused, he could then have applied for judicial review.

46. Applications to magistrates to state a case under section 111 of the Magistrates' Court 1980 must be made within 21 days – see section 111 (2). It would be wrong, save in exceptional circumstances, to allow a claimant to avoid the 21 day time limit set out in section 111 by claiming judicial review, with its three month time limit for commencing proceedings. The court may allow judicial review proceedings against magistrates where the complaint is procedural unfairness (e.g. bias) by the magistrates court – see, for example, *R (Rankin) v Ipswich Magistrates Court* [2016] EWHC 2851 (Admin). However, the complaint in this case is not about the fairness of the procedure adopted by the Second Defendant but about the lawfulness of the summons on the basis of which the Second Defendant granted the liability order. Furthermore, I do not think this case has any other exceptional circumstances which justify granting judicial review despite the availability of an alternative remedy.

47. Also, it seems to me that the Claimant could have commenced judicial review proceedings against the Council on receipt of the summons, rather than waiting for a liability order to be made. Had he done so, the matter might not have gone as far as a liability order, in which case questions of alternative remedy, section 31 (2A) of the 1981 Act and academic claims would not have arisen. However, that is not how the Claimant proceeded.

48. In those circumstances I refuse to quash the summons and/or liability order because the Claimant had an alternative remedy or alternative remedies, which he did not pursue.

49. The Council also argues that I must refuse relief under section 31 (2A) of the 1981 Act because the outcome for the Claimant – a liability order requiring him to pay £80.50 costs as well as the council tax owing – would have been the same even if the summons had not been unlawful.

50. There is no evidence before me that demonstrates that the amount of £80.50 sought by the Council and awarded to it by the magistrates is other than costs reasonably incurred by the Council in obtaining the liability order. The Council's Costs Schedule, which had not been updated since 2018/2019, and which gave an average per summons of £83.71, did of course include cases where liability orders had to be applied for. But the Claimant does not dispute that it is entirely legitimate to apply that calculation to a case where the person liable does not pay the council tax owing before the hearing of the liability order application. It follows that the £80.50 sought by the Council and set out in the liability order *did* represent an amount equal to the costs reasonably incurred by the Council in obtaining the order.

51. At the hearing before me (though not in any of his extensive written submissions, so far as I could see), the Claimant said that he failed to pay the council tax owing before the magistrates' court hearing only because he needed to check from the liability order made by the Second Defendant that the costs stated in that order (£80.50) were the same as the costs demanded in the summons. The Claimant therefore contended that the conditions for application of section 31 (2A) were not met, because had the Council issued a lawful summons, seeking (if payment were made before the liability order hearing) costs based only on an average of the Council's expenses which excluded cases where it had had to obtain a liability order, he would have paid up before the case reached the Second Defendant.

52. I am not persuaded that the Claimant's failure to pay the council tax owing prior to the hearing before the Second Defendant was because he needed to check from the liability order made by the Second Defendant that the costs stated in that order (£80.50) were the same as the costs demanded in the summons.

53. It is clear from the Claimant's 2017 judicial review challenge that he has for several years been engaged in seeking to show that the Council's summonses for arrears of council tax are unlawful for the reasons I have found in this case.

54. I do not accept that he needed to test whether the costs demanded in the summons subject of the present case were based on a calculation including cases where the Council had incurred costs in applying for liability orders, by not paying in response to the summons and waiting for the Second Defendant to make a liability order. The situation was clear from the Council's letter of 20 February 2024, in which it was stated that if he did not pay the £280 council tax due within 14 days, "Court proceedings will then follow for the recovery of the full balance and costs of £80.50 will be incurred." A comparison between the costs claimed in the summons - £80.50 – and the 20 February 2024 letter reveals that the sum claimed in the summons included the cost of any court proceedings. If he had been in any residual doubt, he could have checked with the Council, prior to the hearing in front of the Second Defendant, whether the costs demanded in the summons included the cost of the liability order application – but so far as I am aware, he did not.

55. I do not accept the Claimant's contention that the conditions for application of section 31 (2A) were not met because had the Council issued a lawful summons, seeking (if payment were made before the liability order hearing) costs based only on an average of the Council's expenses excluding cases where it had had to obtain a liability order, the Claimant would have paid up before the case reached the Second Defendant.

56. In the circumstances, I am satisfied that it is highly likely that had the unlawful conduct by the Council not occurred (issue of the unlawful summons) and a lawful summons issued which differentiated between the costs if payment was made before the court hearing and the costs if payment was not so made, the outcome for the Claimant would have been the same: the Council would still have had to apply for a liability order, the order would have been made and he would have had to pay costs of £80.50.

57. Further or alternatively to my conclusion in relation to section 31 (2A), it would not be appropriate to grant relief to the Claimant because his claim is now academic. The fact is that he did not pay in response to the summons and it was necessary for the Council to apply for the liability order. The liability order had to be made by the Second Defendant and the Claimant does not dispute that in those circumstances the costs claimed were reasonable and in compliance with reg. 34.

CONCLUSION

58. I conclude that it was unlawful for the Council to issue a summons demanding, as a pre-condition for avoiding an application for a liability order, payment of a sum derived from a calculation which included the additional costs of applying for liability orders. However, I refuse to quash the summons and/or the liability order, because the Claimant failed to pursue his alternative remedies and because had the unlawful conduct not occurred it is highly likely that that the outcome for the Claimant would have been the same and/or because the claim is academic. Accordingly, I grant permission to apply for judicial review as against the Second Defendant, but refuse to quash the summons and/or the liability order.

FORM OF THE ORDER

59. I will consider submissions about the form of the order to be made in this case, following my judgment. However, it may help the parties if I express some preliminary views.

60. It seems to me that order should provide that the claim must be dismissed.

61. So far as costs are concerned, under CPR 44.2 the court has a discretion as to whether costs are payable by one party to another. By CPR 44.2 (2), if the court decides to make an order about costs, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order.

62. In this case the Claimant has succeeded in demonstrating that the Council acted unlawfully in issuing the summons, but I have refused relief because the Claimant failed to pursue his alternative remedies and because had the unlawful conduct not occurred it is highly likely that the outcome for the Claimant would have been the same and/or because the claim is academic. In those circumstances, my preliminary view is

that there should be no order as to costs; in other words, that each party should bear their own costs.

63. I add an observation about the Schedule of costs submitted by the Council, in the sum of £6,600 plus £1320 VAT, a total of £7,920. My understanding is that when a court orders a losing party to pay costs, the order is the net sum; in other words, without adding VAT. It therefore appears to me (as a preliminary view) that any sum claimed by the Council should not include VAT.