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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/04/2012

Before :

THE HONOURABLE MR JUSTICE UNDERHILL

Case No: CO/8686/2011

Between:

R (SDR)	**Claimant**
- and -	
Bristol City Council	**Defendant**
- and -	
Vence LLP and Ashton Vale Project LLP	**Interested Parties**

Case No: CO/1836/2012

Between:

R (ABC)	**Claimant**
- and -	
Bristol City Council	**Defendant**
- and -	
Vence LLP and Ashton Vale Project LLP	**Interested Parties**

Alex Goodman (instructed by **Richard Buxton Environmental & Public Law**) for the **Claimant in CO/1836/2012**
Leslie Blohm QC (instructed by **Head of Legal Services, Bristol City Council**) for the **Defendant**
Jonathan Karas QC and James Maurici (instructed by **Clarke Wilmott LLP**) for **The Interested Parties**

Hearing dates: 29 February and 2 March 2012

Approved Judgment

The Hon. Mr Justice Underhill :

INTRODUCTION

1. There are two applications before me, in cases numbered CO/8686/2011 and CO/1836/2012 respectively (for short, "8686" and "1836"). I heard argument on 29 February. I was proposing to hand down my judgment on 2 March. In the interval I received further written submissions which required more attention than I was able to give them in the time available. I was able to, and did, announce the broad nature of my decision on that date, but I reserved the precise terms of the order and the detailed reasoning. Those are what I now hand down. The process has unfortunately been delayed somewhat, for reasons communicated to the parties.

2. There is a proposal to develop an area of land ("the Fields") in the Ashton Vale district of Bristol, partly for a retail and commercial development but primarily to provide a new stadium for Bristol City Football Club ("BCFC"). Two landowners are involved – Vence LLP and Ashton Vale Project LLP ("AVP"). The proposal has strong opponents because members of the local community claim to have used the Fields for recreational purposes for many years. But it also has strong support, particularly from supporters of BCFC. Feelings run high on both sides. I have seen convincing evidence of incidents of intimidation and harassment aimed at opponents of the development.

3. Two individual objectors to the development applied for the registration of the Fields as a town or village green under the provisions of the Commons Act 2006. They were members of a body called the Ashton Vale Heritage Group. The registration authority was Bristol City Council. It appointed an inspector to conduct a non-statutory inquiry ("the TVG inquiry"). Following a ten-day hearing, on 26 August 2010 the inspector recommended that the Fields be registered as a town or village green.

4. Following the conclusion of the TVG inquiry the landowners submitted substantial further material and submissions to the Council with a view to persuading it not to follow the inspector's recommendation. A different group of "TVG supporters" called Save Ashton Vale's Environment ("SAVE") took the lead in resisting any departure from the recommendations. A leading figure in SAVE was a former city councillor called Peter Crispin.

5. On 16 June 2011 the Council's Public Rights of Way and Commons Committee decided to register only that part of the Fields that was not required for the development: that was in substance a rejection of the inspector's recommendation. It is said, however, that the eventual registration did not entirely conform even to that decision, since the Council's officers excluded from the registered part a further parcel for use as a "landscape corridor".

6. On 12 September 2011 an application was lodged for judicial review of (a) the decision of the Committee and (b) the subsequent act of registration: that is case no. 8686. The Council were the Respondents. Vence and AVP were named as Interested Parties. The Claimant was identified in the claim form only by the initials "SDR", and the form contained an application for anonymity on the basis that TVG supporters – or, to put it another way, opponents of the development – had been subject to threats of violence and harassment. That application was granted by Irwin J on 15 September

2011, on the basis that the parties to the application should be told SDR's identity on a confidential basis. SDR's solicitors were Richard Buxton Environmental & Public Law ("RB"), who had been representing the original TVG applicants, and in due course SAVE, in the dealings with the Council following the delivery of the inspector's report; but the pleaded grounds say nothing explicitly to the effect that SDR was purporting to act as representative of any wider group – I return to this aspect in due course. It is material to mention that SDR is elderly and in poor health. His only source of income is statutory benefit. He was initially granted legal aid for the purpose of the proceedings, though the Legal Services Commission subsequently revoked the grant.

7. Permission to apply for judicial review was granted by Collins J on 12 January 2012. I was told that it was hoped that the case could be listed in May.

8. On 15 February 2012 a gentleman to whom I will refer as "B", who is a member of SDR's family, wrote to the Court enclosing two forms, both signed by SDR and dated 14 February. The letter was delivered to the Administrative Court Office on 16 February and formally filed the following day: I return to this aspect also below. The forms were as follows:

- The first was a notice of change of solicitor. Box A, which covers the case where a party intends to act in person, was ticked. It reads:

  > "My solicitor, Richard Buxton [address] has ceased to act for me and I shall now be acting in person."

  Box B on the standard form is an alternative to box A and is intended to cover the case of a change of solicitor in the conventional sense (i.e. as opposed to where the party will be acting in person). Nevertheless, it also was completed (though not ticked), so as to name B as SDR's "representative" and giving his address as an address for correspondence. Box C was ticked, which states that "I have served notice of this change on every party in this application (and on the former solicitor)".

- The second form was a notice of discontinuance. It simply gives the reference for the claim and says, by ticking the appropriate box, "the claimant discontinues all of this claim".

There is an issue before me as to whether either form was technically valid or effective, but I will not address that at this stage.

9. The covering letter says that both forms were sent to the parties "today". The Council appears to have received copies of both forms on 15 February itself, but RB did not get them until 16 February. On 15 February Mr McNamara, the Council's Head of Legal Services, telephoned Ms Copithorne, the solicitor at RB with conduct of the claim, to ascertain her response. She had, as I have said, not yet received them. She telephoned SDR to find out what was going on. Her evidence is that he appeared troubled and unwilling to speak to her. She understood him, however, to say that he had not signed any forms and did not in fact want the challenge to the Council's decision to be dropped, but that as a result of pressure from B and/or others he did not

feel that he himself could any longer be associated with it. She says that she suggested to him that he be replaced by some other individual to carry on the proceedings.

10. No doubt in response to that conversation, on 17 February SDR wrote to the Court in the following terms:

> "I, [SDR] of [address] also known as the sole claimant SDR, claim number CO/8686/11, hereby declare for the avoidance of doubt, the following:
>
> 1. That I do not permit for a replacement as a result of the claim discontinuance.
> 2. That I do not wish for a replacement as a result of the claim discontinuance.
> 3. That the discontinuance signed paperwork served to the Courts are an accurate and wholly reliable account of my withdrawal.
> 4. That any claim by my former solicitors are no longer reliable and not an accurate description of my view.
> 5. That [B] is now my sole legal guardian and representative.
>
> 'I would like to express to the Courts that my claim withdrawal is a result of wanting to see the City going forward providing young people with employment opportunities for the greater good of many. I humbly withdraw my claim.'"

11. In those circumstances, Ms Copithorne, while maintaining the position that SDR's purported discontinuance appeared to be contrary to his real wishes and was ineffective, took two steps with a view to maintaining, or reviving, the challenge to the Council's decisions. Both involved a different resident of Ashton Vale referred to only as "CRM". (Even CRM's gender has not been revealed, but I will for convenience assume it to be male.) The first was an application by CRM, by notice dated 20 February 2012, to be substituted as Claimant in the current proceedings. The second was the issue, by a claim form in the name of CRM dated 21 February 2012, of a fresh application for judicial review in substantially identical terms to the original proceedings: this is case 1836. In both cases an ancillary application was made for anonymity, on the same basis as the application previously made by SDR; and an application was also made for a protective costs order. The latter had been adumbrated by RB in correspondence before SDR's notice of discontinuance, but no application had been made.

12. On 21 February SDR wrote again to the Court, as follows:

> "Unfortunately with claims made by my former solicitors, I the sole claimant in the judicial review feel it is necessary to make my position explicit again.

> 1. My withdrawal from the Judicial review was a decision taken with much consideration in consultation with my family and [B].
> 2. As an individual and family, we do not feel that there is any credence left to stand in the way of common sense and a happy compromise. We sincerely feel that enough is enough.
> 3. I do not want to be in the way of potential jobs, young people and economic prosperity for the City of Bristol.
>
> Leading up to the point of "discontinuance" my family and I have felt very used by the people behind us. The decision to withdraw is to cut a clean slate. Any suggestions that myself or family decision were persuaded or coerced into this decision is totally not true."

13. The papers in 1836 were put before HH Judge Thornton QC, sitting as a Deputy High Court Judge, as a matter of urgency on 22 February 2012. He extended time and ordered that it be joined with 8686. He made various consequential directions aimed at ensuring the two cases were, in effect, treated as one. He made an anonymity order in the same terms as that made by Irwin J, though for some reason he re-named CRM as "ABC". I should say at this stage that it was accepted before me that the identity of ABC should be concealed also, on terms which I will record at the end of this judgment.

14. On 24 February 2012 the Council applied for an order setting aside the judgment of Judge Thornton in 1836. That was listed before me together with the application for substitution in 8686.

15. Before me ABC was represented by Alex Goodman of counsel: there is a question as to whether, and if so in what sense, he also represents SDR. Mr Leslie Blohm QC appeared for the Council. The Interested Parties were represented by Mr Jonathan Karas QC and Mr James Maurici.

SUBSTITUTION

16. It was common ground between counsel that the Court can permit an individual claimant in judicial review proceedings who is recognised as bringing the proceedings on behalf of a wider group to be substituted by another such claimant if in the course of the proceedings the original claimant for one reason or another does not wish to proceed. That was decided – by me, as it happens – in *River Thames Society v FSS* [2007] JPL 782; and I understand that such substitution has happened not infrequently in other cases of this kind. A large part of the case of the Council and the Interested Parties was that the present case was radically different because the proceedings brought by SDR had come to an end as a result of his notice of discontinuance and that 1836 had to be judged as a new claim, in which case it was seriously out of time. I will return to those questions in due course, but I prefer to begin by considering what the position would be in the absence of that complication – that is, if the original proceedings were unquestionably still in being at the time that the application for substitution, as it would then be, by ABC fell to be decided. In such circumstances

the case would appear on the face of it to fall squarely within the reasoning of the *River Thames Society* case. Mr Blohm, however, submitted that there were two important differences.

17. First, he contended that the original proceedings were not in truth proceedings brought on behalf of a wider group. There was nothing in the claim form to say that that was so. SDR was apparently bringing the proceedings simply as a local resident. The case could not be, in effect, taken over by another local resident simply because he shared the same objective of seeing the Council's decisions overturned.

18. I reject that submission. I see the force of the argument that substitution in judicial review proceedings should not be permitted simply on the basis of a community of interest, in the broad sense, between a claimant who no longer wishes to proceed and a new claimant who wishes to pick up the baton; and I am prepared to accept for the sake of argument that substitution is only permissible where it is apparent that the original claimant was from the start bringing the claim for the benefit of a wider group which was in some sense associated with him in doing so. But I do not think that that further element needs to be established by the use of any particular formula. It is enough that it should be apparent to the defendant and any interested parties. In the present case, it was, and certainly should have been, apparent to all concerned that SDR was indeed claiming to be acting with the support of others who associated themselves in the claim. He was represented by RB, who had acted as solicitors for SAVE. The pre-action protocol had been signed jointly by him and by Mr Crispin, who is described in the evidence as "the spokesperson of SAVE". In her witness statement lodged with SDR's claim form Ms Copithorne explained in some detail how SAVE had emerged as the voice of those TVG supporters who wanted to continue the struggle following the rejection of the inspector's recommendation. She said, at para. 23:

> "In bringing this claim the claimant has been acting in his own interest as a user of the application land, but also feels that it is important that he act according to a substantial degree of consensus amongst the supporters at each step (i.e. writing to the Council, instructing our firm and counsel for advice and then for proceeding with the claim) as the outcome of the claim will affect all of them. This takes time to coordinate meetings and to come to an agreement, particularly when the preceding events are as fraught with emotion and a perception of a real risk of violence, as these have been."

The witness statement ends:

> "There is a persistent fear amongst the TVG supporters that if a claim is brought, more people will be subjected to harassment and violence. However, the TVG supporters feel very strongly that all of the application land should be registered as it is their village green and the threats have not succeeded in deterring them so far."

19. Mr Blohm's response was that that did not amount to evidence that SDR was acting "for" the other members of SAVE or "TVG supporters", or "on their behalf" or as "representing" them, but only that he was acting in their interests. But he was not able in any satisfactory way to identify the substance of that distinction in the context of public law proceedings. Considerations of formal agency are surely out of place. Nor do the provisions for representative proceedings in Part 19 of the Civil Procedure Rules appear applicable. In my judgment it is indeed enough that some or all of the members of SAVE were, and were stated to be, associated with SDR in the bringing of the proceedings.

20. Mr Blohm's second ground for distinguishing the circumstances of the present case from those applying in the *River Thames Society* case was that the conduct of those behind SDR and ABC constituted an abuse of the process of the Court and was the result of choices of claimants being made by SAVE for tactical advantage. It was not entirely clear to me what the essence of the alleged abuse was. It was initially suggested that the two claimants had been chosen because their personal circumstances – ABC, like SDR, is elderly, and he also has severe health problems – would attract the sympathy of the Court. There is no reason whatever to suppose that so implausible a motive influenced the choice of the claimants; and even if it did I do not see why such a tactic, though futile, would constitute an abuse. It was then said that SDR was believed to be entitled to legal aid (though apparently ABC is not), the suggestion being that if other claimants had been chosen legal aid would not have been available. It is by no means established that the selection of a claimant on this basis is an abuse: I was referred to the helpful review of the authorities by Keith J. in *Edwards v The Environment Agency* (CO/5702/2003) (though I would be surprised if there had not been further cases since then). But I could not in any event conclude on the evidence that the choice of SDR had been motivated by such considerations: the explicit evidence of Ms Copithorne was that he was the only person prepared to put his head above the parapet in the prevailing atmosphere of intimidation and harassment. In the end, I understood Mr Blohm's submission to be that those behind the claimants were trying to have their cake and eat it – by bringing the original claim as if it were an individual claim but presenting it as a representative claim when the need for substitution arose. In that case this submission is substantially identical to the first, and I reject it for the same reasons.

21. I would thus accordingly unquestionably allow the substitution of ABC as a claimant if the original proceedings were still on foot. However, it is necessary to consider whether those proceedings have, and had at the time of the substitution application on 20 February 2012, been effectively discontinued; and, if so, whether the fresh proceedings should be allowed to proceed.

DISCONTINUANCE

22. Mr Goodman contended that SDR's notice of discontinuance was ineffective on two bases, namely (1) that SDR's signatures to the two notices, if indeed they were his, were procured by improper pressure; and/or (2) that the notice was signed by SDR as a litigant in person, whereas RB in fact remained on the record because the accompanying notice of change of solicitor was ineffective. I take those two grounds in turn.

23. As to the first point, Mr Goodman relied on the evidence of Ms Copithorne, in her witness statement in support of ABC's application for substitution, about her first conversation with SDR (which I have summarised at paragraph 9 above) and in a further witness statement dated 27 February. In the latter statement she makes various points by way of argument about the inherently surprising nature of SDR's volte-face and the stilted and unconvincing explanations offered in his letters of 17 and 21 February, which read as though they had been dictated by others. She also refers to the witness statement, also dated 27 February, of a SAVE supporter who claimed to know SDR well. This witness gives circumstantial, and on its face convincing, evidence that SDR had told him of a series of approaches by a businessman who had a substantial interest in the success of the development and who, with B, had tried to induce him, partly by veiled threats, partly by misrepresentations and partly by offers of a large sum of money, to drop the judicial review proceedings. The witness had reported what SDR had told him to the police. Ms Copithorne in her statement gives evidence of a conversation that she herself had had with the businessman in question. (Both the witness and the businessman are named, but in circumstances where SDR's anonymity is being preserved I do not propose to name them myself.)

24. There is no evidence before me in answer to those two witness statements, which were of course made only two days before the hearing. But I do have a letter dated 27 February from the well-known Bristol firm of solicitors, Osborne Clarke, in which they say that they had been asked by B and SDR to take a witness statement from SDR explaining his position authoritatively. They agreed to do so on a pro bono basis. Mr Shakesby of Osborne Clarke attended SDR at B's home and took a statement from him "without [B] being in the same room ... [and] ... as far as possible in the words of SDR". The statement is attached. It reads:

> "1. I am making this statement in order to make my position clear in these proceedings.
>
> 2. I signed the notice of discontinuance and the notice of change of solicitor that were recently filed. I wanted to bring this claim to an end. I asked ... [B] ... to handle those for me. I do not want Buxton's to act for me, or to do anything in my name.
>
> 3. I just want this claim finished. I have nothing against the City Ground, or against anyone. All I want is to be left alone. I am crippled by arthritis and I am no longer able to stay in my house. The only reason that I was persuaded to be involved in this claim was because I thought that if I stayed in the house and tried to stop the stadium that it might help me to keep the memory of [B's] mother alive.
>
> 4. I do not want to be involved in the claim any more. It is making life too difficult. Most of my neighbours will not speak to me because they know that I want to drop the claim and I am being pressured not to. I had to leave my house to get away from it all and because I no longer want to be there.

5. I have tried to drop the claim before, but people ignore me, or try to persuade me to carry on. I have been told what Buxton's have said about someone taking my place. I did not say that to them. When Buxton's rang me I put the phone down on my solicitor because I did not want an argument about dropping the claim. I do not know why my former solicitor was surprised that I wanted to drop the claim. It is common knowledge and that is why people in the village made my life so difficult and wouldn't talk to me.

6. I just want to drop the claim and make it all stop. My intentions in relation to this claim are set out in the notice of discontinuance, the notice of change and the two letters dated 17 and 21 February 2012. These documents are now produced and shown by me …

7. I believe that the facts set out in this witness statement are true."

25. This is a troubling situation. I agree with Ms Copithorne that the explanations given by SDR for what is a remarkable change of heart do not altogether ring true. Likewise the evidence of the other witness referred to at paragraph 23 above is prima facie convincing, though I could not and should not make any findings without the other parties having the opportunity for cross-examination. On the material that I have seen I think it likely that SDR's volte-face is the result of him having been subjected to persuasion – to put it no higher – from B. Of course that persuasion need not necessarily have been improper, and B may well have been acting in what he saw as SDR's best interests. However, the evidence to which I have referred does give reason to suspect that B has in turn been influenced by others with less disinterested motives. But ultimately I do not need to resolve these questions. The witness statement taken by Osborne Clarke satisfies me – and any further inquiry would be disproportionate – that SDR did indeed sign the notices and that, whatever the pressures on him, his act must be regarded as voluntary.

26. I turn therefore to Mr Goodman's second ground. He made three particular points.

27. First, he pointed out that under rule 42.2 (3) of the CPR a notice of change of solicitors must state the party's new address for service. Although the form signed by SDR had (albeit in the wrong box) given an address for service, namely B's, that was not a good address for service because it was not SDR's residence, as required by rule 6.23 (2) (c). I am not sure that that is established on the facts: the evidence before me tends to suggest that SDR has gone to live, albeit perhaps temporarily, with B. But even if B's address is not SDR's residence within the meaning of the rule, that is in my view no more than an irregularity. It does not mean that the notice is to be treated as ineffective.

28. Secondly, Mr Goodman relied on rule 42.2 (2) (b), which requires that notice of change must be served on every other party and on the former solicitor; and on rule

42.4, which requires the notice filed at court to state that those requirements have been complied with. He said that although the notice contains such a statement, it was not true, because no such service had, as at the date of signature (14 February), occurred: the notice was only served on the Council on 15 February and on RB itself on 16 February. In my view, in a case where the notice has been served by post (as permitted by rule 6.20), the statement required by rule 42.4 is simply that the notice has been posted. That was true when the notice was filed at court, and it makes no difference that posting had not occurred on the previous day, when SDR actually signed the form.

29. Thirdly, he said that enquiries with the Court had established that the notices had not been filed, and that accordingly both were ineffective: see (as regards the notice of change) rules 42.1 and 42.5 and (as regards the notice of discontinuance) rule 38.3 (1) (a). But that is factually wrong. I have myself seen the receipted original of B's letter and the enclosed notices showing receipt on (as I have said above) 17 February. RB have produced an e-mail from an associate in the Administrative Court Office stating the contrary, but the statement is incorrect. I suspect that the error arises from the fact that the documents in question were not on the file but were with my papers for court. It is a pity that RB were given wrong information (though how the mistake occurred is understandable); but what matters is that it was indeed wrong.

30. I therefore hold that SDR's claim was effectively discontinued on 16 or 17 February 2012.

THE FRESH PROCEEDINGS

31. Accordingly, the only vehicle for a challenge to the Council's decision is the claim brought by ABC. That is of course out of time by over four months, and an extension is required. Mr Karas urged me to treat this simply as a fresh claim and to apply the approach appropriate to such a case. He pointed out that in the case of a delayed application the Court should look not only at the prejudice attributable specifically to the delay but at the prejudice caused by the pendency of the proceedings overall.

32. I have no doubt that if this were an ordinary case of an application for judicial review brought out of time I would refuse permission. It is obvious – though the point is confirmed by a good deal of evidence – that the uncertainty and delay caused by the pendency of these proceedings is prejudicial to the Interested Parties. But this is not an ordinary case. The prejudice of which the Interested Parties complain has been present since September and is the legitimate, though no doubt regrettable, consequence of SDR, and those with whom he was associated, exercising their legal rights to challenge a decision of the Council about whose lawfulness there is – as the decision of Collins J to grant permission shows – real room for argument. They would have had to put up with that prejudice until the hearing of the claim, which all agree should be as soon as possible. SDR's sudden change of mind is an uncovenanted windfall for them. If ABC is allowed to continue the challenge – even in the form of fresh proceedings rather than by way of substitution in the old proceedings – they will be no worse off than if SDR had continued with his claim. In substance, albeit not in form, these are the same proceedings: they raise the same challenge on behalf of the same group. I should however refer to two other points made by Mr Karas.

33. First, he pointed out that there was some evidence that the Interested Parties were induced to incur expenditure in the immediate aftermath of, and in reliance on, SDR's discontinuance. The witness statement of Mr Lansdown of Vence says as follows (at para. 18):

> "Following the issue of the Notice of Discontinuance we convened a meeting of the project team to re-commence work on putting everything in place to enable development to commence. This meeting involved BCFC officials, the project management team, legal advisors, the preferred stadium contractor, the stadium architects, engineers, F&E specialists and the IT contractor. The total costs of this meeting amounted to in excess of £8,000. If this application is permitted then the project will once again have to be put on hold, leading to yet further abortive costs and delay."

Although I have no reason to doubt the broad truthfulness of that statement, there would certainly be elements in it that might, in another context, be the subject of fruitful cross-examination. I bear in mind that the Interested Parties cannot have heard of SDR's discontinuance until 15 February at the earliest, and probably not until the following day; and that the Council's solicitor was aware from the start that its validity was challenged by RB, that the substitution application was made on 20 February and the fresh proceedings issued on 21 February (with a weekend intervening): Mr Lansdown does not say on what date the meeting to which he refers took place. But even if Mr Lansdown's statement were taken at face value, I do not believe that the expenditure in question constitutes sufficient prejudice to require me to withhold a permission that I was otherwise minded to grant.

34. Secondly, he tried to persuade me that I should take a different view because of what he presented as a serious piece of non-disclosure by ABC – in practice by Ms Copithorne – in the papers presented to Judge Thornton, inasmuch as she failed to refer explicitly to SDR's letter of 17 February, although it was included in the bundle of documents for the Judge. Strictly, I think that the letter should have been expressly referred to in the claim form or supporting evidence; but I am sure that the omission was not intentional, nor was it in any sense grave. I think it extremely unlikely that it would have affected the Judge's decision. Such criticism as may be justified could not, again, possibly justify me in making a different order than I would otherwise think appropriate.

35. I have reached that conclusion without reference to the circumstances which caused SDR to change his mind. I am not, as I have said, in a position to make definitive findings about the allegations that threats and inducements were offered in order to get him to withdraw. If, however, that were the case it would weigh very heavily in favour of allowing ABC's claim to continue. It would be intolerable if a legitimate challenge to the decision of a public authority were able to be defeated by improper pressure of the kind alleged. Even a serious possibility that that may have been the case would be something that I could take into account, although in the event I have not found it necessary to do so.

36. The upshot of all that is as follows. The first proceedings – no. 8686 – are at an end. I must accordingly set aside the order of Judge Thornton, since that involves (in effect) the consolidation of the two sets of proceedings. However I give permission to ABC to apply for judicial review in no. 1836, notwithstanding the delay, on the basis that it simply steps into the shoes of the earlier proceedings. I would expect counsel to be able to agree directions having that effect. As for anonymity, although the parties have in fact reached agreement, I ought to say, because the interests of public justice are concerned, that I am satisfied that there is a real risk that ABC would suffer harassment or worse if his or her identity were revealed. I rely not only on the evidence which was before Irwin J. but on further evidence which was put before me, in the form both of the witness statement from Ms Copithorne to which I have already referred and a witness statement from Mr Daniel Bennett, the barrister who acted for the applicants in the TVG inquiry. In those circumstances it is right that nothing should appear in the record of the proceedings which would enable ABC's identity to become public knowledge. It must of course be revealed to the Council and the Interested Parties; but because of concerns about an earlier leak of SDR's identity notwithstanding the order of Irwin J., counsel have agreed to such disclosure being on a named-persons-only basis and have agreed the names of the individuals in question.

37. The application for a protective costs order was not before me. The parties are content that it be dealt with in the manner proposed by Judge Thornton.

38. I said at the conclusion of the hearing that in order to avoid unnecessary attendance at the hand-down I would give an indication of my provisional view about costs. I am not minded to make an order for the costs of this hearing. In one sense the outcome has been a victory for those seeking to challenge the Council's decisions; but they have lost on the issue of the effectiveness of SDR's discontinuance, and I also bear in mind that the situation which required the issue of fresh proceedings was not of the Council's making.