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5 **IN THE COMPETITION APPEAL**
6 **TRIBUNAL**

Case No:1425/7/7/21

7
8
9 Salisbury Square House
10 8 Salisbury Square
11 London EC4Y 8AP

12 Tuesday 15th November 2022

13
14 Before:
15 The Honourable Mr. Justice Roth
16
17 (Sitting as a Tribunal in England and Wales)

18
19
20 BETWEEN:

21
22 JUSTIN GUTMANN

23
24 **Applicant/Proposed Class Representative**

25
26 v

27
28 **(1) GOVIA THAMESLINK RAILWAY LIMITED**

29 **(2) GOVIA LIMITED**

30 **(3) THE GO-AHEAD GROUP PLC**

31 **(4) KEOLIS (UK) LIMITED**

32 **Respondents/Proposed Defendants**

33
34 **- and -**

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36 **SECRETARY OF STATE FOR TRANSPORT**

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38 **Proposed Intervener**
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APPEARANCES

Philip Moser KC and Stefan Kuppen (On behalf of the Proposed Class Representative)

Paul Harris KC and Anneliese Blackwood (On behalf of the Proposed Defendants)

Brendan McGurk (On behalf of the Secretary of State – Proposed Intervener)

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Tuesday, 15 November 2022

(10.45 am)

Proceedings

MR JUSTICE ROTH: Good morning. Can I just check you can hear me?

Thank you. I start with the customary warning which will be familiar to many of those on the video link, but perhaps not to everyone, which is that this hearing is being heard remotely but it is as much a Tribunal hearing as if it was taking place with everyone in person in the courtroom in Salisbury Square House. An official recording of the proceedings is being made and it is a contempt of court for anyone to make an unauthorised recording or make any image of these proceedings.

I have before me Mr Moser for the Class Representative and the Applicant, Mr Harris for the Respondents. Mr McGurk, I think, is for the intervener. Those are the only people I see at the moment.

Is Ms Howard appearing?

MR MOSER: She is not, Sir.

1 **MR JUSTICE ROTH:** Turning then to the agenda. The first question is the appropriate
2 forum for the proceedings. I think there is no dispute and it is agreed that it should be
3 England and Wales, and I shall make that order.

4 Secondly, there is the Confidentiality Order. I have been supplied with a draft
5 Confidentiality Order in tab 23 of the first bundle. As I understand, that is agreed --

6 **MR MOSER:** Yes.

7 **MR JUSTICE ROTH:** -- so unless anyone now objects, I shall make an order in those
8 terms.

9 The third item is whether there should be any specific disclosure. I saw Mr Moser,
10 there was raised the question of some disclosure, but I have to say, unless you seek
11 to persuade me otherwise, the Respondent -- Respondents I should say -- are not
12 objecting here to the making of a CPO. I find it hard to see why such disclosure which
13 may be very relevant once the proceedings get going, if a CPO is made, why it is
14 necessary at this stage.

15 **MR MOSER:** It will not surprise you to hear that in that case I am not going to press
16 that. It was largely, as I said in our written submissions, if the Tribunal itself wished to
17 have the information prior to certification.

18 **MR JUSTICE ROTH:** Yes.

19 **MR MOSER:** I hear what you say.

20 **MR JUSTICE ROTH:** I think we can assume that there may, of course, not be the
21 same situation as in the other Gutmann case but there will be a discrepancy such that
22 supports the application. So we will not order, as it were, pre-trial disclosure in this
23 case.

24 Then one comes to the amendment of the Claim Form. As I understand it, Mr Moser,
25 it is paragraph 104, is it not? There was some reference to 103, but looking at the
26 Claim Form, which I have at tab 5 of the first bundle, page 41.

1 **MR MOSER:** Yes, the proposed class definition.

2 **MR JUSTICE ROTH:** That's it. 1 October was an error so it should be 24 November;
3 is that right?

4 **MR MOSER:** Correct.

5 **MR JUSTICE ROTH:** Then you wish to amend the definition to conform to the
6 definition that is set out at the end of the recent judgment in the Gutmann case on
7 amendment.

8 **MR MOSER:** Sir, yes.

9 **MR JUSTICE ROTH:** And that's the extent of the amendments you seek; is that right?

10 **MR MOSER:** Yes.

11 **MR JUSTICE ROTH:** Are those opposed, Mr Harris?

12 **MR HARRIS:** No, Sir.

13 **MR JUSTICE ROTH:** Well, I give permission to make that amendment. Obviously,
14 the amended definition is the definition that will go into the Notice, which is probably
15 the next question, the sort of timetable.

16 Starting with the Notice, you have suggested that there is no difficulty doing that by
17 22 November as I understand it. Is that right?

18 **MR MOSER:** That's correct. And I understand that that is agreed.

19 **MR JUSTICE ROTH:** Yes. It will be the same form, effectively, as the Notice that was
20 approved by the Tribunal in the other Gutmann case. I don't have a copy of that, but
21 clearly we considered it at that time, so that's satisfactory.

22 **MR MOSER:** Yes, it will be. It is set out in general terms at paragraphs 5.1 and
23 following of the Epiq plan. It is essentially the same.

24 **MR JUSTICE ROTH:** Yes. That is fine, so 22 November for the Notice.

25 Now working back, as it were, from where we will get to, I think there are three things
26 to be dealt with: one is the actual consideration of making a CPO; secondly, there's

1 case management of this case, and potentially together with the other two Gutmann
2 case (inaudible); and then there is thirdly the Secretary of State's application to
3 intervene. It seems to me sensible they should all be heard together, or dealt with
4 together, and that there should be a hearing.

5 I don't think -- given the issues proposed by the Secretary of State, and I see that's
6 opposed -- it is not appropriate to deal with that on the papers. That will have to be
7 in January.

8 Given the availability of the Tribunal that could be on the first available date after the
9 22 January. I think if one works back to that I think it may be appropriate to say that
10 objections by 22 December, so that is a month after the Notice, or any application to
11 be heard. Then you will know the position after Christmas and that will enable the
12 parties to prepare their skeletons for the hearing in good time after you return from,
13 I hope, an agreeable break over Christmas/New Year.

14 So I think that's the timetable I have in mind. Does that seem satisfactory, Mr Moser?

15 **MR MOSER:** Sir, we've always said that it's essentially in the Tribunal's hands as to
16 whether or not there needs to be a hearing. I note what you say about the Secretary
17 of State's intervention. It is certainly the case that the only matter of substance that
18 has arisen so far is the Secretary of State's intervention, which of course is relatively
19 unwelcome as far as we are concerned, and we will have more to say about that either
20 today or in due course. But I am not going to seek to persuade you otherwise.

21 As far as my own availability is concerned, and I know that's not decisive, but I know
22 that I am not available in January or February.

23 **MR JUSTICE ROTH:** Not at all?

24 **MR MOSER:** Not at all. I am currently in a case that is due to start in the last week
25 of January in the TCC, a public procurement case about the National Lottery.

26 **MR JUSTICE ROTH:** Yes.

1 **MR MOSER:** That is due to last until some time towards the end of February. So
2 those dates, I am afraid, are bad for me.

3 **MR JUSTICE ROTH:** Yes. You see, we can't consider making a CPO until the time
4 for objections has expired, obviously.

5 **MR MOSER:** No.

6 **MR JUSTICE ROTH:** The question of intervention, first of all, should be decided by
7 the full Tribunal. I think, given the issues raised, I would like it to be done at a hearing.

8 **MR MOSER:** Yes.

9 **MR JUSTICE ROTH:** There are also, of course, then directions for pleadings. If
10 a CPO is made, there are all the forward-going case management directions of the
11 usual kind: dates for defence, replies, disclosure and so on. So it would be useful to
12 have a hearing even just to iron those out. Expert evidence et cetera.

13 **MR MOSER:** Indeed -- forgive me.

14 **MR JUSTICE ROTH:** To postpone it to March would be from the point of view -- let's
15 assume, although it is not decided, but there seems a good chance given what
16 everyone has said, that this will be case-managed together with the other Gutmann
17 case.

18 **MR MOSER:** Yes.

19 **MR JUSTICE ROTH:** This one will be able to, as it were, catch up without
20 much difficulty. But those cases I would have thought you want to get moving with, so
21 postponing this to March would be unattractive.

22 **MR MOSER:** Sir, it may be of assistance -- forgive me for interrupting -- but looking
23 at my diary, rather than trying to recall it, I see that from the week starting 20th
24 February, I am again available. That would only be one month later.

25 **MR JUSTICE ROTH:** It is a matter for you to consider with your clients. In terms of
26 this case, that's not a problem, given when it started; in terms of the other cases, that

1 is a bit of a delay. But, as you say, it's only about a month's delay. If you say that, on
2 instructions, you don't see that of concern, I would have thought that that is workable.

3 **MR MOSER:** I am getting instructions it is not of concern. Of course again, rather like
4 when we dealt with the listing of the Court of Appeal if I recall, this is a case where
5 there is only one counsel team, and there is a CFA in play and so on.

6 **MR JUSTICE ROTH:** Yes.

7 **MR MOSER:** So it is more than usually dependent on my availability.

8 **MR JUSTICE ROTH:** Yes.

9 **MR MOSER:** So I would be grateful if it could be not before the 20th, please.

10 **MR JUSTICE ROTH:** Mr Harris, I expect you don't object to being put back by
11 a month, do you?

12 **MR HARRIS:** We don't object. I am in the fortunate position that my client has settled
13 out of the Trucks 2 trial --

14 **MR JUSTICE ROTH:** Yes, of course.

15 **MR HARRIS:** -- so as at this week I have quite good availability in February. But I am
16 just conscious that leading counsel for both Stagecoach and First MTR, they are
17 currently still both in the Trucks Trial 2, but you have rightly said, Sir, on the first
18 available date and liaison will no doubt be conducted in the usual way.

19 **MR JUSTICE ROTH:** Yes. As you know, we can't be tied to counsel's availability
20 firmly. We do our best to accommodate it. Sometimes, particularly in multi-handed
21 cases, it is not possible. It is only a CMC, and if the main contested issue is going to
22 be the Secretary of State's intervention, that will, it appears, largely be a debate
23 between Mr Moser's client and the Secretary of State. That's not to say you may not
24 have observations to make and the other TOCs may have observations, but primarily
25 it is going to be for the Secretary of State, so if their leading counsel can't attend,
26 I would not have thought that is going to be an inhibitory factor.

1 So we will do that then. We will say the first available date after 20th February. The
2 question then is only: do we extend the date for objections to January? I wouldn't have
3 thought so. I think a month is sufficient.

4 Then we need not fix the date for skeleton arguments by a calendar date, but I would
5 have thought we should say that skeleton arguments, including from the Proposed
6 Intervener, should be 10 days before that CMC and that should be sufficient.

7 The authorities bundle and hearing bundle should be then filed, I will say, seven days
8 before the CMC.

9 **MR HARRIS:** So can I just please clarify? It is both a certification hearing and
10 a CMC?

11 **MR JUSTICE ROTH:** It will be a joint CMC --

12 **MR HARRIS:** Yes.

13 **MR JUSTICE ROTH:** -- in this case and the two other Gutmann cases.

14 **MR HARRIS:** Yes.

15 **MR JUSTICE ROTH:** One of the matters on the agenda will be whether they should
16 be jointly case-managed, or indeed heard together going forward.

17 **MR HARRIS:** Yes. Right. But just for the sake of clarity, the issue of whether or not
18 the current Gutmann case that we are here today for is certified will be decided at that
19 hearing or shortly after that hearing?

20 **MR JUSTICE ROTH:** Yes, at that hearing.

21 **MR HARRIS:** Yes, thank you.

22 **MR JUSTICE ROTH:** It may be that if there have been no objections filed, and if you
23 are not opposing it, the Tribunal may ask Mr Moser just to clarify that the Woodsford
24 LFA in this case is in material terms the same as the Woodsford LFA in the other
25 cases.

26 As you know we do look at the LFA not from the point of view just of the Respondents

1 taking points on it, but to satisfy ourselves that the funder is not able to, as it were,
2 exercise undue control over the proceedings that could conflict with the interests of
3 class members. So there is an independent scrutiny by the Tribunal, but we've done
4 that with the previous Woodsford LFA and I imagine this one is pretty similar. So that
5 will be one question we will raise and you may want to address in your skeleton,
6 Mr Moser, for that hearing.

7 So we then will need to fix the date in the next few days, because you are going to
8 need to put the date in your Notice.

9 **MR MOSER:** Yes.

10 **MR JUSTICE ROTH:** So there will be liaison between the Registry with the other two
11 members of the Tribunal -- who as I think you have been told will be the same as the
12 two members involved in the first Gutmann case -- and then with yourselves to fix
13 a date.

14 **MR MOSER:** I am grateful.

15 **MR JUSTICE ROTH:** Now is there anything else that we need to deal with this
16 morning?

17 **MR MOSER:** I think there is nothing from us, Sir.

18 We did receive, literally as we were waiting to start, a letter copied to us which was
19 also sent to the Tribunal -- in fact, principally sent to the Tribunal -- from the Secretary
20 of State, in which the Secretary of State says that as a matter of housekeeping he
21 would like to seek at this morning's hearing directions that his note and the Boyle
22 Statement of Intervention be afforded confidential treatment.

23 I don't know whether the Secretary of State wishes to pursue that but that's a matter
24 for Mr McGurk.

25 **MR JUSTICE ROTH:** There's a letter to the Tribunal dated -- what's the date of the
26 letter?

1 **MR MOSER:** 15th November. It arrived minutes before the hearing.

2 **MR JUSTICE ROTH:** I should say I have not seen that letter. Mr McGurk?

3 **MR McGURK:** Thank you, Sir. I will help with that.

4 It came to our attention yesterday that included in the bundle was the Statement of
5 Intervention in the Boyle proceedings. We had not been aware that it was proposed
6 to include that in the Gutmann bundle and we were not consulted about it.

7 I make no criticism as I think this has happened as a result of a misunderstanding, but
8 there are policy-sensitive matters in the Boyle Statement of Intervention --

9 **JUDGE:** Can you just help me, where is it in the Gutmann bundles?

10 **MR McGURK:** It is in the supplementary bundle which I think was filed with the
11 Tribunal this morning.

12 Sorry, it's not. I am working from the hard copy bundles, Sir. It is volume 2. The Boyle
13 Statement of Intervention is at tab 73, page 763.

14 **MR JUSTICE ROTH:** Just a moment.

15 Page 763, yes.

16 **MR McGURK:** Yes. Now as I say, I think it has ended up in the Gutmann bundle as
17 a result of some misunderstanding and miscommunication.

18 But we are where we are. We just wanted to regularise the position with the Tribunal.

19 As I say, there are some policy-sensitive matters in there. There is a large amount of
20 that Statement of Intervention that is just not relevant to these proceedings anyway,
21 and so all we were seeking from the Tribunal this morning was an order that it be
22 afforded confidential treatment retrospectively under rule 101 to prevent further
23 disclosure.

24 In due course, I know this is not a matter for today, but if the Secretary of State were
25 to be permitted to intervene -- we are, of course, not yet a party to the confidentiality
26 ring order but we would seek to become a party to the confidentiality ring order and

1 that would be a document included within it.

2 The other thing we needed to raise with you, Sir, was the Gutmann note that we served
3 yesterday in response to Mr Moser's note.

4 **MR JUSTICE ROTH:** Yes.

5 **MR McGURK:** That is tab 3 --

6 **MR JUSTICE ROTH:** Yes, I have that.

7 **MR McGURK:** -- of the supplementary bundle. It contains a degree of policy-sensitive
8 information as well. So again we were just seeking --

9 **MR JUSTICE ROTH:** Can you help me on that? Where is the policy-sensitive
10 information?

11 **MR McGURK:** Yes, well, it is paragraphs 15 to 17 particularly. They allude to some
12 arrangements made under the franchise agreement.

13 **MR JUSTICE ROTH:** Just a moment.

14 **MR McGURK:** Yes.

15 **MR JUSTICE ROTH:** 15 to 17. Why is paragraph 15 confidential?

16 **MR McGURK:** The concern that my clients had, Sir, was that read with 16 and 17,
17 and the allusion to some of the provisions in the Franchise Agreement, it might be said
18 that we were indicating more widely -- or in CPR language pursuant to 31-14 -- that
19 we were effectively referring to or mentioning those provisions which are in the public
20 domain only in redacted form. The TOCs will obviously be aware of those provisions --

21 **MR JUSTICE ROTH:** Sorry, can I interrupt you? Are you saying there is nothing in
22 16 and 17 itself which is confidential, but certain parts of the Franchise Agreement are
23 confidential, and the concern is that if this is in the public domain, that might lead to
24 the Franchise Agreement being, as it were, brought into the public domain?

25 **MR McGURK:** We do not want to risk a position where that which is in the public
26 domain in redacted form, becomes available in the public domain in non-redacted

1 form.

2 **MR JUSTICE ROTH:** Why should that be the case because of paragraphs 16 and
3 17? I don't follow.

4 **MR McGURK:** In a sense, Sir, if the Tribunal is content that no confidential information
5 is referred to there, or there is no risk that it might be said that we are referring to the
6 Franchise Agreement, that may answer the question.

7 **MR JUSTICE ROTH:** Clearly there is reference to the Franchise Agreement, but the
8 fact that there is a Franchise Agreement is not confidential.

9 **MR McGURK:** No.

10 **MR JUSTICE ROTH:** That is widely known. If the first sentence of paragraph 15 is
11 confidential, I would be surprised, but that's a matter for you to address.

12 **MR McGURK:** Sir, in a sense we were seeking just to preserve the position today in
13 circumstances where the Tribunal was minded to hear the application. That, in
14 a sense, has been rendered academic given that we go off to February. We were
15 going to seek an order that the note and the Statement of Intervention be deemed not
16 to have been read in open court, and then we were going to say to the Tribunal that
17 we would prepare, in very short order, effectively confidential and non-confidential
18 versions of the note and the Statement of Intervention. If there was any objection to
19 the non-confidential version, we could have a debate about it.

20 But we just wanted to preserve the position lest it be said that we have waived
21 confidentiality or that confidential matters were going to be amplified here today.
22 Hence the request for the retrospective treatment of the Statement of Intervention and
23 the note.

24 **MR JUSTICE ROTH:** I am quite happy for the Statement of
25 Intervention particularly -- has it been treated as confidential in the Boyle proceedings?

26 **MR McGURK:** We are writing to the Tribunal separately in that regard. We had

1 understood it was disclosed into a confidentiality ring in Boyle. That has not
2 happened.

3 We are again seeking to regularise the position in the Boyle proceedings but it doesn't
4 detract from the fact that there are policy-sensitive matters in the Boyle Statement of
5 Intervention.

6 **MR JUSTICE ROTH:** The Boyle Statement of Intervention, I have not looked at. It's
7 not been really referred to other than the fact that you have been given permission to
8 intervene. So I am quite happy to say that that is treated as confidential, and that, as
9 far as further reference is sought to be made to it, the Secretary of State must file
10 a confidential and a non-confidential version of it --

11 **MR McGURK:** Thank you, Sir.

12 **MR JUSTICE ROTH:** -- for the hearing in late February.

13 So far as this note which was put in now just yesterday, it's obviously not all
14 confidential.

15 **MR McGURK:** No.

16 **MR JUSTICE ROTH:** It's been put in for these proceedings. The fact that it refers to
17 the Franchise Agreement doesn't mean that the Franchise Agreement is therefore
18 disclosed and has become, simply because of the reference to it, non-confidential --

19 **MR McGURK:** The other issue --

20 **MR JUSTICE ROTH:** I am just struggling to see why anything in paragraphs 15 to 17
21 is confidential. I am a bit concerned if it were, because that is essentially the argument
22 that's going to be addressed. It will be very difficult to hear that argument, and for
23 Mr Moser to respond to that argument, if these, what are basically headline
24 submissions, are treated as confidential.

25 **MR McGURK:** Sir, is the practical response in relation to the note that we be admitted
26 and included in the ring as a precautionary measure pending intervention? We will in

1 turn provide Mr Moser and others with what we say is a confidential and
2 non-confidential version of the note, and if objection is taken, then it can be dealt with
3 in due course.

4 We really just want to preserve the ring. It is not just the Franchise Agreement; it is
5 the basis upon which liabilities and costs are passed from the TOCs to the Secretary
6 of State, in relation to which there is some degree of sensitivity.

7 Again we just want to preserve the position lest it be said that it is out there and all
8 considerations that are taken into account when deciding how liabilities and costs
9 are passed on can be explored in the public domain.

10 So I wonder if that interim measure might be a convenient way of dealing with it as
11 a stop gap, sir.

12 **MR JUSTICE ROTH:** Yes. I am ready to do that, but I would like you, as regards the
13 note, to file a non-confidential version.

14 **MR MOSER:** Forgive me, may I --

15 **MR JUSTICE ROTH:** Just a moment, Mr Moser.

16 What I have in mind is you will file a non-confidential version by 22 November,
17 because it is something that the Proposed Class Representative needs to consider
18 how to prepare his response.

19 **MR McGURK:** I could do it rather sooner than that, Sir, if it helps the Tribunal and
20 Mr Moser.

21 **MR JUSTICE ROTH:** As I say, I've given some indication that at the moment I am
22 struggling to understand why anything here is going to be confidential.

23 But Mr Moser, you wanted to say something?

24 **MR MOSER:** Sir, I wonder if I can give some comfort, because it does seem to be
25 proceeding on something of a false factual premise. The Franchise Agreement is in
26 the public domain in front of me. Here it is online, 619 pages of it. Only very, very few

1 bits of it relating to some figures are redacted, as we know from the other proceedings.
2 So it is simply not right, I am afraid, to say that the Franchise Agreement and its terms
3 are confidential.

4 Furthermore, this application is flawed in a number of ways. It's flawed procedurally
5 because, of course, under rule 101 it ought to have been made in writing with specific
6 reasons. The letter that, Sir, you haven't even seen, does not comply with the terms
7 of rule 101 of the Competition Appeal Tribunal Rules 2015.

8 Furthermore, Sir, it is important in this jurisdiction -- where third parties, potentially
9 class members and others have to be aware of what is being argued and potentially
10 appear at the hearing of the certification application -- that the arguments are
11 transparent and open. This isn't a case of seeking to make confidential some aspect
12 of the funding arrangements or similar, or those very, very few parts of the Franchise
13 Agreement that relate to money that are redacted and in a confidentiality ring.

14 This is an attempt by the Secretary of State to make confidential the central part of his
15 argument which is that passengers should pay double to help the bottom line of the
16 Treasury. Now that is politically embarrassing.

17 **MR JUSTICE ROTH:** Mr Moser, can I interrupt you? I hear what you say. I agree
18 that it is important this is ironed out. I think there is a fundamental difference between
19 the Statement of Intervention which I haven't read, and I don't know what might be
20 referred to there --

21 **MR MOSER:** The Statement of Intervention we have no interest in. We didn't put it
22 in the bundle.

23 **MR JUSTICE ROTH:** Yes. But this grounds of intervention, I have to say, Mr McGurk,
24 it is pretty sloppy, if I can put it that way, for a note to be put in one day and the next
25 day for the person who has produced the note to come to the Tribunal and say, "Well,
26 actually, we shouldn't have been putting it in in the way we did."

1 I will, however, as I think it seems to have been more by oversight than anything else,
2 give you permission and order that that note be put in the confidentiality ring. But I will
3 want you, as I say, to produce a non-confidential version and a properly reasoned
4 request under rule 101 as to why those bits that are said to be confidential are
5 confidential, and I will consider that with any objections that the Proposed Class
6 Representative may wish to make.

7 And indeed, independently of objections, because this is a question which potentially
8 is of interest to potential class members who indeed might wish to have something to
9 say about it, quite apart from the Proposed Class Representative at that hearing. I will
10 decide well before the hearing whether that request for confidentiality as regards the
11 note should be granted.

12 But at the moment, it will be treated as confidential. You will put in your
13 non-confidential version with the request for highlighted passages in this note to have
14 confidentiality preserved by 22 November, and Mr Moser can make any submissions
15 in observations in writing in response by 29 November.

16 **MR McGURK:** Sir, I am extremely grateful. That is very helpful.

17 I take, Sir, your points. We were not in a position to serve it into the ring yesterday,
18 because we are not party to it.

19 **MR JUSTICE ROTH:** Yes.

20 **MR McGURK:** But I hear the subtext that we could have taken other steps, and in
21 those circumstances, I am grateful for the indulgence.

22 **MR JUSTICE ROTH:** Yes. And I hope those instructing you will bear in mind that we
23 are very cautious about granting confidentiality protection in all proceedings, but
24 particularly in proceedings where there is a very large group of interested persons
25 potentially affected by this --

26 **MR McGURK:** Understood, Sir. And you will see --

1 **MR JUSTICE ROTH:** -- they are obviously not questions of national security that are
2 covered by this note.

3 Right. That is that. Is there anything else for today?

4 **MR MOSER:** My Lord, no. Save the last two items on our draft Order that costs be
5 reserved.

6 **MR JUSTICE ROTH:** Yes.

7 **MR MOSER:** That includes, of course, costs against the Secretary of State. And
8 there be liberty to apply.

9 **MR JUSTICE ROTH:** Yes. Is anyone objecting to the reservation of costs? No. And
10 liberty to apply, for sure.

11 Mr Moser, I haven't quite followed the course of your draft. If you or those working
12 with you could please draw up an Order encapsulating what's been decided.

13 **MR MOSER:** Of course.

14 **MR JUSTICE ROTH:** If there is nothing else to deal with, that concludes this hearing,
15 thank you all very much.

16 **MR MOSER:** Thank you, Sir.

17 **(11.20 am)**

18 **(The hearing concluded)**

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