IN THE HIGH COURT OF JUSTICE **AC-2026-LON-003836**

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:-

(1) BEYOND GM LTD

(2) JOSEPH WOOKEY

(3) PATRICK HOLDEN CBE

(4) JOANNA BLYTHMAN

Claimants

- and -

SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Defendant

SUMMARY GROUNDS OF RESISTANCE
ON BEHALF OF THE DEFENDANT

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*References to documents are given in the form [**2/CB/page**] for the JR2 Claim Bundle, and [**1/CB/page**], [**1/SB1/page**] and [**1/SB2/page**] for the JR1 Core and Supplementary Bundles, consistent with the Claimants' Statement of Facts and Grounds ("**SFG**").*

A. INTRODUCTION

1. This is the second claim for judicial review brought by the Claimants concerning the Secretary of State's decision-making on the labelling of precision bred organisms ("**PBOs**") under the Genetic Technology (Precision Breeding) Act 2023 ("the **2023 Act**") and the Genetic Technology (Precision Breeding) Regulations 2025 ("the **2025 Regulations**"). It challenges the decision of Minister Morgan of 23 June 2026 not to explore further a position different from that under the 2025 Regulations in relation to PBOs ("the **Maintain Decision**").

2. The first claim (AC-2025-LON-002733) ("**JR1**") resulted in the judgment of Johnson J dated 4 June 2026 ([2026] EWHC 1306 (Admin)) ("**the Judgment**"), which upheld the Claimants'

claim on Ground 2 (irrationality arising from the then Minister's misunderstanding of his powers) but rejected Grounds 1, 3 and 4. Relief in JR1 remains outstanding and is listed for hearing on 12 November 2026, together with the Defendant's application for permission to appeal on Ground 2.

3. None of the grounds advanced in this claim for challenging the Maintain Decision is arguable. In summary:

   a. On Ground 1 (consultation) no duty further to consult arose;

   b. On Ground 2 (Tameside/fair and balanced submission) the Minister was properly and fully briefed;

   c. On Ground 3 (Food Safety Act misdirection), the Minister's decision was, and was expressly understood by him to be, taken on the footing that he had power under section 26(2)(b) of the 2023 Act to mandate labelling of all PBOs; and

   d. On Ground 4 (unpublished policy) the Maintain Decision is not a policy of the kind to which the principle in *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12 applies.

4. The Secretary of State agreed that this claim should be listed for a rolled-up hearing together with the relief hearing in JR1 on 12 November 2026, for the reasons given in paragraph 20 of her Pre-Action Protocol Response of 23 July 2026 ("the **First PAP Response**") [**2/CB/198**]. That agreement is not, and should not be treated as, any concession as to arguability. It was a pragmatic position, taken in an effort to reduce costs and in circumstances where the Claimants are very likely to renew any written refusal of permission on the papers, and where it is in the interests of justice and in accordance with the overriding objective to ensure that this matter is finally determined together with, if not before, a determination is made in relation to the relief hearing listed for 12 November 2026. The Court may, however, with the benefit of these Summary Grounds, take the view that it is able to refuse permission on the papers for the reasons set out below. Any renewal could then be rolled-up and heard together with the question of relief on 12 November 2026. This would, at least, provide the Parties with the benefit of the Court's view on the basis of the written arguments, and enable them to review their positions on that basis, in advance of the hearing listed for 12 November 2026.

C. GROUND 1: CONSULTATION

5. Ground 1 is not arguable. The Secretary of State was under no duty to carry out a fresh consultation exercise (or, as the Claimants' submission is properly to be understood, to re-consult) before reconsidering the issue of labelling following the Judgment.

6. Given the way the Claimant has expressed this ground, it is necessary to provide a reminder of the following key legal principles:

   a. Absent a legitimate expectation, there is no general common law duty to consult persons who may be affected by a measure before it is adopted. Such a legitimate expectation will only arise where there is a clear, precise and unambiguous promise, that promise has been broken, and failing to hold the public authority to its promise would result in an abuse of power (see *R (L) v Warwickshire CC* [2015] EWHC 203 (Admin) at para. 17).

   b. Mere fairness is not enough to found a duty to consult on its own, and deciding whether or not it might in the abstract be considered fair to consult on a proposal does not provide a reliable answer to whether the proposal need be the subject of consultation. Nor does the fact that a proposal might be expected to excite interest and comment without more imply that there is a duty to consult on it: *R (MP) v Secretary of State for Health and Social Care* [2021] 4 All ER 326 para. 36 (Newey LJ). The Court will only impose a duty to consult where a failure to consult amounts to an abuse of a public authority's power. To meet this test, the public authority must have acted in a way which is "*fundamentally wrong*" and which *"would put the authority firmly beyond the range of behaviour that is expected of it as a public body and thus threaten the rule of law, if left uncorrected*": *R (Better Streets) v RBKC* [2023] EWHC 536 (Admin) at para.55.

   c. The court will be even less inclined to require re-consultation, and will only do so where the differences between that which was consulted upon and that which the consulting party subsequently wishes to permit were "*fundamental*" and "*of a very high order of significance*" (see *Keep Wythenshaw Special Ltd v University Hospital of South Manchester NHS Foundation Trust* (2016) 148 BMLR 1 per Dove J (as he then was) at paras. 73-75 and the cases there cited (cited by the Court of Appeal with approval in *R (Hawes) v Tower Hamlets LBC* [2026] 1 WLR 1038 at para. 64-65).

7. The Claimant's pleaded ground is unarguable for at least the following reasons:

a. First, there was no express promise of further consultation of the clarity and precision required to found a legitimate expectation of consultation (see *Moseley v Haringey LBC* [2014] UKSC 56 at para. 35 and *R (Heathrow Hub Limited) v Secretary of State for Transport* [2020] EWCA Civ 213 at para. 69). None is identified in the SFG.

b. Second, there was no established practice "tantamount to such a promise" (*Heathrow Hub* at para. 69). The SFG's own account of the process leading to the making of the 2025 Regulations shows that consultation was undertaken on the substantive design of the regulatory regime, not on every subsequent decision made in the course of ensuing litigation regarding that regime. The Maintain Decision was a discrete decision, taken in the specific context of responding to a finding of unlawfulness by the High Court. No established practice of consulting on decisions of that kind is identified, still less evidenced.

c. Third, insofar as there is a residual category of case in which conspicuous unfairness may found a duty to consult even absent a promise or practice (as to which see *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2015] 3 All ER 261, *R (Medical Justice) v SSHD* [2024] EWHC 38 (Admin) per Linden J at paras. 95-96 and 165, and *Freedom from Torture & Anor v Secretary of State for Home Department* [2026] EWHC 1278 (Admin) at paras. 136-140) [1], the circumstances in which the Court may find such a duty to arise must be exceptional. On any view the facts here come nowhere close to establishing an approach which involve an abuse of power: see *Better Streets* at paras. 52-58 and *Hough* at paras. 79-87). The Minister was asked to reconsider, with an open mind, a single, discrete policy question. That is what he did. His decision was not one which had a pressing and focussed impact upon the Claimants. He was not required further to consult them before taking a decision.

d. Fourth, the Secretary of State had consulted before making the 2025 Regulations. She was not required to consult again (i.e. to re-consult) before reconsidering the issues raised by the Judgment (see *Keep Wythenshawe Special* at paras. 73-77, and *Hawes* at paras. 64-65). The Claimants expressly disavowed any challenge to the adequacy of

[1] The Secretary of State accepts that it is arguable that there is such a duty, but her position on the extent to which such a duty exists is fully reserved other than for the purposes of determining permission.

the consultation carried out before the 2025 Regulations were made (Claimants' Skeleton Argument §8 in JR1). It is not open to them to revisit that issue now.

e. Fifth, the SFG places new reliance on *The National Council for Civil Liberties, R (on the application of) v Secretary of State for the Home Department* [2025] 3 WLR 543 ("***Liberty***") for the proposition that the engagement between officials and industry stakeholders regarding the impact of a potential quashing order amounted to "formal consultation" (SFG §61(d)) [**2/CB/45**], such that the Claimants' exclusion from it was unfair. That does not assist the Claimants. The engagement to which the Claimants refer was not consultation. It was conducted for the distinct and limited purpose of understanding hardship or prejudice that a quashing order might cause to third parties, for use in the Secretary of State's submissions on relief in JR1 (see First PAP Response §6(b) [**2/CB/196**]; Second PAP Response §10 **[2/CB/203]**). It was not a consultation at all. It was not conducted for the purpose of, and did not in fact inform, the Maintain Decision, which concerned a different and logically distinct question (namely, whether to reconsider the substantive labelling policy at all). The output from the engagement was not summarised or presented to Minister Morgan for the Maintain Decision. That much is clear on the face of the Submission (§31 **[2/CB/132]**). Fundamentally, engagement conducted for one purpose does not, without more, constitute consultation on a different and distinct decision.

f. Sixth, the suggestion in the SFG (§61(d)) [**2/CB/45**] that the Secretary of State's response to the Claimants' second pre-action letter of 3 August 2026 (declining to provide further detail of the third-party engagement) itself supports an inference of "*unfair, selective consultation*" is misconceived and should be rejected. A reasoned decision was given for not providing further information at pre-action stage, on the basis that the request did not relate to the decision under challenge (see Second PAP Response §9 [**2/CB/203**]). There is no basis for suggesting that the Secretary of State was required to provide that information.

g. Seventh, the SFG's suggestion (§59, §61(b)) [**2/CB/43-44**] that the Claimants had a legitimate expectation that any fresh decision would be "*similarly informed*" to Minister Zeichner's earlier decision-making, by reason of his personal history of engagement with the organic sector (including his direct dialogue with Ms Thomas,

itself relied upon by the Defendant in JR1: see SFG §58 citing DGR §73-75 [**1/CB/127**] and D Skel §73 [**2/CB/259**]), does not establish any duty to consult. It is inherent in the political system that Ministers (and Secretaries of State) will change. The mere fact of such a change cannot sensibly be said to necessitate re-consultation. There is no basis in law for such an assertion, which would be contrary to the principles established in the authorities cited above and obviously administratively unworkable. The relevant question is whether the Minister who took the decision had sufficient information rationally to entitle him to take the decision he took. That is addressed under Ground 2 below and is unarguable for the reasons in response to that ground.

h. Eighth, in any event, the Claimants have identified no material prejudice flowing from the absence of a fresh consultation exercise. The witness evidence relied upon in the SFG (§61(e)) [**2/CB/45-47**] describes, in general terms, matters that were already known to and considered by the Secretary of State through the extensive consultation and engagement carried out before the 2025 Regulations were made, and through the JR1 proceedings themselves, including the witness evidence served by the Claimants in JR1. The Claimants have not identified any new, materially different point that could and would have been put to the Minister had a further consultation exercise been undertaken.

8. For all these reasons, the Secretary of State resists the grant of permission on Ground 1.

D. GROUND 2: FAILURE TO COMPLY WITH THE TAMESIDE DUTY OF INQUIRY / FAILURE TO PUT A FAIR AND BALANCED SUBMISSION TO THE MINISTER

9. Ground 2 is similarly unarguable. The Secretary of State did not fail to comply with the Tameside duty, and the submission put to the Minister was fair and balanced.

a. First, as to the *Tameside* duty itself: the question is whether the Secretary of State asked herself the right question and took reasonable steps to acquaint herself with the relevant information to enable her to answer it correctly (*Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014, 1064-1065), and it is not arguable (or even close to arguable) that no reasonable decision-maker could have taken the decision on

the specific question the Minister was asked to address without making inquiries going beyond those addressed in the materials before him (*R (Khatun) v London Borough of Newham* [2005] QB 37 per Laws LJ at para. 35).

b. In addition to his discussion with officials, the Minister was provided with: (1) the ministerial submission itself [**2/CB/130-134**]; Annex A, specifically addressing the history of decision-making on labelling including position of the organic sector [**2/CB/170-172**]; (2) the 'Intro to Precision Breeding: Briefing Pack' [**2/CB/135-137**]; the 2023 Act Explanatory Notes [**2/CB/138-169**]; and (3) the Judgment itself [**2/CB/614-656**]. That was a proper and sufficient basis on which to take the decision put to him.

c. Second, the SFG's complaint (§67(a)) [**2/CB/48**] that the 18 June Submission failed to provide material detail about the organic sector's concerns on supply chain traceability is not accepted. Annex A expressly summarised the views of organic stakeholders at paragraphs 12-15, including the Control Bodies' concerns about demonstrating the absence of PBOs in supply chains, the NatCen-facilitated dialogues concerning coexistence measures, and the organic sector's support for seed and plant labelling together with its indication that product labelling would also be required to address its concerns [**2/CB/171**]. That is a fair and accurate summary of the organic sector's position, appropriate to a submission to a minister.

d. Third, the comparison drawn in the SFG (§67(a)) [**2/CB/48-49**] between the materials provided to Minister Zeichner to Minister Morgan does not establish or contribute to a *Tameside* breach. The test is whether the Minister had sufficient information on the basis of which a reasonable decision-maker could have taken a decision, on the footing that he had power under the 2023 Act to mandate labelling of all PBOs, on whether or not he wished to explore that option further or was content with the position as it stood. It is well established that a minister may rely upon the summary provided by officials (see *R (Save Stonehenge) v Secretary of State for Transport* [2025] PTSR 726 at paras. 78-109, in particular 91-97). Annex A gave the Minister a fair and accurate summary of the relevant considerations for that purpose, including the organic sector's concerns (SFG §46-51) [**2/CB/37-40**]. Nothing more was required.

e. Fourth, the SFG now separately pleads, relying on *B4 v Secretary of State for the Home Department* [2024] 1 WLR 5342, that the submission failed to be "*fair and balanced*", a matter said to be for the Court's own determination rather than a question of *Wednesbury* unreasonableness (SFG §65) [**2/CB/47-48**]. In this regard:

a. Even the particular context of *B4*, the Court held there was a margin of appreciation to be given to the authors of the advice to the Secretary of State (citing an analogy with *R (Witley Parish Council) v North Yorkshire CC* [2023] JPL 1081 at para. 37). SIAC cannot simply substitute its own view of what should go into the advice, and whether a detail here or comment there might or might not have been left out is not sufficient to establish that the overall effect of the report is unfair or unbalanced (para. 62). Were the same approach to apply to the Submission in this case as applies to the role of SIAC in the context of a case like *B4* (which, for the reasons set out below it does not), the Submission would comfortably satisfy the test of being "*fair and balanced*". Indeed, the SFG's own formulation of what a fair and balanced submission required (SFG §66) [**2/CB/48**] identifies three elements: (i) the real difficulties the Regulations present for the organic sector; (ii) the Court's indication that further inquiries could be appropriate; and (iii) the types of further inquiries that could be undertaken. Read fairly and as a whole, let alone with the reasonable benevolence to be expected (as to which see *R (WildFish Conservation) v Secretary of State for Environment, Food and Rural Affairs* [2024] Env LR 15 399 at para. 146), the Ministerial Submission and Annex A addressed each of these: it summarised the organic sector's concerns (paragraphs 12-15) [**2/CB/171**]; it set out, under "Policy Ambition" and "Powers for mandatory food labelling", the competing considerations bearing on whether the position should be revisited (paragraphs 20-21, 26-28) [**2/CB/171-172**]; and the Submission itself expressly asked the Minister to consider, with an open mind, whether he wished to explore labelling further (paragraphs 7-8, 19-22) [**2/CB/130-131**].

b. *B4* is, however, distinguishable. Its reasoning does not directly apply in the circumstances of this case. It was specific to its context; namely a decision

being reviewed by the Special Immigration and Asylum Chamber ("**SIAC**"), in the "draconian" statutory context where deprivation of citizenship under section 40 of the 1981 Act is such that there is no right to make representations in advance of the decision made on grounds of national security. No exact analogy can be drawn with other contexts (as the Court made clear at para. 63). In the context of *B4,* the absence of the right to make representations in relation to a decision concerning a specific individual in advance of the decision informed what the common law duty of procedural required (paras. 60-65). In understanding *B4* it is important to understand that the decision was one based upon the requirements of procedural fairness, applying *R (Osborn) v Parole Board* [2014] AC 1115, which is an objective question for the Court (see para. 61).

c. By contrast, the circumstances of this case are entirely distinct from those in *B4*. The decision in this case is not one concerning a particular individual. It is not a 'draconian' decision. It is not even a decision which engages the Claimants rights as protected by the ECHR (see Judgment para. 155). The position is simply that the Court should review the Maintain Decision on ordinary public law principles (which include procedural fairness). Indeed, and by analogy with the planning law cases referred to by Singh LJ in *B4* at para. 64, part of the expert function of officials is to make an assessment of how much information needs to be included in a submission in order to avoid overburdening it with excessive and unnecessary detail (see *R (Fabre) v Mendip DC* [2017] PTSR 1112 at 1120D cited with approval by the Senior President of Tribunals in *R (Mansell) v Tonbridge and Malling BC* [2019] PTSR 1452 at para. 42). It is emphatically not the role of the Court to seek to assess the adequacy of the Submission other than on ordinary public law grounds.

f. Fifth, the SFG's complaint (§67(c)) [**2/CB/49**] that the Briefing Pack failed properly to explain the Judgment's findings that Minister Zeichner had been aware the 2025 Regulations would have a significant adverse impact on the organic sector, would put England out of step with the rest of the UK and the EU, and would affect trade (J/160),

is not accepted. The Minister was provided with the Judgment itself [**2/CB/614-656**] and was expressly told to approach the matter on the basis that the Judgment was to be accepted in full (Submission §19-22) [**2/CB/131**]. A Minister so instructed, and provided with the Judgment in full, cannot fairly be said to have been denied a proper explanation of its findings merely because the ministerial submission itself did not separately re-narrate every finding at length. Rather, absent a clear positive-indication to the contrary, the Minister is to be taken to have fully and properly understood the position (see *WildFish* para. 146). Once again, the logical implication of the Claimants arguments for ministerial decision making is unrealistic and artificial.

g. Sixth, the SFG's reliance (§72-73) [**2/CB/51-52**] on *R (SP) v SSHD* [2004] EWCA Civ 1750 and *R (Balajigari) v SSHD* [2019] 1 WLR 4647 for the proposition that Minister Morgan's open-mindedness was "tainted" by being asked simultaneously to reconsider the labelling position and to defend the existing Regulations is misconceived. Those authorities address the distinct problem of an individual decision-maker being asked to revisit an adverse decision affecting a specific person without having first afforded that person an opportunity to make representations, such that the decision-maker has a natural reluctance to conclude his own earlier decision was wrong. They have no application to a Minister reconsidering, afresh, a policy question with an express instruction to approach the matter with an open mind and on the footing that the Judgment is to be accepted in full. That was precisely the instruction given here (Submission §19-22) [**2/CB/131**]. There is no analogous "first decision" by Minister Morgan capable of generating the psychological or institutional resistance to change identified in *SP* and *Balajigari*.

h. Seventh, and in any event, the length of the meeting on 23 June 2026 (recorded as either 15 or "just over 20" minutes: SFG §55) [**2/CB/42**] is not indicative of inadequate inquiry. It is entirely consistent with the length of time available to busy Ministers to discuss these issues, noting that they have already had the opportunity to 'read-in' to the matter and to prepare themselves for the meeting. The relevant question is the extent to which the information before the Minister was sufficient to enable a reasonable decision maker to take a decision. For the reasons set out above, it was.

10. Permission should be refused on Ground 2.

E. GROUND 3: MISDIRECTION IN LAW RELATING TO POWERS UNDER THE FOOD SAFETY ACT 1990

11. Ground 3 is unarguable, for the following reasons:

a. First, the Minister was expressly and correctly briefed that he had the power to require the labelling of all PBOs, including food and feed, under section 26(2)(b) of the 2023 Act (Annex A, paragraph 26) [**2/CB/172**]. His decision was taken on the clear and unequivocal basis that he had that power, and "in circumstances where the High Court has stated clearly that you have the power to require the labelling of all PBOs" (Submission §21) [**2/CB/131**], consistent with the Judgment at paragraphs 132 and 134. That is a complete answer to this ground: whatever the position under the Food Safety Act 1990, the Minister's decision was not taken in reliance on any misunderstanding as to his powers under the 2023 Act, which were correctly and squarely put to him as the relevant source of power. The Claimants never offer a serious counter to this ultimate lack of materiality, identified in the pre-action responses.

b. Second, and in any event, the Minister did not misunderstand the scope of section 16(1)(e) of the Food Safety Act 1990. Annex A's reference to that Act (paragraph 27) [**2/CB/172**] was accurate. There are broad powers to introduce food labelling under that Act, and that is what the Minister was told. Certainly, there is no positive indication, still less a sufficient one, that the Minister proceeded on a mistaken view of the scope of that power, or that its scope had any bearing on his decision (see *WildFish* at para. 146).

c. Third, the SFG's characterisation of the Secretary of State's position on this ground as "confused" (SFG §74) [**2/CB/52**] is rejected. There is no inconsistency between recognising that the Minister understood the scope of his power under the 2023 Act and noting that Annex A also referred, for completeness, to the (distinct and additional) powers available under the Food Safety Act 1990. The SFG's suggestion that no explanation was given for why the Food Safety Act was mentioned at all mistakes the purpose of Annex A, which was to give the Minister a complete picture of the relevant statutory landscape. It does not follow, and the SFG does not explain why it should

follow, that the Minister's decision was based upon, still less vitiated by, any misunderstanding of the interaction between the two regimes.

d. Fourth, the SFG's expanded argument (§70) [**2/CB/50**] that Food Safety Act powers would, in any event, be an inadequate substitute for section 26(2)(b) traceability powers because they would not extend to non-food inputs (such as animal feed inputs used in the production of food, for example hay fed to dairy cattle) does not assist the Claimants on this ground, even if correct. The question for Ground 3 is whether the Minister was materially misled as to the scope of his powers when taking the Maintain Decision, not whether the Food Safety Act 1990, considered in isolation or in combination with the powers under the Plant Varieties and Seeds Act 1964, would provide a complete regulatory solution to the Claimants' traceability concerns. As set out above, the Minister was correctly informed that he held the broader section 26(2)(b) power addressing food and feed. The adequacy or otherwise of the narrower Food Safety Act power is accordingly immaterial to the lawfulness of the Maintain Decision.

e. Fifth, further and in any event, insofar as necessary, the Secretary of State relies on section 31(3C)-(3D)/(2A) of the Senior Courts Act 1981. It is highly likely that the outcome would not have been substantially different had the matters complained of not occurred, such that permission and/or relief should be refused on this ground.

F. GROUND 4: UNLAWFULLY OPERATING AN UNPUBLISHED POLICY

12. Ground 4 is unarguable.

13. There simply is no unpublished policy of the kind identified in *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12 at para. 36, namely a policy governing how a discretion will be exercised in individual cases, which members of the public are entitled to know about in order to be able to make relevant representations in their own case. The Maintain Decision is a single decision on a discrete question, not a statement of general policy of the kind to which the Lumba principle is directed.

14. The Secretary of State has not withheld any information relating to the exercise of the power conferred by section 26(2)(b) of the 2023 Act. The Maintain Decision, and the materials underpinning it, have been disclosed to the Claimants and placed before the Court in the

context of the ongoing JR1 proceedings. The Claimants (and, through these proceedings, the Court) are fully appraised of the substance and reasoning of the Maintain Decision. There is no operative policy being applied covertly to their prejudice.

15. The constitutional concern engaged by *Lumba* is the risk of a public authority applying a secret internal policy to make decisions affecting individuals who have no opportunity to know of, or make representations about, that policy before it is applied to them. That concern simply does not arise in this case. No decision has been or will be taken in reliance on any undisclosed criterion or policy affecting the position of any third party.

16. The SFG's rhetorical question (§76) [**2/CB/53**]: 'How would an unconnected organic farmer know that the Regulations are being maintained intact despite the Judgment?' does not identify any legal duty to publish the Maintain Decision generally. The 2025 Regulations remain in force until quashed. The public Judgment in JR1 expressly left open the question of relief. If the court ultimately quashes the 2025 Regulations then that will be known. If not, the status quo (Regulations in force) will remain, and the reasons for that decision will be given in open court.

G. INTERESTED PARTIES

17. The Secretary of State has updated the Food Standards Agency ("**FSA**") about this claim, including by providing it with a copy of the pre-action correspondence and this document. The Secretary of State does not consider that the FSA is likely to be an Interested Party, nor that there are any other parties who ought to be notified of this claim at this stage.

H. AARHUS COSTS

18. The Secretary of State opposes the Claimants' application under CPR 46.27 to vary the default Aarhus costs cap to £140,000. The Claimants have not applied the correct test, which is concerned with whether the proceedings would be prohibitively expensive applying CPR 46.27(3).

19. The Claimants do not argue that the proceedings would exceed the financial resources of the claimant (see CPR 46.27(3)(a)). Nor have they identified any factor demonstrating that it would be objectively unreasonable to limit the Defendant's liability to the default cap having regard to the factors set out in CPR 46.27(3)(b). On the contrary, the matters identified do

not go to the Claimants' liabilities in costs or situation at all. They go to the financial circumstances of the Claimants' lawyers, and the quantum of costs they are likely to be able to recover from the Defendant in the event the Claimants succeed. That is not a factor going to whether the proceedings would be prohibitively expensive. The Claimants have secured legal representation. That legal representation is not contingent upon the Court raising the Defendant's costs cap. In those circumstances, the proceedings are not prohibitively expensive with the default costs cap in place.

20. Moreover, even if the principle of increasing the cap to account for the position of the Claimants' lawyers in circumstances where that has no impact upon the Claimants' ability to secure representations (which it is not), the Claimants have not provided a proper explanation of why £140,000 is the appropriate figure in the context of the statutory test of "prohibitively expensive." They have not applied the statutory factors in CPR 46.27(3)(b) and in those circumstances no variation can properly be made.

I. CONCLUSION

21. For the reasons given above, none of the four grounds advanced is arguable. The Secretary of State invites the Court to refuse permission on all grounds and to order the Claimants to pay the Secretary of State's costs of responding to this claim subject to the default costs caps under CPR 46.26.

CHARLES STREETEN
JONATHAN WELCH

Francis Taylor Building
9 September 2026