[2023] EWHC 925 (Admin)

Case No: CO/4247/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 April 2023

**Before** :

**MR JUSTICE GRIFFITHS**

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**Between :**

**The King**
**(on the application of**
**VERNON VANRIEL)** **Claimant**

**- and –**

**(1) THE ADJUDICATOR'S OFFICE**
**(2) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Defendants**

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**Chris Buttler KC** and **Raza Halim** (instructed by **Duncan Lewis Solicitors**) for the Claimant
The First Defendant was not represented
**Edward Brown KC** and **Kathryn Howarth** (instructed by **Government Legal Department**) for the Second Defendant

Hearing dates: 22 & 23 February 2023
Further written submissions: 24 February 2023

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# Approved Judgment

**If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.**

## Mr Justice Griffiths:

## Introduction

1. The Claimant was born in Jamaica in 1956. He was brought to the UK at the age of 6 in 1962 and lived here continuously until 2005.

2. He was part of what has been called the Windrush generation, that is, those Commonwealth citizens who came to the UK between 1948 (the year in which *HMT Empire Windrush* docked at Tilbury bringing in workers from the Caribbean) and 1973 (when the Immigration Act 1971 came into force). All these people, as Commonwealth citizens, had the right to live and work in the UK indefinitely without giving up their birth nationality, and to come and go as they pleased.

3. Commonwealth citizens arriving in the UK from 1973 did not have the same rights. A practice grew of requiring people of the Windrush generation to prove that they had entered the country before 1973, which many of them could not do. The result was that they were refused re-entry to the UK after absence abroad. This happened to the Claimant.

4. The Claimant went to Jamaica in July 2005 to visit family. But, when he tried to return on 17 September 2008, he was unlawfully refused entry. He was forced to stay out of the UK, against his will, for 10 years, until the treatment of the Windrush generation became a national scandal. He was finally allowed to re-enter the UK on 6 September 2018.

5. The Second Defendant established the Windrush Lessons Learned Review as an independent assessment to be carried out by Wendy Williams, a member of Her Majesty's Inspectorate of Constabulary. Her report (*Windrush Lessons Learned Review: Independent Review by Wendy Williams*) was published by the House of Commons in March 2020. The Executive Summary said:

> "Members of the Windrush generation and their children have been poorly served by this country. They had every right to be here and should never have been caught in the immigration net. The many stories of injustice and hardship are heartbreaking, with jobs lost, lives uprooted and untold damage done to so many individuals and families."

6. One of the case studies in the *Windrush Lessons Learned Review* was the Claimant's. His experience was described in this way:

> "Vernon went to Jamaica to visit the son he'd had there in the late 1990s. He stayed for just over two years. Although he didn't know it, that made the "indefinite leave to remain" stamp in his Jamaican passport worthless. He was refused a UK visa, though he had three children here. In the UK since the age of six, Vernon had been going to Jamaica since his father moved back in the early 1990s and had never obtained British naturalisation. It was cheaper just to get a visa each time. But now he was stranded. A former amateur and professional boxer, he started coaching. But as money slowly ran out, he lived in his

> aunt's chicken coop and a disused shack, relying on small amounts his sister sent from the UK. Eventually, he contacted David Lammy MP, who took up his case. After the Guardian ran his story, the British Embassy got in touch with an airline ticket for his return. Now 63, he'd spent 13 years in Jamaica, destitute."

7. On 18 February 2021, the Second Defendant sent the Claimant a personal apology, in a letter she signed by hand. Her letter said:

> "The injustice and hardships suffered by you, and other members of the Windrush Generation, at the hands of successive Governments, have been shameful. Most of us cannot imagine the emotional hardship of being made to feel unwelcome in our own country, let alone the financial burden it placed upon you, or indeed the uncertainty you must have felt over the future. I remain truly sorry for all you have been through. This Government is working to right the wrongs of the past and ensure they can never happen again. Delivering justice for those who have been affected has been my personal priority throughout my time as Home Secretary."

8. The decision of this court in *R (Vanriel) v Secretary of State for the Home Department* [2022] QB 737 cleared the way for the Claimant to become a British Citizen, following an earlier refusal by the Second Defendant, held in that case to be unlawful, in 2019.

## The issues

9. The case before me is about financial compensation to the Claimant under the Windrush Compensation Scheme ("the Scheme"). The Scheme was originally promulgated by the Second Defendant in April 2019. The Claimant has been paid a total of £103,501.31 under the Scheme, which he accepted on 20 September 2021 by signing and returning a form stating, in relation to the final payment:

> "I accept this compensation, £91,516.31 [i.e. £103,501.31 less the payments already made], as full and final settlement for my claim."

10. After the Claimant had taken the money, his solicitors sent a Pre-Action Protocol letter dated 8 November 2021 and issued a Claim Form on 13 December 2021.

11. Eyre J refused permission to apply for judicial review on three grounds, and granted permission on two other grounds (Grounds 4 and 5). Unusually, it may be relevant to recall exactly what he said when giving permission, because at various points it was emphasised to me by the Claimant that the giving of permission was significant in showing the arguability of the claims and, therefore, the injustice to the Claimant should it turn out that he was bound by a settlement of them.

12. Eyre J gave permission to proceed on the basis of the three issues which are those argued before me:

    i) The effect of the "full and final settlement".

> Eyre J did not refuse permission on any ground because of the settlement, but he expressed doubts about the Claimant's answers to it. He did not consider it arguable that the settlement clause was "an attempt to oust the court's judicial review jurisdiction". He recognised "considerable force" in the Second Defendant's contention that, having signed such an acknowledgement and received payment, it was "abusive" for the Claimant to seek judicial review of the decision to pay compensation in a particular sum. He also recognised "force" in the proposition that the effect of such acknowledgement was that the court should, in its discretion, decline relief, even if it was otherwise merited. However, he decided that those were matters "not apt for determination at the permission stage".

ii) Ground 4: whether the Second Defendant's refusal to make an award to the Claimant for loss of access to benefits was based on a misconstruction of Annex I of the Scheme.

iii) Ground 5: in the alternative to Ground 4, and on the assumption that Ground 4 fails, whether the refusal of an award for loss of access to benefits under the Scheme was a breach of the Claimant's rights under Article 14 and Article 1 of Protocol 1 of the European Convention on Human Rights.

Eyre J said that Grounds 4 and 5 were "not compelling but they are arguable with sufficient prospect of success for permission to be granted". He refused permission on Grounds 1-3, with which I am not, therefore, concerned.

13. An additional issue is whether a witness statement from Martin Forde KC, who describes himself as "directly involved in the drafting of the Scheme", is admissible or not. His evidence is put forward in support of the Claimant's case on Ground 4 and Ground 5, but it was also deployed in support of the Claimant's arguments of construction on the effect of the settlement.

## The Scheme Rules

14. The Scheme Rules applicable to this case were those dated December 2020. They have been revised since then.

15. Rules 1.1 and 1.2 explain the purpose of the Scheme as follows:

> "1.1 This compensation scheme ("the Scheme") is designed to compensate individuals who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom. Those most affected are often referred to as the "Windrush generation".
>
> (…)
>
> 1.2 There is no single or consistent picture of the loss suffered by those affected. The Scheme has been designed to address potential losses under a range of categories and to take into account the impact of the losses in each case, as far as possible."

16. Rule 1.3 states that the basis of the Scheme is that "Compensation under the Scheme is paid voluntarily".

17. Part 3 of the Rules is entitled "Redress".

18. Rule 3.1 provides for an apology by the Home Office to be given in conjunction with awards. This the Claimant has received.

19. Rules 3.2 - 3.9 provide for "Types of compensation award" under various different headings, and, in every case, refer to an Annex dealing with each type respectively.

20. Rule 3.5 and Annex E govern claims "in respect of loss of access to child benefit, child tax credit or working tax credit". None of these are benefits to which the Claimant was entitled. His claim for loss of access to benefits was in respect of other benefits.

21. Rule 3.8 and Annex H govern claims "in respect of impact on life". The Claimant received an award under this Annex which the Secretary of State argues covered his present claim for loss of access to benefits.

22. Rule 3.9 provides that "A discretionary award may be made…". Annex I governs that. The Claimant's claim for loss of access to benefits was made under Annex I and its refusal gives rise to Grounds 4 and 5 of this claim.

23. Much cited in this case have been Rules 3.10 to 3.12, which govern claims (amongst others) that relate to "Government Departments and Agencies other than the Home Office". They establish a procedure for claims under the Scheme which are for benefits due but not paid to be referred to the relevant department for consideration. In the Claimant's case, the department administering the benefits to which he was entitled before and after his absence from the UK, and administering the benefits which he claims loss of access to under the Scheme, was the Department for Work and Pensions ("DWP"). Rules 3.10 to 3.12, so far as material, say:

> "3.10 Paragraphs 3.11 and 3.12 apply where a claim made by a primary claimant or an estate includes a request for: (a) reinstatement or backdated payment of a benefit payable by: (i) DWP;…
>
> 3.11 The Home Office will notify DWP… DWP… will consider any such request, in accordance with the relevant legal and administrative frameworks applicable to reinstatement or backdated payment of the benefit…
>
> 3.12 Any payment or adjustment made as a result of a request considered under the arrangement set out in paragraph 3.11 will not form part of the compensation payable under the Scheme."

24. Rule 3.14 says that awards under any Annex in the Scheme do not have to cover all the losses suffered. It reads:

> "Where an award under any of the Annexes provides for less than the actual losses suffered, no additional award will be made under any of

> the other Annexes to meet any difference between that award and the actual losses suffered."

25. Rule 3.15 specifically excludes certain categories of loss even from Rule 3.9 and Annex I, although this is the part of the Scheme enabling discretionary awards. In this case, attention has been focussed on the following parts of Rule 3.15:

> "An award under the Scheme, including an award under Annex I, will not be made in respect of:
>
> (…)
>
> (c) employment-related losses or lost employment benefits associated with the termination of a contract of employment or contract for services, or the withdrawal of an offer of employment or the offer of a contract for services, save where provided for in Annex D;…"

However, both sides agree that the Claimant's claim for loss of access to benefits did not fall within Rule 3.15(c). Neither side claims that the DWP benefits which are the foundation of his claim for loss of access to benefits are "employment-related losses".

26. Part 4 of the Rules sets out various grounds for reducing or declining to make an award. Rules 4.1 to 4.3 exclude double recovery. Rule 4.2 excludes double recovery for sums received elsewhere under the Scheme, and Rule 4.3 (which is not relevant) excludes double recovery from outside the Scheme. Rules 4.1 and 4.2 say (so far as material):

> "4.1 A claimant shall not be entitled to an award representing payment more than once for the same impact, loss, damage, detriment or other circumstance, and the Home Office may reduce or decline to make an award under the Scheme in so far as it compensates for or it relates to an impact, loss, damage, detriment or other circumstance that has previously been the subject of compensation or payment under or outside the Scheme.
>
> 4.2 For the purposes of paragraph 4.1: (a) a claimant has been compensated or paid under the Scheme in respect of impact, loss, damage, detriment or other circumstance if they have been granted an award in respect of that impact, loss, damage, detriment or circumstance under the Scheme;…"

27. Part 5 and Rules 5.1 to 5.3 provide for repayment of awards under the Scheme after the event, in certain circumstances (such as the provision of false information or the withholding of relevant information).

28. The Rules envisage three types of possible determinations and awards.

i) An interim determination and interim payment. Rule 7.2 enables the Home Office to decide the award in separate components (which it did not do in the Claimant's case). If it takes this course, it makes "an interim determination in respect of that part of the claim" (Rule 7.2) and may make "an interim payment in respect of that award" (Rule 8.2).

ii) A "preliminary, not fully decided, determination in respect of the part of the claim that relates to Impact on Life (Annex H)" (Rule 7.11). If the Home Office goes down this route, it may make a preliminary payment in respect of that determination (Rule 8.3). This did happen in the Claimant's case. The payment he received was £10,000, which is the fixed sum for any preliminary award (paragraph H8 of Annex H).

iii) Apart from those provisions for interim and preliminary payment, Rule 8.1 provides that "an award will normally be paid in a lump sum", i.e. when the award is fully determined.

29. Part 7 deals with "Determinations". These are notified in writing (Rule 7.1). They are valid for two months and may be withdrawn if not accepted in that time unless the Home Office has been notified that the claimant "would like to seek a review" or seeks to extend the two-month deadline (Rule 7.9).

30. Part 10 provides for a form of appeal process, by way of "Review". A claimant has two months to apply to the Home Office for a Tier 1 Review (Rule 10.4). This will be in respect of a determination (but "does not include preliminary determinations issued under paragraph 7.11") (Rule 10.1). A Tier 1 Review is determined "by a senior reviewer who was not involved in taking the decision to which the claim relates" (Rule 10.7). It is the Tier 1 decision that is challenged in this case, although it upheld the original determination, which has also featured in the submissions.

31. After a Tier 1 review decision and determination, a claimant has a right to request a Tier 2 review (Rule 10.11) which will be considered "by an independent person" (Rule 10.12). In the Claimant's case, this was the First Defendant, the Adjudicator's Office.

32. Part 8 deals with "Award and Payment". Rule 8.5 provides:

> "Entitlement to an award arises on:
>
> (a) the date on which the Home Office receives written notice of acceptance of the determination in full; or
>
> (b) in the case of a review under Part 10, the date on which the Home Office receives written notice of acceptance in full of the determination issued with a Tier 1 or Tier 2 review decision."

33. There is, therefore, no payment until the process is complete (unless there have been any interim determinations and payments, which did not happen in this case, or unless there has been a preliminary, not fully decided, determination in respect of the part of the claim that relates to Impact on Life (Annex H), which did happen in this case).

34. Part 9 deals with "Conditions of payment".

35. If a claimant accepts an interim payment, they accept it as full and final settlement of that part of the claim to which it relates (Rule 9.2).

36. If a claimant accepts a preliminary payment, they accept it as the minimum award for Impact on Life (Annex H) (Rule 9.1). This means that more money may follow in the final award.

37. Rule 9.3 deals with "Final payment".

> "9.3 If a claimant accepts an award, they accept it as full and final settlement of their claim and of any claim which they may have been entitled to bring under the Scheme."

38. Rule 1.4 says:

> "A claim is determined "fully and finally" when either:
>
> (a) a determination has been issued in respect of it, and that determination has been accepted in full and paid or has been withdrawn; or
>
> (b) the claim has been withdrawn;"

39. But in this case, particular emphasis has been placed on Rule 9.3, above.

40. The Annexes, as I have said, flesh out the details of various heads of claim. Some of the Annexes provide for the same fixed sum to be paid in every case. Thus, under Annex E, the award for "Denial of access to working tax credit" is always £1,100, and, under Annex F, the award for "Denial of access to free NHS care" is always £500. However, awards for "Impact on Life" under Annex H are determined by reference to a table running from Level 1 ("Marked detriment") at £10,000 up to Level 5 ("Profound impacts") at £100,000, but with a footnote stating that there is scope to award more than £100,000 "where an individual's circumstances are so compelling or severe it would be appropriate to do so". Discretionary payments under Annex I are not fixed payments and no scale is provided for them.

41. The criteria for an award under Annex H, Impact on Life, are set out at H1-H2 of Annex H.

> "H1. An award under this Annex may be made to a primary claimant… if the following conditions are met.
>
> (a) … the primary claimant… experienced detrimental impacts as a direct consequence of being unable to demonstrate lawful status in the United Kingdom.
>
> (…)
>
> (c) The detrimental impacts experienced are of the type described in paragraph H2 (a) to (f).
>
> (…)
>
> H2. Detrimental impacts for the purposes of paragraph H1 are non-financial impacts of the following type and description:

(a) inconvenience;

(b) injury to feelings, including anxiety, distress and reputational damage;

(c) family separation;

(d) immigration difficulties when attempting to return to the United Kingdom following a trip abroad;

(e) inability to attend significant family occasions, celebrations and events;

(f) impacts relating to a deterioration in physical or mental health such as pain, suffering and loss of amenity."

42. The criteria for a Discretionary Award under Annex I are set out in I1 to I4 as follows:

"I1. An award may be considered under this Annex to a primary claimant… if the following conditions are met.

(a) The primary claimant… experienced significant impacts, loss or detriment of a financial nature as a direct consequence of being unable to establish their lawful status.

(…)

(c) The impact, loss or detriment is not of a kind provided for in Annexes B to H, whether or not an award has been made under one or more of those Annexes.

(d) The impact, loss or detriment is not of a kind excluded from consideration under paragraph 3.15 of the Scheme [which is not relevant in this case].

(e) The Home Office is satisfied the evidence, mitigation and causation requirements set out in paragraph I2 have all been met.

I2. Subject to paragraph I3, no award shall be made under this Annex unless where, on the basis of the evidence provided, the Home Office is satisfied on the balance of probabilities that:

(a) the primary claimant… suffered the losses or impacts claimed;

(b) at all material times, the primary claimant… used best endeavours to minimise and mitigate the losses or impacts suffered;

(c) the losses or impacts arose solely as a direct consequence of the inability to demonstrate lawful status; and, where it is reasonable to expect as much, that evidence is corroborated by sources independent to the claimant.

> I3. If the claimant cannot demonstrate some or all of the requirements in paragraph I2 are met, the Home Office may nevertheless consider making an award if it is satisfied that there are wholly exceptional circumstances which make an award appropriate."

43. Paragraph I4 of Annex I provides that awards under Annex I may be for less than the full extent of the losses incurred and proved.

**The Claimant's claims for compensation under the Scheme**

44. The Claimant made a detailed claim for compensation under the Scheme on 4 July 2020 totalling £307,647.31 ("claim letter"). There were five Heads of Claim:

    i) Immigration fees and legal fees, claimed under Annex B of the Scheme.

    ii) Denial of access to services, claimed under Annex F of the Scheme.

    iii) Homelessness, claimed under Annex G of the Scheme.

    iv) Impact on Life, claimed under Annex H of the Scheme. A total of £129,500 was claimed in this respect, broken down into injury to feelings and difficulties when attempting to return (£7,000), Family separation and inability to attend significant family occasions, celebrations and events (£25,000), mental health (£30,000) and physical health (£67,500).

    v) Discretionary award, claimed under Annex I of the Scheme. Part of this was a claim for £45,030 in respect of loss of Incapacity Benefit, Income Support and Disability Living Allowance. The claim was made under Annex I because it was accepted that "these losses are not covered under Annex E (loss of access to benefits)" (claim letter of 4 July 2020). There was no attempt to claim it under Annex H as part of the Impact on Life. As I have mentioned, Impact on Life is awarded on a scale which will not ordinarily exceed £100,000 (para above), and the Claimant was already claiming £129,500 under Annex H, without counting benefits.

45. Before the Claimant's entitlement was finally decided, he was found to be in "urgent and exceptional need" and the Secretary of State in 2019 and 2020 made four advance payments to him, totalling £1,985.

46. On 13 January 2021, the Secretary of State made a preliminary award of £10,000, which was the maximum preliminary award possible for Impact on Life (Annex H) (see para above).

*The decisions*

47. On 7 May 2021, a caseworker made an initial decision that the Claimant was entitled to compensation of £103,501.31. But, in respect of benefits and homelessness, nothing was awarded. The lion's share of the award was a proposed award of £100,000 in respect of Impact on Life under Annex H (which was the maximum usual award, as I have explained in para above), which took into account (amongst other impacts) "feelings of abandonment, destitution, homelessness…" and "profound,

prolonged impacts that have permanently exacerbated and affected your ability to live a relatively normal life".

48. The caseworker's initial award made "No award" in respect of Loss of Access to Benefits, noting (which was not disputed, in view of the Claimant's absence from the UK during the period in question) that he was not entitled to benefits in that period. It then made no discretionary award for loss of benefits, stating "…the loss of access to benefits claim has already been considered under the Loss of Access to Benefits category of the scheme."

49. The caseworker's letter gave the Claimant a choice of either accepting this amount "in full and final settlement of your claim", or, if he did not agree with it, asking for a review.

50. The Claimant's solicitors applied for a Tier 1 review, in a letter dated 21 June 2021. The letter made the following points:

    i) It noted that the original claim letter had made a claim for £307,647, and that the caseworker's offer was for £103,501. It offered to accept £241,294.31 "in full and final settlement of [the Claimant's] claim to compensation".

    ii) It asked for "an interim or preliminary payment of £103,5011.31 (less the monies he has already received)". It accepted all the elements of the caseworker's calculation which had made up that sum, but only "conditional on him being paid those monies on an interim or preliminary basis".

    iii) It sought an additional £100,000 award in relation to homelessness, under Annex G of the Scheme. This was a reduction from the original claim of "in the region of £120,000" in relation to homelessness.

    iv) It sought an additional £37,793 in relation to loss of benefits, under Annex I. This was a reduction from the original claim of £45,030 in relation to loss of benefits. In arguing for this payment (against the caseworker's nil award), the letter emphasised that the claim was for a discretionary payment under Annex I because of the loss of a right to claim benefits, and not (as the caseworker had treated it) a claim for the benefits themselves under Annex E. It recognised that benefits were not payable while the Claimant was in Jamaica, but argued that, but for his unlawful exclusion from the UK, he would have claimed and been entitled to those benefits and should therefore be awarded discretionary compensation.

51. The Tier 1 review decision ("the Tier 1 decision") is the decision under challenge. It is common ground that this is an appropriate target for the judicial review in this matter, rather than the subsequent decision of the First Defendant (the Adjudicator's Office), which reviewed it later without considering it afresh.

52. The Tier 1 decision, in a letter dated 28 June 2021, was to confirm that the offer of compensation remained at £103,501.31. It made the following points:

    i) The Claimant was not entitled to an award in relation to homelessness.

ii) The claim for Loss of Access to Benefits had been referred to the relevant departments and they had confirmed that all benefits to which the Claimant was entitled had been paid. No benefits were stopped or refused due to his status in the UK (which would have been unlawful).

The Claimant had, as I have said, always accepted this and was not claiming that any benefits to which he was entitled had been withheld.

iii) Turning to the basis on which the claim for Loss of Access to Benefits was actually made, as a discretionary payment under Annex I, this was also refused.

53. The decision to refuse a discretionary award for Loss of Access to Benefits under Annex I was explained as follows:

> "It is noted that Duncan Lewis would like this category to be considered for a discretionary payment and care has been taken to request a review of benefits under this category as not to invoke section 10.3(b) of the Scheme Rules.
>
> The claim however relates to benefits paid by another Government Department. As a result, it must be referred to the relevant department as per sections 3.11 and 3.12 of the Scheme Rules in order to assess your entitlement to an award by the appropriate department, for difficulties accessing benefits. Any payment considered by another government department does not form part of the compensation payable under the Scheme.
>
> Whilst Duncan Lewis submit that section 10.3(b) does not apply in their review, the Scheme Rules demonstrate that a request for a review cannot challenge any payment made (or refusal to make a payment) by another government department.
>
> Tier 1 Review is therefore unable to consider a discretionary payment for this aspect of your claim."

54. The Tier 1 decision gave the Claimant a binary choice:

i) If he wished to accept the Tier 1 decision, he was to sign and return a Claim Response Form, and payment would then be processed. A two month deadline was suggested, although he was invited to ask for more time if he needed it. He was told:

> "This award is in full and final settlement of your claim. This means that once you have agreed to accept this final award, you will not be able to seek a review under the compensation scheme for any additional compensation for your claim."

ii) If he wished to request a further review (a Tier 2 review) it would be undertaken by a separate reviewer in the Adjudicator's Office (the First Defendant). Nothing was said about interim payment in that event.

55. On 28 June 2021, the Claimant's solicitors enquired about whether he might be given an interim payment of the agreed sums pending the outcome of a Tier 2 review in respect of the additional, disputed elements. The response on behalf of the Secretary of State on 2 July 2021 was to refuse. It said:

> "Entitlement to an award under the Scheme arises when the customer provides written confirmation that they accept a determination in full. It is not possible to accept part of a determination. Determinations are normally paid in one lump sum except where a preliminary payment has been offered or an interim decision has been made in a separate decision notice.
>
> If your client wishes to accept the award offered in the decision notice dated 28 June 2021 then your client accepts this as full and final settlement of their claim. If your client does not wish to accept the award, then the claim will be passed [to] the Adjudicator's Office for independent review."

56. The Claimant's solicitors requested a Tier 2 review by letter dated 8 July 2021. They made the following additional points:

i) They made an offer to accept £261,294.31 in full and final settlement.

ii) They asked the Tier 2 Adjudicator to recommend an interim payment of the sums relating to categories which were no longer in dispute (£103,501.31). They said "very real prejudice is caused to our client by having withheld from him the compensation agreed by the Home Office to be a discrete sum…"

iii) They renewed the disputed claims in relation to homelessness under Annex G (£100,000) and Loss of Access to Benefits under Annex I (£37,793).

iv) They also made an additional claim of £20,000 for what they said was maladministration of the Scheme.

v) They requested a decision within 14 days.

57. On 13 August 2021 they pressed for a decision, referring to "our client's vulnerabilities and the ongoing detriment that he suffers until his compensation claim is finally decided". A reply of 19 August 2021 said the Adjudicator's Office was unable to provide a timescale. The Claimant's solicitors' response on 1 September 2021 asked for a decision on at least the question of recommending an interim payment of undisputed sums within 7 days. It said that the Claimant was distressed at the lack of progress, and had been feeling extremely depressed, and that part of this was attributable to uncertainty and lack of closure.

58. The Adjudicator's Office replied on 3 September 2021, saying that it accepted the Home Office explanation for refusing an interim payment of the undisputed sums. Their letter said:

> "We asked the Home Office about this, they said that in order to pay an interim award a separate interim decision notice would need to have

> been issued and accepted by Mr Vanriel prior to the full and final award.
>
> In your letter of 8 July 2021, you refer to the "unlawful refusal of an interim payment." Paragraph 4.11 of our Service Level Agreement does not allow us to look at reviews about matters that a court has considered or could consider. We do not have the authority to consider whether the Home Office's decision, to not make an interim payment, was lawful. Our role is to consider whether, in reaching that decision, the Home Office followed the scheme rules and applied its judgment reasonably. As the Home Office did not make an interim determination in respect of Mr Vanriel's claim, we have concluded that they have followed the scheme rules and applied their judgment reasonably. We will not ask them to make an interim payment to Mr Vanriel."

59. The decision of the Adjudicator's Office on the disputed sums was conveyed in a letter of 13 September 2021 ("the Tier 2 decision"). It upheld the Tier 1 decision. In doing so, it stressed the limited scope of an Adjudicator Office's Tier 2 review.

60. After the Tier 2 decision, a letter was sent to the Claimant on behalf of the Secretary of State dated 14 September 2021 giving him another binary choice:

    i) He could accept the payment awarded by the Tier 1 decision. His payment would be processed when he had returned the form doing this.

    ii) If he wished to take the matter further and not to accept the offer, he was referred back to the Tier 2 decision letter, which had suggested he could ask an MP to refer the case to the Parliamentary Ombudsman with a view to investigation.

61. The letter prefaced this choice with the following context:

> "We are now able to make a payment to your client in respect of the full and final settlement of your Windrush Compensation claim. This will be the amount shown in your Tier 1 Review decision letter that is enclosed. There is no further recourse available within the remit of the scheme to have your client's decision looked at again."

62. On 20 September 2021 the Claimant accepted the Secretary of State's offer. He did so by completing and signing the form that had been sent to him. The form included the claim reference number and the Claimant ticked and signed up to the following statement at the foot of the form:

> "I accept this compensation, £91,516.31 [i.e. £103,501.31 less the payments already made], as full and final settlement for my claim."

63. The Claimant's evidence is that, by the time he accepted the offer, he had been living on various state benefits, with no savings of his own, ever since he had been allowed back into the UK. His outgoings, including various sums he paid voluntarily to members of his family, and gave to friends, used up not only his benefit income but

also all the money he was paid in advance from the Scheme. By the time he signed the form, he was "completely broke and unable to meet my outgoings". His evidence is:

> "I felt that I had no choice but to accept the offer… I did so on 20 September 2021 in order to ease my financial situation, to assist my then fiancé's family to move out of Riverton City [in Jamaica], and to be able to help the members of my family and my friends who so badly needed my support."

*The proceedings*

64. After the Claimant had taken the money, his solicitors sent a Pre-Action Protocol letter dated 8 November 2021 challenging the initial decision, the Tier 1 decision, and the Tier 2 decision, on judicial review grounds. The Secretary of State responded resisting the claims, partly on the ground that they had been settled, and partly on their merits. The Claim Form was issued on 13 December 2021.

65. After the issue of proceedings, the Home Office announced changes to the Scheme in relation to homelessness claims. Following this, the refusal of a homelessness award to the Claimant (which had been the subject of Ground 2, for which permission to apply was not granted by Eyre J) was reconsidered, and he was awarded a further £29,250 under the homelessness category.

**The Claimant's submissions on the effect of the settlement**

66. The following submissions were made on behalf of the Claimant on the effect of the settlement.

    i) It was argued that to go behind the settlement agreement in this case was not an abuse of process because there was no genuine element of concession, citing *AB v CD* [2011] EWHC 602 (Ch) para 22. The Secretary of State had merely determined the Claimant's entitlement under the Scheme.

    ii) No harm to the public would be caused by allowing the Claimant to take the settlement sum and then seek further payments. Any successful claim for further payment would do no more than restore to him a shortfall between what he had settled for and what he was actually entitled to.

    iii) The Claimant was in a weak financial position and needed to accept the settlement because he had been left destitute as a result of the Secretary of State's unlawful refusal to allow re-entry to the United Kingdom and because the Secretary of State had refused to pay the settlement sums by way of interim payment. The Secretary of State's refusal to pay the sum allowed without waiver of further rights was exploiting his weak financial position to avoid a legal challenge.

    iv) To allow the settlement to bind the Claimant would, on the assumption that his claims for more would succeed if he could pursue them, mean that he had received an underpayment, and this would lead to unlawful action going unchecked, and be inimical to good administration and the public interest.

67. In the alternative, it was argued on behalf of the Claimant that he was, on a true construction of the Scheme, entitled to pursue further payment notwithstanding the sums he had accepted by way of settlement. This point was argued, essentially, as follows:

i) The operative settlement was not the statement made and signed by the Claimant on 20 September 2021 that he accepted compensation "as full and final settlement for my claim" (quoted in para 9. and again in para 62. above). Rather, it was the provision of para 9.3 of the Scheme (quoted in para 37. above) that "If a claimant accepts an award, they accept it as full and final settlement of their claim and of any claim which they may have been entitled to bring under the Scheme."

ii) The wording of para 9.3 should be interpreted as attaching the qualification "under the Scheme" to both parts of the sentence, so that on its true construction it should be understood in the same way as if it had been written: "If a claimant accepts an award, they accept it as full and final settlement of their claim [under the Scheme] and of any claim which they may have been entitled to bring under the Scheme."

iii) The present claims for judicial review are not claims "under the Scheme" and are not therefore precluded or excluded by the settlement.

iv) Claims for judicial review can or should only be excluded by the most clear and explicit words, arguing (by analogy) from the principles discussed in *R (Privacy International) v Investigatory Powers Tribunal* [2020] AC 491 in relation to Parliamentary instruments, on the basis that the same must apply to an executive policy instrument like the Scheme. The words relied upon in this case are, it is argued, not clear or explicit enough to exclude the present proceedings.

v) Although "full and final settlement" might appear conclusive against the Claimant if understood as lawyers use it as a term of art, the Scheme was intended to be used by non-lawyers and so a different interpretation should be preferred. *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836 [2008] EWCA Civ 72 paras 107-109, and paras 122-124 were referred to. Particular emphasis was placed on the approval, in paras 123 and 108 of *Raissi*, of the principle that a government compensation scheme should not be construed "as if it were a statute" but that the court should decide "what would be a reasonable and literate man's understanding of the circumstances in which he could under the scheme be paid compensation…" (citing, as *Raissi* does in para 108, words of Lawton LJ in *R v Criminal Injuries Compensation Board ex parte Webb* [1987] 74 at 78). Per the Court in *Raissi* at para 124, "Having regard to… the purpose of the scheme, it is, in our view, quite wrong to approach it in the legalistic manner adopted by the Divisional Court. It should be interpreted purposively." It was submitted that the purpose of the Scheme was to grant compensation, and that it would be contrary to that purpose if a settlement clause was construed so as to reduce the compensation otherwise due by precluding a challenge alleging underpayment, especially when the Claimant's motive for settling was a lack of funds.

68. In further support of the submission that para 9.3 of the Scheme should not be construed so as to exclude proceedings for judicial review, reliance was placed on para 17 of a witness statement dated 13 November 2022 from Martin Forde KC. The admissibility of this evidence was challenged (para 13. above). Paragraph 17 says:

> "On the question of "full and final settlement", I understand that the Secretary of State contends that, if an individual accepts an award, they cannot apply for judicial review of the adequacy of the award. This is absolutely not how I understood and intended that the Scheme would operate. My intention, in including a "full and final settlement" provision, was simply to ensure that there was an end point to the assessment procedure under the Scheme. It was never my intention that individuals would have to sign away any right of legal challenge in order to receive the sum which the Home Office assessed to be payable. Had I been asked to consider and advise on a clause that made it a condition of an award that the individual would have to forego any potential claim for judicial review, I would have firmly advised the Home Office that this was unjust and should be deleted… As I have explained above, as soon as the Home Office and an applicant have agreed that part of a claim is payable, that sum should be paid without that affecting any disputed heads of compensation."

69. The Claimant argued that even if he was personally unable to recover larger sums as a result of having settled his claims, the public law questions which he raises in these proceedings were not thereby laid to rest, and he retained standing to have them ventilated and decided. Per Lord Toulson in *Hunt v North Somerset Council* [2015] 1 WLR 3575 at para 16: "Public law is not about private rights but about public wrongs". He also cited Sedley J in *R v Somerset County Council and ARC Southern Ltd ex parte Dixon* [1998] Env L R 111 at 121 and *Land Securities plc v Fladgate Fielder* [2010] Ch 467, [2009] EWCA Civ 1402 per Moore-Bick LJ at para 94: "the public has an interest in ensuring that breaches of the law by public bodies are identified and, where appropriate, corrected". The Scheme is agreed to be amenable to judicial review in principle. He argued that, just as legislation has to be interpreted by the courts (citing Laws LJ in *R (Cart) v Upper Tribunal* [2011] QB 120 [2009] EWHC 3052 at paras 37-38), so should the court resist the ouster of its jurisdiction to construe the Scheme by a settlement.

70. The Claimant distinguished *Mongson v First Tier Tribunal (Social Entitlement Chamber)* [2018] EWCA Civ 3032, on the basis that *Mongson* was not a claim for judicial review, but a case brought through an appeal process created by a provision of the relevant scheme itself (para 125 of the Criminal Injuries Compensation Scheme 2012). Therefore, although in *Mongson* the settlement was held to be final and binding, and removed jurisdiction from the First Tier Tribunal and upwards to the Court of Appeal under the Scheme, it was not a case which had to consider whether public law or judicial review proceedings were also precluded.

71. The Claimant went so far as to submit that it was impossible to settle the public law claim, because of the public interest in determining such claims. As an alternative, he submitted that, even if he could recover no additional compensation by reason of the settlement, he should not be prevented from obtaining a ruling from the Court on the matters of principle in Grounds 4 and 5, because of the public interest in those

matters. He argued that, if the settlement had post-dated the issue of proceedings seeking judicial review (which, in this case, it did not), it would have required the approval of the Court, citing *R (Gacal) v Secretary of State for the Home Department* [2015] EWHC 1437 (Admin) at para 27, and that this should be regarded as an example of a general principle that no settlement of a public law claim should oust the jurisdiction of the court to consider such claims, notwithstanding a prior settlement between the parties. He referred to *The State of Mauritius v The (Mauritius) CT Power Ltd* [2019] UKPC 27 at para 44, in which a term in a commercial agreement between the state and a commercial entity by which the government waived sovereign immunity was held not to oust the judicial review jurisdiction of the court. He emphasised that, although the judicial review proceedings are brought on the application of the Claimant, it is the Crown which is the party on the Claimant's side, and the Crown did not enter into his settlement under the Scheme.

**The Defendant's submissions on the effect of the settlement**

72. The Defendant argued that there is no question of ouster in this case. Had the settlement been actionable, for example by reason of a misrepresentation, fraud, undue influence, lack of capacity, or one party acting *ultra vires*, the Court retained all its jurisdiction. The effect of the settlement was, however, to resolve the claim. It was made for good consideration because it secured a specific payment at a date earlier than any payment was otherwise due. The parties had disputed what should be paid, and offers were answered by counter-offers. The Secretary of State's refusal to pay agreed sums by way of an interim payment, leaving other sums to be determined (para 55. above), was in accordance with the terms of the Scheme, and has not been challenged by way of judicial review. The wording of the Claimant's acceptance was clear and unambiguous and rendered the settlement full and final, and, therefore, binding and complete. The Claimant was represented by solicitors throughout. The Claimant no longer had standing to bring proceedings for judicial review because he had no further claim and no interest in arguments which might provide others with a claim. It would be absurd if every settlement with a public body left open the possibility of a claim for further benefits by way of judicial review; this would apply, to give just one example, to the many settlement claims which are entered into with NHS trusts. A public body can enter into a binding contract. A contract of settlement is as binding as any other contract, and remains so even if the counter-party is a public body. There is a public interest in allowing final settlement of disputes, even with public bodies. This was not an agreement entered into under duress; that is not even alleged. The Claimant's claim is an abuse of process.

**The evidence of Martin Forde KC**

73. Since part of the argument was based on the evidence of Martin Forde KC (para 68. above), I will first decide the question of whether that evidence is admissible.

74. Mr Forde's evidence was put forward as "comment on the formulation of the Scheme and, in particular, whether the drafters of the Scheme had regard to certain factual matters when formulating the Scheme" (para 1 of his witness statement). He had no involvement with Mr Vanriel's case, or with the settlement of that case.

75. He was the Independent Adviser to the Windrush Compensation Scheme between 2018-2021 and his role "was to oversee the development of the Scheme Rules and to

give independent advice to the Home Office regarding the design of the Scheme". He was "directly involved" in the drafting of the Scheme, but does not claim to have been the sole or even principal draftsman. He says "I received various drafts of the Scheme on which I commented and gave advice before the Scheme was finalised". He says "The Home Office accepted my advice and the final version of the Scheme accords with my vision of the categories of loss and their scope".

76. It seems to me to be inconsistent with fundamental principles of construction that the subjective understanding or intention, even of a principal draftsman, should be received in evidence on the question of what a document means. That is so whether the document is legislation or contract, and it applies both to the Scheme and to the construction of the words used at the time that the Claimant settled his claims and accepted the compensation offered by the Defendant.

77. Whilst Lord Hoffmann said that "absolutely anything" which would have affected the way in which the language of a document would have been understood by a reasonable man may be considered as relevant background to resolution of disputes of construction, he was there referring to "all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract" and he expressly excluded "declarations of subjective intent": *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912H-913B. Similarly, Lord Neuberger has said that interpretation is concerned to find the intention of the parties, but "ignoring subjective evidence of any party's intentions": *Marley v Rawlings* [2014] UKSC 2. The evidence of Mr Forde KC has been commissioned and filed in these proceedings, long after the settlement which is now under review. It was not available to Mr Vanriel or anyone else when the Scheme was published, or when the compensation was accepted by the Claimant.

78. I consider the evidence relied upon in paragraph 17 of his witness statement to be inadmissible.

79. To assuage any disappointment that the Claimant may feel about that, however, I can say that, even if I had taken it into account, it would not have led me to a different conclusion to the one I have reached without it.

**The true construction of the settlement**

80. The language of "full and final settlement" was used, in the correspondence, by the Claimant's own solicitors, from a very early stage. When the caseworker made the initial assessment of compensation to be offered to the Claimant under the Scheme, on 7 May 2021, the Claimant's solicitors applied for a Tier 1 review in a letter dated 21 June 2021 which also offered to accept £241,294.31 "in full and final settlement of his claim for compensation".

81. That offer was not accepted, and the Tier 1 review then reached the decision now under challenge, on 28 June 2021.

82. The Claimant did not accept the Tier 1 review decision. Instead, he exercised his right to request a Tier 2 decision, by his solicitors' letter dated 8 July 2021. But he had previously enquired, through his solicitors, whether he might be given an interim payment of the agreed elements of the Tier 1 award, while pursuing his claim for

increased sums in respect of other elements (letter of 28 June 2021). The response on behalf of the Secretary of State on 2 July 2021 made it clear that this was "not possible". It said "If your client wishes to accept the award offered in the decision notice dated 28 June 2021 then your client accepts this as full and final settlement of their claim." There is no question in this case of the Claimant entering into a settlement under any misapprehension that it was intended only to be a stage in the resolution of a larger claim. That possibility had been explored and rejected.

83. Similarly, it is no part even of these judicial review proceedings, or of any proceedings, that the Secretary of State was not entitled to refuse staged payment. She was acting in accordance with the structure and provisions of the Scheme. Payments totalling £1,985 had already been made in recognition of the Claimant's "urgent and exceptional need", and a further payment of £10,000 by way of preliminary award in the maximum possible sum for Impact on Life had also been made (paras 45. to 46. above). The refusal of further staged payments was raised with the Adjudicator's Office, and upheld (para 58. above). The Claimant's solicitors had suggested that the refusal was "unlawful" and the Adjudicator's Office stressed that it was not allowed to look at matters that a court could consider. The Claimant's solicitors chose not to pursue the suggestion of unlawfulness by way of proceedings for judicial review, or any legal action.

84. The basis on which the Claimant eventually accepted the compensation offered in the Tier 1 review, and upheld by the Tier 2 review, was stated on behalf of the Defendant, and accepted by the Claimant, in the wording he signed up to as a condition of receiving the money. This was: "I accept this compensation, £91,516.31, as full and final settlement for my claim." It did not refer to any provision of the Scheme. It did not limit itself, specifically, to the Scheme. It was stated to be "full and final settlement for my claim."

85. The words "full and final settlement" were, in this context, unambiguous. This was a "full" settlement, leaving nothing outstanding, and it was "final", bringing to an end any dispute and leaving no right to re-open the claim. The agreement to bring the claim to an end was not limited to the processes set up under the Scheme itself. It was "full and final settlement", and reserved no rights to bring any proceedings, including proceedings for judicial review, in respect of the claim. This did not oust the jurisdiction of the court, because a challenge to the enforceability of the settlement remained available, and a dispute about the meaning of the settlement, to give another example, could also be referred to the courts. But "full and final settlement" meant that the amount of the award, which had been accepted in "full and final settlement", was no longer in question.

86. The settlement was not limited to claims "under the Scheme". It was a "full and final settlement for my claim". The settlement wording to which the Claimant signed up did not include the qualifier "under the Scheme" (and I am not persuaded that, if it had, it would have made any difference in this case).

87. The rules of the Scheme did not limit the effect of this "full and final settlement". On the contrary, paragraph 9.3 reinforced it. The phrase "under the Scheme" does appear in para 9.3 of the rules, but in a context which broadened rather than narrowed the ambit of the "Final payment". Para 9.3 said:

> "If a claimant accepts an award, they accept it as full and final settlement of their claim and of any claim which they may have been entitled to bring under the Scheme." (underlining added)

88. The first phrase – "they accept it as full and final settlement of their claim" – was on all fours with the words to which the Claimant affixed his signature. The second phrase – which I have underlined – meant that acceptance of an award settled, not only the claim actually made, but any claim not made (for example, for an additional element), but which might have been made. So far from being words of limitation, therefore, the second phrase expanded the effect of acceptance.

89. In any event, all the Claimant's claims are for additional compensation under the Scheme, and, whatever the mechanism of those claims, including by way of proceedings for judicial review, I consider them, nonetheless, to be claims under the Scheme. However, on the view I take of the true construction, both of the words over the Claimant's signature, and of para 9.3 of the rules of the Scheme, this is not a point that makes any difference.

90. The words "full and final settlement" are so clear and commonplace that I cannot find any ambiguity that requires resolution by a purposive construction. To some extent, all construction exercises are performed with an eye to the purpose of the instrument in question. If and insofar as a purposive construction may be required, however, there is nothing in the purpose of the Scheme, or in its general design, which suggests that a full and final settlement should be given a narrow construction.

91. The context and purpose of the Scheme is set out, at some length, in paras 1.1, 1.2 and 1.3 at the start of the rules. Para 1.1 begins:

> "This compensation scheme ("the Scheme") is designed to compensate individuals who have suffered loss in connection with being unable to demonstrate their lawful status in the United Kingdom."

Para 1.2 notes:

> "There is no single or consistent picture of the loss suffered by those affected. The Scheme has been designed to address potential losses under a range of categories and to take into account the impact of the losses in each case, as far as possible."

Para 1.3 states:

> "**Basis of Scheme**
>
> Compensation under the Scheme is paid voluntarily."

92. Hence, the purpose of the Scheme is to provide compensation. But that does not mean that the compensation should not be capable of agreement between the parties, even if this (by agreement) closes off further proceedings which might result in a different amount. The settlement did not deprive the Claimant of compensation. It gave it to him, on a basis which had been analysed and explained to him (and his solicitors), and which he decided to accept.

93. Nor did the Scheme undertake to pay the maximum possible sum that might correspond to actual losses incurred or impacts suffered. Parts of the Scheme were in the form of fixed sums, regardless of the particular facts of individual cases (para 40. above). It was expressly provided that awards might be less than the actual losses suffered (Rule 3.14, para 24. above). Some categories of loss were excluded altogether (Rule 3.15, para 25. above).

94. The amount of compensation was not determined mathematically. That is consistent with what is said in para 1.2 of the rules. The "Impact on Life" category was potentially one of the largest elements in any award, on a scale specified up to £100,000 or more, and it was the largest element in the Claimant's own award. He was awarded £100,000 (out of the total of £103,501.31) in respect of Impact on Life, against his claim for £129,500 (the largest single element in his total claim for £307,647.31). However, these sums were awarded and claimed by way of an exercise of judgment. There was no formula producing a precise figure. The criteria attached to the scale of payment in Annex H were in general terms which might justify a range of assessments depending on the assessor.

95. The Scheme did not require either the highest possible award, or an award in a particular amount. It directed an award which was in accordance with the rules of the Scheme, but that did not mean that it would be contrary to the purpose of the Scheme that the parties should agree on a binding settlement, even if it was for less than the Claimant wanted.

96. Moreover, binding settlement was built into the Scheme rules. It was an integral part of Rules 9.2 and, particularly relevant to this case, 9.3 (paras 36. - 37. above).

97. My construction of the meaning and effect of the settlement is, therefore, in full accordance with the purpose of the Scheme.

98. There is no evidence that the words "full and final settlement" were misunderstood by the Claimant, or by his solicitors. The Claimant's evidence was that he accepted the compensation offered, not because he thought he could pursue further sums in later proceedings, but because he wanted the money immediately (para 63. above).

99. I have already noted that the Claimant does not claim that the settlement agreement was entered into under economic duress, or any duress. There is no basis for such a claim in the evidence. Moreover, the Claimant's evidence does not claim that the Claimant needed money entirely for himself. He says it was to "ease my financial situation", and also "to assist my then fiancé's family" and "to be able to help the members of my family and my friends".

100. On the true construction of the words used by the Claimant when accepting the Defendant's award of compensation, he accepted the award in full and final settlement of his claim, and agreed that his claim was at an end, and that he would pursue no further claim, and that he was therefore not entitled to bring further proceedings (including judicial review proceedings) to challenge or increase the amount of the award. This is also the effect of the provisions of the Scheme, including rule 9.3 and rule 1.4 (paras 37. and 38. above).

**What the Claimant gained by entering into the settlement**

101. I am satisfied that, by entering into the settlement, the Claimant obtained a concession and an advantage, which he would not otherwise have obtained, and which is enough to make it fully binding and enforceable against him. It was made clear to him, by the rules and the correspondence, that something he really wanted, which was payment sooner rather than later, would only be given to him if the amount of the payment had been agreed. He was not going to be given any money on account, and he was not going to be given an award in stages. He accepted less than he had asked for, and less than he wanted, because he wanted it straight away, and otherwise he would have to wait (if, indeed, the award was not to lapse altogether in accordance with rule 7.9 or rule 8.5, paras 29. and 32. above). He settled, and he was paid at once. That was a genuine advantage to him, and he secured it by the settlement. There was no impropriety, let alone illegality, in withholding payment until the amount had been agreed.

**Effectiveness of the settlement in respect of judicial review claims**

102. Some settlement agreements are not binding, notwithstanding their own clear terms. An example is settlement of a claim for unfair dismissal, which does not preclude Employment Tribunal proceedings unless the requirements of section 203 of the Employment Rights Act 1996 have been satisfied.

103. There is no such provision applicable to this case. Counsel for the Claimant accepted that he could find no authority to support the proposition that public law claims cannot be settled or precluded, before issue of proceedings, by agreement between the parties.

104. It is not contrary to public policy that public law claims should be ruled out, between particular parties, in particular cases, by agreement between those parties. Of course, no such agreement would bind the Crown, and it would not bind anyone who was not themselves party to the agreement in question. But there is no reason in principle why a person who has reached a full and final settlement for payment of a sum of money should not be precluded from applying for judicial review, or being granted remedies in judicial review, even though the application would be brought in the name of the Crown.

105. The settlement of disputes is in the public interest, and the parties must make their own assessment of what is in their private interest.

106. The judgment of the Court of Appeal in *Mongson v First Tier Tribunal (Social Entitlement Chamber)* [2018] EWCA Civ 3032 is in forceful terms, and it is no less relevant or persuasive by reason of the route by which that case reached the Court of Appeal. Per Sharp LJ, with whom Flaux LJ agreed, at paras 13-14:

> "13. On the facts of this case, the respondent applied for an award. He was dissatisfied with the determination. He asked for a review, which then took place and he then accepted the determination pursuant to that review, albeit with some reluctance. An award was duly made and then paid to the respondent. On my reading of the Scheme, this was the end of the matter. The common thread running through these provisions and the procedural regime they create is the demarcation between acceptance of a determination and payment of the award on the one

> hand and rejection of the determination and review/appeal on the other. See in particular paragraphs 100, 101, 123 and 127 of the Scheme. The sense of this is obvious from an administrative and legal perspective for reasons of finality and certainty as Mr Purnell submits. In this context he draws attention to the observations of Moses LJ in *Law Society v LSC* [2010] 2550 EWCA (Admin), at paragraph 116 where he says:
>
> > "Good public administration requires finality. This is because public authorities need to have certainty as to the legal validity of their decisions and actions and third parties need to be able to rely on those decisions and actions."
>
> Mr Purnell gives an example. On receipt of a signed acceptance form, CICA must be able to know that any award based on such an acceptance is final, in circumstances where the scheme itself provides for a definition of "final award" as meaning an award which, but for any possibility of being reopened in accordance with paragraph 114, disposes of the application.
>
> 14. Quite apart from those considerations, however, in my view this is the position that emerges from the clear wording of the Scheme itself. If the respondent was satisfied with the review decision and wanted to appeal it, that route would have been open to him. But under the rules of the Scheme, he could not both accept the award and then appeal it."

107. Nothing in this suggests that judicial review proceedings must, as a matter of public policy, be excluded from the ambit of an enforceable settlement agreement.

108. I see no reason why that should be so. This is not a case in which any general question of public policy arises. It is all about Mr Vanriel's individual claim, and the elements and the amounts which he claimed and which the Second Defendant has paid. It is a money claim and no issue of principle has been raised for any reason other than re-opening and potentially increasing the monetary award. That claim has been settled by mutual agreement. It is in accordance with public policy that settlement should take place, and that, having been agreed, it should be final. If and insofar as anyone else has a similar claim, or even an identical claim, and whether or not their claim raises similar issues of principle to those raised by the Claimant in Grounds 4 and 5, it is up to that person to bring it if they choose. The settlement agreed by the Claimant places no fetter on that at all.

109. The jurisdiction of the court has not been ousted. The settlement agreement itself would be actionable, if payment was not made in accordance with the agreement, or if the settlement was procured by misrepresentation, or under some other circumstance rendering the agreement itself open to question.

110. The court will not determine claims which have been settled, regardless of whether the court's decision, if made, would be more or less favourable, or identical, to the terms of the settlement.

111. The Claimant no longer has any interest in the matters raised by Grounds 4 and 5, because his own claims have been settled.

112. It would be wrong to subject the Defendants to a determination by the Court of matters and disputes ruled out of court by the settlement agreement. It would be wrong even if the determination was on a theoretical basis, or on the basis that no further payment to the Claimant (the only applicant in the case) should follow. The benefits which the Second Defendant obtained from the settlement included finality, and the end of further dispute and, certainly, the avoidance of litigation. The Second Defendant is entitled to retain that benefit, and the Court will not deprive her of it.

113. It is an abuse of process for the Claimant to pursue a claim for judicial review in respect of an award under the Scheme which he has accepted in full and final settlement and been paid only on the basis of a full and final settlement.

114. I will, therefore, not even express a view on Grounds 4 and 5.

115. For these reasons, the claims for judicial review will be dismissed.