



[2026] EWHC 1394 (Admin)

Case No: AC-2025-003798

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/06/2026

Before

LORD JUSTICE SINGH
MR JUSTICE JAY

Between:

THE KING
(on the application of UCPI DESIGNATED
LAWYER OFFICERS CORE PARTICIPANT
GROUP)

Claimant

- and -

SIR JOHN MITTING (SITTING AS CHAIRMAN
OF THE UNDERCOVER POLICING INQUIRY)
("UCPI")

Defendant

-and -

(1) COMMISSIONER OF POLICE OF THE
METROPOLIS
(2) DR NEVILLE LAWRENCE OBE
(3) BARONESS DOREEN LAWRENCE OF
CLARENDON, OBE
(4) PETER FRANCIS

Interested
Parties

Oliver Sanders KC, Catherine Collins and Achas Burin (instructed by **Designated Lawyers, UCPI**) for the **Claimant**

Fiona Scolding KC, John Warrington, Sarah Hemingway, Julia Farrant and Charles Bishop (instructed by **Solicitor to the Inquiry into Undercover Policing**) for the **Defendant**

Peter Skelton KC and Emelia Bezant-Gahan (instructed by **Metropolitan Police Service Directorate of Legal Services**) attended for the **First Interested Party** but did not make

submissions

Imran Khan KC (instructed by **Imran Khan & Partners**) for the **Third Interested Party**

The Second and Fourth Interested Parties were not represented

Hearing dates: 13 and 14 May 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 9 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE JAY

LORD JUSTICE SINGH and MR JUSTICE JAY:

Introduction

1. This is the judgment of the Court.
2. The principal issue in these judicial review proceedings is whether Sir John Mitting, sitting as Chairman of the Undercover Policing Inquiry (“UCPI”), whom we will hereinafter be referring to as the Defendant, has power under section 21 of the Inquiries Act 2005 (“the IA 2005”) to issue a notice on a former police officer, anonymised in the UCPI as HN86, compelling him to attend in London to give oral evidence, in circumstances where at the time the notice was served he was resident overseas. The second ground of challenge, which we consider to be very much subordinate to the first ground, is whether there was procedural unfairness in connection with the issue of the notice.
3. The UCPI was set up in 2015 following widespread and serious concerns about undercover policing operations over a number of decades. As specified in its Terms of Reference, the purpose of the UCPI is:

“... to inquire into and report on undercover police operations conducted by English and Welsh police forces since 1968 ... [to include] ... whether and to what purpose, extent and effect undercover police operations have targeted political and social justice campaigners ... [and includes] the undercover operations of the Special Demonstration Squad.”
4. The Special Demonstration Squad (“SDS”) was an undercover unit operating within the Metropolitan Police Service (“MPS”), Special Branch, from c. 1968 to 2008. SDS undercover officers infiltrated and reported on groups assessed as capable of presenting threats connected with public disorder, extremism, subversion and terrorism. The SDS was managed by a Detective Inspector (“DI”) and Detective Chief Inspector (“DCI”) operating from an office in MPS premises.
5. HN86 served in the SDS as an undercover officer from the late 1970s (ceasing at some point in the 1980s), as a DI in 1990 (effectively as second-in-command of the SDS), and then as a DCI between 1991 and 1994 (effectively in command). He retired following a mental breakdown in the late 1990s. HN86 is now in his 70s and for approximately 25 years has lived overseas. HN86 retains his British nationality and has permanent residency in the country where he lives. He is in receipt of police and state pensions, pays tax on his police pension in the UK, and pays tax on his state pension and other income in his country of residence. He does not own property in the UK and returns only occasionally, most recently about three years ago for a wedding.
6. HN86 has the benefit of anonymity in the UCPI. No order to similar effect in these proceedings was made when permission to apply for judicial review was granted by Jay J on 6 March 2026, but we consider that the reasons justifying an anonymity order in the UCPI apply with equal force to the proceedings before us. It follows that we make such an order pursuant to CPR r. 39.2(4).

7. HN86 is not an Interested Party to these proceedings and he is not a Core Participant in the UCPI. A number of former MPS personnel, including HN86, are represented before the UCPI by the UCPI Designated Lawyer Officers Core Participant Group, hereinafter referred to as the Claimant. The Claimant's position is that it brings this claim for judicial review on behalf of the group it represents, including HN86. Save in relation to the Claimant's second ground of challenge, the Claimant's standing to bring this claim is not disputed by the Defendant.
8. The Defendant considers that HN86 is a witness of particular importance to the UCPI. The Claimant contends that the significance of HN86 as a witness has been overstated and invites us to refrain from making any findings as to the value or utility of his evidence to the Defendant. Given that no irrationality challenge to the section 21 notice has been brought and its merits are not in issue, we are content to accept the Claimant's invitation although we note the Defendant's case, as contained in paras 13-16 of his counsel's skeleton argument, setting out the three main reasons why HN86's oral evidence is now considered to be important. In particular, we record that the Defendant is of the view that there are a number of lines of inquiry to be pursued with HN86 in respect of which only he is in a position to assist. These include: oversight and authorisation of intelligence gathering on the Stephen Lawrence Campaign; allegations of racism and discriminatory targeting of campaigns; managerial knowledge (including knowledge of those senior to HN86) of undercover officers' sexual relationships; the use of identities of deceased children; and, undercover officer involvement in criminality. The Inquiry process would enable Counsel to the Inquiry to probe HN86's evidence, and core participants to put their own questions under rule 10 of the Inquiry Rules 2006 (2006 SI No. 1838) ("the Inquiry Rules"), either indirectly, through Inquiry counsel, or directly and with permission, by their own counsel.
9. The Claimant is represented by Oliver Sanders KC, Catherine Collins and Achas Burin. The Defendant is represented by Fiona Scolding KC, John Warrington, Sarah Hemingway, Julia Farrant and Charles Bishop. Baroness Doreen Lawrence, OBE, the Third Interested Party, is represented by Imran Khan KC. We are grateful to all the advocates for their written and oral submissions.

Essential Factual Background

10. In 2024 HN86 voluntarily agreed to receive a request under rule 9 of the Inquiry Rules for written evidence. He provided a partial response by way of statement dated 23 May 2024. To be fair to him, full compliance with the request would have been onerous.
11. On 1 August 2025 the Defendant gave a provisional indication to the Claimant through the Solicitor to the Inquiry that he would like HN86 to give oral evidence. On that date, and again on 4 September, the Claimant stated that it had not yet been able to make contact with HN86. On 24 September the Claimant was informed that the Defendant's view was that if HN86 was not willing to return to the jurisdiction but was prepared to give evidence remotely, that would be something that the Defendant would be happy to facilitate. On the same day the Claimant informed the Defendant that HN86 had now given his instructions, as follows:

"HN86 does not wish to give oral evidence, either in person or remotely. He remains unwell ... I did specifically ask whether there were any circumstances in which HN86 would be prepared

to give oral evidence, including remotely, but he said there were not.”

12. Again on 24 September, the Defendant stated that he required a medical report to be produced, and that the reporting doctor should be invited to consider whether there were any circumstances in which HN86 could give oral evidence, including before a private hearing with limited attendees. In response on the same day, the Claimant stated:

“We are not applying for HN86 to be excused on medical grounds. He is not agreeing to return to the jurisdiction to give oral evidence and has specifically stated that he does not want to give evidence either remotely or in private.”

Implicit in this response is the assertion that he could not be compelled by the Defendant to return to the UK.

13. On 29 September 2025 the Deputy Solicitor to the UCPI wrote to the Claimant setting out the matters we have just summarised as an explanation for the Defendant’s reasons to serve a section 21 notice, as well as the possible consequences of non-compliance. The offer to HN86 to attend remotely was repeated. The notice itself included the following:

“Notice to HN86 under section 21 of the Inquiries Act 2005

I have not received confirmation of your attendance to attend the Tranche 3, Phase 3 Evidential Hearings taking place at the International Dispute Resolution Centre to be held June - July 2026.

I require your in-person attendance at 9:30am on 13, 14 and 15 July 2026 at the International Dispute Resolution Centre, 1 Paternoster Square, London, EC4M 7BQ.

If you wish to make a claim that you are unable to comply with any part of this notice or that it is not reasonable in all the circumstances to require you to comply with this notice, as set out in Section 21(4) of the Inquiries Act 2005, you must notify the Inquiry in writing within twenty-one days of the date of this notice, giving reasons. I will determine any such claim and may vary or revoke this notice.

Possible consequences of non-compliance

1. You are liable to prosecution if you fail to comply with this notice.

- Section 35(1) of the Inquiries Act 2005 provides that a person is guilty of an offence if he fails without reasonable excuse to do anything that he is required to do by a notice under section 21.

- Section 35(7) provides that a person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level three on the standard scale or to imprisonment for a term not exceeding the relevant maximum, or to both. The relevant maximum in England and Wales is 51 weeks imprisonment.

2. I, or after the end of the Inquiry the Minister, may certify the matter to the High Court pursuant to section 36(1) of the Inquiries Act 2005.

- The High Court, after hearing any evidence or representations on the matter may make such order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the court. The High Court may hold that a person who disobeys this notice to be in contempt of the Inquiry. That person may be the subject of a warrant for their arrest, have their assets seized or be imprisoned.

- Any person who knows of this notice and does anything which helps or permits anyone to disobey this notice may also, after certification to the High Court, be held to be in contempt of the Inquiry and that person may be imprisoned or have their assets seized.”

14. Mr Mark Perry, Solicitor to the Inquiry, has explained why a section 21 notice was served in HN86’s case. In short, this was the first time that the Defendant, after careful consideration, concluded that it was necessary to serve such a notice on any witness to secure their attendance at the Inquiry. In his opinion, there are exceptionally compelling reasons to justify such a course. In particular, HN86 is the only former undercover police manager residing outside England and Wales who has refused to give oral evidence. The Defendant has sought to organise a coherent sequencing of witness evidence in the summer months, and HN86’s evidence – scheduled for mid-July – fits into that framework. The Defendant himself is due to retire as Chairman of the Inquiry in the autumn of 2027 and it is important that his interim report on Tranches 2-3 is completed in good time. To arrange for HN86 to give evidence at a later date would have significant costs consequences. Finally, it is pointed out that for many core participants the wait for justice has lasted many years. Implicit in Mr Perry’s evidence is the contention that it was necessary to serve the section 21 notice sufficiently before mid-July 2026 to enable all practical and logistical issues to be addressed and resolved in good time.

15. The Claimant wrote to request the withdrawal of the notice on 2 October 2025 on the following basis:

“As the Inquiry is aware, and has acknowledged at para 17 of Minded to 9, HN86 resides out of the jurisdiction. The Inquiry has no power to issue s. 21 notices to individuals overseas, and the s. 21 notice is therefore unlawful.

...

This letter is not a response to the s. 21 notice under s. 21(4). ...”

16. The Deputy Solicitor to the Inquiry responded on 3 October, stating that in the Defendant’s view the notice was lawfully issued and:

“I wish to emphasise that the Inquiry’s preference was to avoid invoking coercive measures. We remain hopeful that HN86 will recognise the importance of engaging with the Inquiry process which seeks to ensure a fair and thorough examination of the issues.

I repeat that to further support HN86 in giving evidence, the Inquiry is willing to accommodate a range of measures to assist him to ensure that HN86 can participate in a manner that respects his anonymity, his privacy and wellbeing while enabling the Inquiry to fulfil its statutory obligations.”

17. The Claimant sent a pre-action protocol letter before action on 8 October raising the arguments which later formed the basis of this judicial review challenge. The Inquiry responded on 9 October. The Inquiry maintained its position that the section 21 notice was lawfully issued, and in answer to the contention that HN86 and others enjoyed a legitimate expectation that a notice would not be issued in relation to individuals overseas, stated:

“The Inquiry has noted your assessment of the occasions on which it passed comment on its ability to secure the co-operation of witnesses who are abroad. In each case the statements made amount to shorthand which did not specifically address the question whether it would be lawful to issue a notice. It remains the case that we accept that a person overseas cannot be forcibly removed to the United Kingdom to give evidence. As to the correspondence dated 24 September 2025, the Inquiry was merely attempting to secure the attendance of HN86 without the need for a section 21 notice at all. No representations were made as to what would happen if he refused to agree to attend at all.

Neither of these statements amount to a clear or unambiguous representation that HN86 would not be the subject of a section 21 notice if this were considered to be a fair, necessary and proportionate requirement, having regard to the Chairman’s duties under section 17(3) of the Inquiries Act.”

18. The Inquiry continued to offer a number of alternative mechanisms to give evidence:

“...the Inquiry has made it clear throughout that it will consider any reasonable alternatives to your client giving evidence in person in London, including his attendance remotely by video-link. Your client will be aware of the special measures already

in place, such as the fact that he will give evidence anonymously and will be screened. In addition, the Inquiry will consider any other measures such as voice distortion software or any other mechanisms and is open to suggestions. The Inquiry remains open to discussions on the best way to facilitate your client's voluntary attendance to give evidence."

19. Since then, the Defendant, stating that he wished to avoid using court and public resources on a judicial review claim that may end up being unnecessary, has continued to probe the assertion that HN86 may not be fit to give oral evidence. On 30 January 2026 HN86 agreed to undergo a "without prejudice" medical examination in support of an application for excusal on medical grounds. Unfortunately, since then the matter has not progressed speedily.
20. After some delay, the Claimant initially proposed a medical expert who would not be able to provide a report for 14 weeks, later increasing to 16-18 weeks. Enquiries were then made on behalf of the Defendant, and the Claimant was provided with the details of a number of experts who could provide a report within 4-6 weeks. The Claimant sent a draft letter of instruction on 16 April to which the Defendant responded on the same day. On 30 April the Claimant confirmed that an expert had accepted instructions and would provide a report within 6-8 weeks.
21. Meanwhile, the Defendant had ascertained with the assistance of the Foreign, Commonwealth and Development Office an indication in the form of preliminary advice that the British Embassy in HN86's country of residence may be able to host him to give evidence remotely should he wish to do so voluntarily. According to the third witness statement of the Inquiry's solicitor, Mr Mark Perry, at the time of writing the Embassy had not responded to a request for advice regarding any specific legal considerations which might apply to HN86 giving evidence at the British Embassy in this particular foreign jurisdiction. At the hearing, however, Ms Scolding stated that the Embassy has recently confirmed that HN86 may give evidence remotely from the relevant British Embassy.

Legislative Framework

22. Pursuant to section 1 of the IA 2005, a Minister may cause an Inquiry to be held in relation to a case where it appears that:

"(a) particular events have caused, or are capable of causing, public concern, or

(b) there is public concern that particular events may have occurred."

It is common ground that the "particular events" inquired into could have taken place anywhere in the world. In practice, however, there would need to be some connection with the UK before public concern about them could be generated.

23. Section 5 provides in material part:

"5 Setting-up date and terms of reference

(1) In the instrument under section 4 appointing the chairman, or by a notice given to him within a reasonable time afterwards, the Minister must—

(a) specify the date that is to be the setting-up date for the purposes of this Act; and

(b) before that date—

(i) set out the terms of reference of the inquiry;

(ii) ...

...

(6) In this Act ‘terms of reference’, in relation to an inquiry under this Act, means—

(a) the matters to which the inquiry relates;

(b) any particular matters as to which the inquiry panel is to determine the facts;

(c) whether the inquiry panel is to make recommendations;

(d) any other matters relating to the scope of the inquiry that the Minister may specify.”

24. Section 17, which has particular relevance to the second ground, provides:

“17 Evidence and procedure

(1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.

(2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.

(3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).”

25. Section 21 provides in material part:

“21 Powers of chairman to require production of evidence etc

(1) The chairman of an inquiry may by notice require a person to attend at a time and place stated in the notice—

- (a) to give evidence;
- (b) to produce any documents in his custody or under his control that relate to a matter in question at the inquiry;
- (c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel.
- (2) ...
- (3) A notice under subsection (1) or (2) must—
 - (a) explain the possible consequences of not complying with the notice;
 - (b) indicate what the recipient of the notice should do if he wishes to make a claim within subsection (4).
- (4) A claim by a person that—
 - (a) he is unable to comply with a notice under this section, or
 - (b) it is not reasonable in all the circumstances to require him to comply with such a notice,is to be determined by the chairman of the inquiry, who may revoke or vary the notice on that ground.
- (5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the chairman must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information.
- (6) ...”

26. Section 35 provides in material part:

“35 Offences

- (1) A person is guilty of an offence if he fails without reasonable excuse to do anything that he is required to do by a notice under section 21.
- ...
- (5) Proceedings in England and Wales or in Northern Ireland for an offence under subsection (1) may be instituted only by the chairman.
- (6) Proceedings for an offence under subsection (2) or (3) may be instituted—

(a) in England and Wales, only by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, only by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(7) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level three on the standard scale or to imprisonment for a term not exceeding the relevant maximum, or to both.

(8) ‘The relevant maximum’ is—

(a) in England and Wales, 51 weeks;

(b) in Scotland and Northern Ireland, six months.”

27. Section 36 provides:

“36 Enforcement by High Court or Court of Session

(1) Where a person—

(a) fails to comply with, or acts in breach of, a notice under section 19 or 21 or an order made by an inquiry, or

(b) threatens to do so,

the chairman of the inquiry, or after the end of the inquiry the Minister, may certify the matter to the appropriate court.

(2) The court, after hearing any evidence or representations on a matter certified to it under subsection (1), may make such order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the court.

(3) In this section ‘the appropriate court’ means the High Court or, in the case of an inquiry in relation to which the relevant part of the United Kingdom is Scotland, the Court of Session.”

28. Section 40 empowers an inquiry chairman to award reasonable amounts to a witness “in respect of expenses properly incurred, or to be incurred, in attending, or otherwise in relation to, the inquiry”. If jurisdiction otherwise exists, this power is wide enough to include the cost of travel from HN86’s country of residence to the UK.

29. Section 42 provides:

“42 Notices etc

A notice or notification under this Act must be given in writing.”

No provision of the IA 2005 or the Inquiry Rules deals with the manner in which a notice or notification may or must be given. It follows that the mode of service lies within the broad discretion of the Chairman.

30. Finally, section 52 provides:

“52 Extent

This Act extends to the whole of the United Kingdom.”

31. Section 31(2A) of the Senior Courts Act 1981 provides:

“(2A) The High Court—

(a) must refuse to grant relief on an application for judicial review, and

(b) may not make an award under subsection (4) on such an application,

if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.”

The Evidence

32. Given, as we have said, that the rationality of the Defendant’s assessment that HN86 is in a position to give valuable evidence to his Inquiry is not at issue, we consider that it is unnecessary to address in this judgment much of the evidence that the parties have placed before us, although we have of course read it carefully.

33. It is worthy of some note that in a number of other public inquiries the territorial reach of s. 21 notices, or at least the ability to enforce them, has fallen for consideration. We mention four examples.

34. First, in “The Report of the Al Sweady Inquiry” (December 2014, HC 818-1), volume 1, §1.137, it was recorded:

“Although s. 21 Notices were served on these witnesses [now residing overseas], in order to compel them to attend a particular venue to give evidence on a particular date, the Notice has no reach overseas. In the event, not all of those upon whom s. 21 Notices were served gave oral evidence to the Inquiry.”

We consider that this statement does not assist us in answering the jurisdictional question that has been posed. It is ambiguous as to whether Sir Thayne Forbes believed that there was power to serve the relevant notices as opposed to enforcing them.

35. Secondly, in “The Litvinenko Inquiry: Report into the death of Alexander Litvinenko” (January 2016, HC 695), at §4.81, Sir Robert Owen stated that a number of witnesses

gave evidence voluntarily because, being outside the jurisdiction, they could not be compelled to do so. It was for that reason that no s. 21 notices were served.

36. Thirdly, in the “Grenfell Tower Inquiry: Phase 2 Report (September 2024, HC 19-II), volume 2, §16.16, the Inquiry panel chaired by Sir Martin Moore-Bick stated as regards four foreign witnesses:

“The position in relation to them was rather different because, having taken legal advice, the chairman was satisfied that no legal mechanism existed to compel their attendance in this country.”

Taken in context, it is clear that Sir Martin was advised that there was no jurisdiction to serve s. 21 notices in relation to these foreign witnesses.

37. Fourthly, in the “Report of the Public Inquiry into the Attack on Manchester Arena on 22nd May 2017, Volume 3: Radicalisation and Preventability” (March 2023, HC 1137) §25.23, Sir John Saunders’ clearly stated view was that there was no power to serve a s.21 notice on an individual or organisation that was not in the UK. Further, at §§25.19 to 25.24 and 25.79 to 25.94, Sir John recommended reform of sections 21, 35 and 36 to address their lack of extra-territoriality including making section 35 an extraditable offence. We have not overlooked that in *Manchester Arena Inquiry v Romdhan (formerly Abedi)* [2021] EWHC 324 (Admin), at paras 31-32 in particular, Sweeney J issued a warrant for the arrest of a witness who was served with a section 21 notice whilst in the UK, but then fled the jurisdiction. It was accepted that the warrant could only be executed if the witness returned to the UK. More importantly, the power to issue the s. 21 notice was not at issue because at the time it was served the witness was in the jurisdiction.
38. In relation to the Inquiry under current consideration, the Claimant draws attention to the fact that the Defendant has adopted an inconsistent position in relation to other overseas witnesses. In their cases, decisions were taken not to serve section 21 notices because it was said to be inexpedient and disproportionate to spend time and public funds pursuing them, given in particular that in some cases there was no known UK address on which a section 21 notice could be served, as well as the limitations on enforcement. In para 77 of his Detailed Grounds of Defence, the Defendant contrasts some of those cases with HN86’s inasmuch as he does have a UK address through the Claimant. In our judgment, the Claimant may be reading too much into the Detailed Grounds and Mr Perry’s second witness statement, but we consider that the fact that the Defendant has been able to send the section 21 notice to a legal representative within the jurisdiction cannot amount to a principled basis for conferring jurisdiction in relation to HN86 if none otherwise exists; and the point was not pressed before us.
39. The Claimant draws attention to the fact that para 1 of Schedule 5 to the Coroners and Justice Act 2009 substantially replicates section 21 save that notices under this provision are enforceable by way of a bench warrant or fine under Schedule 6, para 6. HM Chief Coroner’s “Guidance for Coroners on the Bench” states that there is no power to compel evidence from a person who is outside the jurisdiction of England and Wales. Bean LJ expressed the same view at para 26 of his judgment in *R (Shafi) v HMSC East London* [2015] EWHC 2106 (Admin); [2016] 1 WLR 640 (DC), although in that case the point did not arise for decision.
40. Despite these statements and indications which generally speaking favour the Claimant’s case, we understand this to be the first occasion on which the extra-

territoriality issue has received full argument before a court. For that reason, what appears to have happened in other public inquiries, for example, on the basis of legal advice which we have not seen, is only of limited assistance.

The Claimant's Submissions

41. In developing his first ground of challenge, Mr Sanders relied on the well-established principle of statutory construction that Acts of Parliament are presumed not to have extra-territorial effect. Mr Sanders also relied on the related presumption that an “offence-creating” provision was not intended to make conduct of either British or foreign nationals committed outside the jurisdiction of the Crown an offence triable in an English criminal court. These presumptions may be rebutted by express statutory language or on the basis of implication, the latter arising with regard to the purpose and context of the legislation considered in light of relevant principles of statutory interpretation and principles of international law.
42. Mr Sanders submitted that there is nothing in the language of section 21 that indicates specific extra-territorial effect, and that the scheme of the IA 2005 as a whole points in the same direction. Although public inquiries have taken place concerned with, for example, the conduct of British armed forces overseas (e.g. Baha Mousa; Al-Sweady; Afghanistan), these are or have been always in the context of the exercise of UK territorial jurisdiction within the scope of article 1 of the European Convention on Human Rights (“ECHR”).
43. Mr Sanders relied heavily on the impracticability of enforcing this section 21 notice against HN86. Offences under section 35 are not extradition offences for the purposes of the Extradition Act 2003, and there is no scope for prosecution, not least because the criminality that may be alleged did not take place in England and Wales and HN86 is under no obligation to comply with any process served on him overseas, so trial and conviction *in absentia* under section 11 of the Magistrates’ Courts Act 1980 would not be possible.
44. Mr Sanders took issue with the Defendant’s suggested distinction in international law between “legislative jurisdiction” and “enforcement jurisdiction” (more fully explained below), the former predicated on HN86 being a UK national. He submitted that this was a distinction without a difference, that relevant jurisprudence did not support it, and that in any event the section 21 notice does infringe on the sovereignty of the overseas country in which HN86 is a permanent resident because the effect of the notice is to criminalise conduct which would not amount to an offence under that country’s laws.
45. Mr Sanders observed that the Defendant’s case is based on a putative distinction between foreign nationals (who fall outside the scope of section 21) and British nationals (who fall within it). However, that is a distinction which is nowhere to be found in the IA 2005 and entails according to section 21 a differential application which is contrary to principle.
46. Mr Sanders referred to a number of authorities which we address below.
47. As for Ground 2, Mr Sanders submitted that HN86 had been invited by the Defendant to attend voluntarily, that no section 21 notice had been served on any other overseas witness, and that by the Defendant proceeding on the basis he did HN86 could not

reasonably have understood that it was necessary to provide further details about his health and personal circumstances with a view to forestalling the need for such a notice. Put another way, Mr Sanders submitted that the section 21 notice came “as a bolt from the blue”, and that had HN86 been informed that such a notice would or might be served he could have provided more information and made representations as to his non-compellability and health. Overall, it is said that the service of the section 21 notice in all the circumstances of his case was unwarranted and unfair.

The Defendant’s Submissions

48. Ms Scolding accepted that the burden is on the Defendant to displace the presumption against extra-territoriality, although in that context she pointed out that the strength of the presumption varies according to the subject-matter. She submitted that the purpose of the IA 2005 is to provide a comprehensive statutory framework for investigating matters of public concern, and added that one of its specific functions is to provide in domestic law a mechanism for the UK to satisfy procedural obligations under the ECHR, which may extend to allegations of breaches of Articles 2 and/or 3 occurring outside the territory of the UK. If inquiry panels could not try to seek the attendance of overseas witnesses, there would be a “gaping lacuna” in their effectiveness.
49. Ms Scolding pointed to other instances of extra-territoriality in both the IA 2005 and the Inquiry Rules 2006. These include: (1) a witness outside the UK distorting or altering his evidence, thereby committing an offence under section 35(2); (2) the power to send a written request for a witness statement under rule 9; and (3) the power, or even a duty, to send a warning letter to a person outside the jurisdiction under rule 13.
50. Ms Scolding accepted that the practicability of enforcement of a section 21 notice is a factor relevant to its interpretation, albeit the fact that there might be deficiencies in this regard does not necessarily prevent the extra-territorial application of a statute. In any event, there were a number of consequences following the issuing of a section 21 notice that apply coercive pressure “even if the enforcement scheme is different to that if the witness was based in the UK”. The notice could incentivise voluntary attendance; the threat of enforcement steps being taken operates as a strong incentive to someone such as HN86 who retains his British nationality and occasionally returns to this country; and, the Inquiry could take account of HN86’s wilful disregard of a section 21 notice in drawing inferences and reaching its final findings.
51. Ms Scolding relied on the legislative history of the IA 2005 and the absence of alternative means of enforcement. She contended that there is no other legislation which creates an equivalent, parallel system which facilitates extra-territoriality in respect of the investigation of matters of “public concern”, and no machinery in the statute which brings into domestic law the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Proceedings.
52. Ms Scolding submitted that under international law a distinction falls to be drawn between “prescriptive” or “legislative” jurisdiction and “enforcement” or “executive” jurisdiction. The former refers to the assertion by a state of its laws to given persons, property and conduct, and is generally considered to be territorial but there are permissible exceptions to this. The latter refers to the actual physical application of given norms by the state, into which category the examination of witnesses would fall. This exercise of jurisdiction is always strictly territorial. In relation to “prescriptive” jurisdiction, that can only be exercised extra-territorially if the state in question can rely

on a permissive rule of international law, and one such rule encompasses the “nationality” or “active personality” principle, which is that a state has jurisdiction to make criminal conduct by its nationals when that conduct occurs outside its territory, but only if it does not cause an interference with the legitimate affairs of other states or cause the national to act in a manner contrary to the foreign state’s laws.

53. Applying those principles, the extension of criminal liability to English criminal law to the acts or omissions of HN86 outside the territory of the UK does not violate any principle of international law, including the principle of comity of nations, but to seek to enforce the criminal law whilst HN86 is overseas would.
54. Ms Scolding submitted that the existence of a number of safeguards in the statutory scheme indicates that Parliament’s intention was that there should be a limited extra-territorial effect. For instance, the Inquiry chairman is bound by numerous public law duties in connection with the issue of a section 21 notice; the target may claim that it would be unreasonable to comply (section 21(4)); and in any criminal proceedings there is a reasonable excuse defence (section 35(1)).
55. Finally, in oral argument Ms Scolding developed a submission that had not been prefigured in writing. It soon occupied centre-stage in her case. She submitted that, in truth, section 21 does not have extraterritorial effect because the offence contrary to section 35(1) is committed not in the relevant overseas country but, at least in substantial measure, in England and Wales. This is because the *actus reus*, being in the nature of an omission, crystallises at the moment should HN86 fail to attend at the due time on the due date in London.
56. Ms Scolding also referred to a number of authorities which we address below.
57. In relation to the second ground, Mr Charles Bishop, who led on this issue, submitted that the Claimant (as opposed to HN86) does not have standing to bring this part of the claim; that there are no procedural legitimate expectations in play; that the Defendant has acted fairly in all the circumstances of this case; and that the subsequent history is relevant, including the Defendant’s proactive steps in seeking to obtain further evidence relating to HN86’s health and personal circumstances.

The Third Interested Party’s Submissions

58. Mr Khan advanced a number of eloquent submissions in support of the Defendant’s case. He pointed out that his client, Baroness Lawrence, has considerable experience of public inquiries as a core participant and is well-placed to apprehend the importance of oral evidence. As she explains in para 4 of her witness statement:

“4. It is my view that without the oral testimony of this witness, the Undercover Policing Inquiry (‘UCPI Inquiry’) would be deprived of vital information necessary to explore matters beyond what is contained in his witness statement. It is also my strongly held view that the courts should be very reluctant to permit witnesses to avoid giving evidence in an Inquiry, as it will set a bad precedent and undermine the purpose and effectiveness of the Inquiry process. My personal and professional experience (as a core participant in this Inquiry and as a member of the House of Lords who is involved in such processes) shows that

Inquiries are set up when things go terribly wrong, and there is a pressing need to find answers and ensure that things change for the better. Furthermore, that those who are culpable or suspected to be culpable of the wrongdoing provide their testimony so lessons can be learned. More importantly for me, and other victims like me, is that they face those whom they harmed and do not avoid the public scrutiny involved in that process. The fundamental basis for an Inquiry to get to the truth and provide catharsis to those who suffered would be permanently adversely affected if the court acceded to the application.”

59. Mr Khan submitted that, if Peter Francis’ evidence is correct (and it is disputed by the Claimant), HN86’s personal attacks on the Stephen Lawrence campaign would have been “despicable, outrageous conduct”, and that it is surprising that HN86 does not wish to provide his own account in rebuttal. Furthermore, the section 21 notice would not be an empty gesture in the event that HN86 did not attend because there would be “real consequences”. It would be important for the public to know that an important witness, a former public servant, had flouted an order of the Inquiry.

Discussion and conclusions

GROUND 1

Jurisdiction in international law

60. The general principles on a state’s jurisdictional competence are summarised in Brownlie’s Principles of Public International Law (9th ed., 2019, written by the late James Crawford SC, who was Whewell Professor of International Law at the University of Cambridge and later a judge of the International Court of Justice), Chapter 21, page 440. Jurisdiction is there said to be an aspect of sovereignty. It refers to a state’s competence under international law to regulate the conduct of natural and juridical persons. The notion of regulation includes the activity of all branches of the state: legislative, executive and judicial. As Brownlie makes clear, international law draws a distinction between “prescriptive” jurisdiction (the power to make laws, decisions or rules) and “enforcement” or “adjudicative” jurisdiction (the power to take executive or judicial action in pursuance of or consequent on the making of decisions or rules). As we shall see, this distinction is important to some of the submissions made before us by Ms Scolding.
61. As Brownlie goes on to make clear, the starting point is the presumption that jurisdiction (in all its forms) is territorial and may not be exercised extra-territorially without some specific basis in international law. However, Brownlie states that the territorial theory has been refined in the light of experience and what amounts to extra-territorial jurisdiction is increasingly a matter of appreciation. “If there is a cardinal principle emerging, it is that of genuine connection between the subject matter of jurisdiction and the territorial base or reasonable interests of the state in question.”
62. The concept of prescriptive jurisdiction has often arisen in particular in the context of determining which state has competence to enact a criminal law in respect of relevant events and persons. Generally speaking, international law takes the view that the

territorial principle is the primary one. So, if a foreign national is present on the territory of a state, they will usually be subject to that state's criminal laws. Other principles, in particular the nationality principle, may also permit a state to exercise prescriptive jurisdiction outside its own territory. A well-known example is that a British national is subject to the English law of murder and manslaughter even if the offence occurs on the territory of another state and even if the victim is not a British national: this is an example of "prescriptive" jurisdiction. Section 9 of the Offences Against the Person Act 1861 provides that such a person may be tried in the courts of this country: this is an example of "enforcement" or "adjudicative" jurisdiction.

63. Brownlie states, at page 447, that international law increasingly recognises the "effects doctrine", in other words that there may be circumstances in which a state can legitimately exercise prescriptive jurisdiction over persons and acts taking place outside its territory where those acts have effects within its territory. Brownlie suggests that this is controversial "but not objectionable in all cases". We shall return to the effects doctrine as it has been applied in English law later.
64. Turning to enforcement jurisdiction, at page 462, Brownlie states that the unilateral and extra-territorial use of enforcement jurisdiction is impermissible. Accordingly, persons may not be arrested, a summons may not be served, police or tax investigations may not be mounted, and orders for production of documents may not be executed on the territory of another state, except under the terms of a treaty or other consent given. However, the principle of territoriality is not infringed just because a state takes action within its own borders with respect to acts carried out in another state.

The presumption of statutory interpretation in domestic law

65. There is a well-established presumption in English law that a statute does not apply extra-territorially. The presumption is formulated as follows in Bennion, Bailey and Norbury on Statutory Interpretation (8th ed., 2020), section 6.8: "Unless the contrary intention appears, an enactment applies to all persons and matters within the territory to which it extends, but not to any other persons and matters." This is also reflected in section 6.10, which states: "Unless the contrary intention appears, an enactment is taken not to apply to people and matters outside the territory to which it extends."
66. It is important to appreciate the distinction that is drawn there between the "extent" of a statute and its "application". This was emphasised by the House of Lords in *R (Al-Skeini and Ors) v Secretary of State for Defence* [2007] UKHL 26; [2008] AC 153, at paras 40-42 (Lord Rodger of Earlsferry) and paras 86-87 (Baroness Hale of Richmond). The "extent" of a statute refers to the part or parts of the UK where it becomes part of the law. For example, an Act may extend only to England and Wales (so it is part of the law of England and Wales but not in Scotland or Northern Ireland) but it may apply to events that take place outside England and Wales. As Lord Rodger explained in *Al-Skeini*, at para 42, this is sometimes made express, for example section 142(1) of the Sexual Offences Act 2003 provides that it extends only to England and Wales but section 72 of the same Act applies to sexual offences that have taken place elsewhere. The critical distinction between "extent" and "application" was helpfully explained as follows by Baroness Hale, at para 86: "there is an important difference between the *legal system* to which any Act of Parliament extends and the *people* and *conduct* to which it applies." (Emphasis in original)

67. This distinction between the extent and application of a statute was applied by the Court of Appeal (Criminal Division) in *R v Sheppard & Anr* [2010] EWCA Crim 65; [2010] 1 WLR 2779, at para 31 (Scott Baker LJ), although *Al-Skeini* was not referred to in that judgment. We will return to that important judgment later.
68. In the present context, the extent of the 2005 Act is the whole of the UK, not only England and Wales, but, as we have noted, that does not answer the question as to whether it can apply to persons or events outside the territory of the UK.
69. We acknowledge that, in circumstances where the presumption against extra-territorial application of a statute applies, it creates a high threshold. The Supreme Court decision in *R (Marouf) v Secretary of State for the Home Department* [2023] UKSC 23; [2025] AC 130 concerned whether the public sector equality duty in section 149(1)(b) of the Equality Act 2010 has extra-territorial effect. The Supreme Court held that it does not. At paras 38-41 Lady Rose JSC, with whom the other members of the Court agreed, rejected the suggestion by counsel in that case that the presumption against extra-territorial effect of legislation has been diluted in recent case law, such as *Cox v Ergo Versicherung AG* [2014] UKSC 22; [2014] AC 1379, at para 29 (Lord Sumption JSC). She said that it remains a “well-established principle”. While she recognised that the presumption may be rebutted by implication and not only by express words, it imposes “a high threshold that needs to be overcome”: see para 41.
70. Nevertheless, an important issue that arises in the present case is whether the presumption arises in the first place.

The “effects doctrine” and the “substantial measure” test in domestic law

71. The “effects doctrine” was recognised in the decision of the House of Lords in *Treacy v Director of Public Prosecutions* [1971] AC 537. In that case the appellant had posted a letter in the Isle of Wight, written by him and addressed to a woman in West Germany demanding money with menaces. The appellant contended that the court had no jurisdiction to try him in England as the offence had not been committed until the letter was received outside England. By a majority of three to two, the House of Lords held that the offence of blackmail in section 21 of the Theft Act 1968 had been committed when the appellant had written and posted the letter in England.
72. What is of interest for present purposes is the speech of Lord Diplock (who was in the majority), which considered the more general issue of cross-border criminal conduct. At page 560, Lord Diplock noted that criminal law is about the right of the state to punish persons for their conduct. Conduct consists of “a person’s doing or, less frequently, omitting to do physical acts, and the definition of the crime always contains a description of physical acts or omissions ...”. But, he continued, the definition may in addition provide that the defined conduct only becomes the defined crime if it is followed by particular consequences and those consequences may take place in a different place from where the original conduct took place.
73. At page 561, Lord Diplock considered the scenario where the consequences of an act in the UK take effect outside its territory. He could see no reason to suppose that Parliament should not empower a court in the UK to punish persons for such conduct wherever the consequences took effect. He also considered the converse situation. “It would be an unjustifiable interference with the sovereignty of other nations over the conduct of persons in their own territories if we were to punish persons for conduct

which did not take place in the UK and had no harmful consequences there. But I see no reason in comity for requiring any wider limitation than that upon the exercise by Parliament of its legislative power in the field of criminal law.”

74. Lord Diplock continued, at page 562, that he could see no reason in comity to prevent Parliament from rendering liable to punishment, if they subsequently come to England, persons who have done outside the UK physical acts which have had harmful consequences on victims in England. He said that “comity gives no right to a state to insist that any person may with impunity do physical acts in its own territory which have harmful consequences to persons within the territory of another state. It may be under no obligation in comity to punish those acts itself, but it has no ground for complaint in international law if the state in which the harmful consequences had their effect punishes, when they do enter its territories, persons who did such acts.”
75. We can see no reason in principle why those comments should not also apply to an *omission* that takes place outside the territory of the UK but has consequences here. As Lord Diplock himself had recognised earlier in his speech, criminal conduct can consist of either acts or omissions.
76. Developments in this area of law after the decision in *Treacy* were summarised by the Court of Appeal in *Sheppard*, at para 21. In the Supreme Court of Canada, in *Libman v R* (1985) 21 DLR (4th) 174, at page 221, La Forest J said: “The English courts have decisively begun to move away from definitional obsessions and technical formulations aimed at finding a single situs of a crime by locating where the gist of the crime occurred or where it was completed. Rather, they now appear to seek by an examination of relevant policies to apply the English criminal law where *a substantial measure of the activities constituting the crime* take place in England, and restrict its application in such circumstances solely to cases where it can seriously be argued on a reasonable view that these activities should on the basis of international comity be dealt with by another country.” (Emphasis added) As the Court noted in *Sheppard*, that statement by La Forest J has subsequently been cited with approval by the Judicial Committee of the Privy Council and the Court of Appeal (Criminal Division): see e.g. *R v Smith (Wallace Duncan)* [1996] 2 Cr App R 1, at page 20 (Rose LJ) and *R v Smith (Wallace Duncan) (No 4)* [2004] EWCA Crim 631; [2004] QB 1418, at para 55 (Lord Woolf CJ).
77. In *Sheppard* the “substantial measure” test identified by La Forest J in *Libman* was applied by the Court of Appeal to the offence in section 19 of the Public Order Act 1986 of publishing written material which is threatening, abusive or insulting with intent to stir up racial hatred or where such hatred is likely to be stirred up. The defendants had posted material on the internet. They resided and operated in England but the website was hosted by a server in California. The server converted the format to HTML which rendered it accessible on the internet. A police officer downloaded the material in England. The Court of Appeal concluded, at para 24, that there was “abundant material” to satisfy the “substantial measure” test in that case.

Sections 35 and 36 of the 2005 Act

78. We respectfully agree with the analysis of sections 35 and section 36 of the IA 2005 by Gillen J in *In the matter of Ian Paisley* [2008] NIQB 158. At para 22, Gillen J considered that the section 35 route was “clearly punitive” if adopted by the chairman of an inquiry. The chairman may himself institute proceedings. The wording of section

35 includes references to “an offence” and provides that an offence under that section is liable on summary conviction to a fine or imprisonment. In contrast, as Gillen J explained at paras 24-28, the provisions of section 36 are not expressed in the language of a criminal offence. The purpose of that section is “not primarily punitive”: see para 25. It is more akin to the concept of a civil contempt, when an order of a court is breached. Its purpose is for the benefit of the inquiry as a step towards securing compliance with its order, in other words to obtain the relevant information rather than to punish. As Gillen J explained at para 28: “It is neither punitive in nature nor bent on vindicating the authority of the tribunal or court at this stage. Rather it is coercive or remedial in concept, calculated towards taking a further step to secure compliance notwithstanding the use of the word enforcement.”

79. Nevertheless, we recognise that the issue of a notice under section 21 cannot be separated from the potential criminal consequences set out in section 35. We do not accept Ms Scolding’s submission that section 21 is concerned only with the public law question of whether there is *vires* to issue a notice. This is because the issue of that notice, without more, requires the person to whom it is addressed to comply with it and, if they do not, renders them liable to the criminal jurisdiction set out in section 35. The fact that there is the alternative non-punitive route in section 36 does not detract from this.
80. Accordingly, we consider that this Court has to analyse the nature of a section 21 notice as part and parcel of a package which includes the criminal provisions of section 35. The question then becomes whether Parliament intended that package of provisions to be applicable in circumstances such as the present, where HN86 resides outside the territory of the UK. This is an exercise of statutory interpretation, to be conducted applying the well-established canons of construction, including the presumption against extra-territorial application.

Analysis

81. In order to answer that question it is necessary to analyse with some care what exactly is the nature of the issue of a notice under section 21, read with the criminal provisions of section 35. This can be approached by reference to a number of hypothetical scenarios in which a section 21 notice is issued to a witness, requiring that person to attend the inquiry in London on a certain date at a certain time.
82. Scenario 1: the witness is resident in England or Wales and fails to turn up at the time required by the notice. It is common ground that person is guilty of a breach of the notice and, subject to any defences that may be available, is liable to criminal sanctions under section 35.
83. Scenario 2: the facts are the same as in scenario 1 but the witness is resident in Scotland or Northern Ireland. Again, there would be no difficulty in reaching the same conclusion, since the extent of the 2005 Act is the whole of the UK and not only England and Wales.
84. Scenario 3: the facts are the same as in scenario 1 but, on the relevant day of the inquiry, the witness is outside the territory of the UK, perhaps on holiday or business. In our view, this cannot affect the above analysis. The witness has chosen to absent himself when he or she was required to attend the inquiry and has breached the notice. No doubt in practice, such a scenario would not arise because the inquiry staff would seek

to negotiate with the witness to avoid dates when they were going to be abroad on holiday or for some other good reason, but that cannot affect the true legal analysis of scenario 3.

85. Scenario 4: the facts are the same as in scenario 1 save that, on the date when the section 21 notice is issued, the witness is outside the territory of the UK. Again, in our view, this cannot affect the legal analysis. The notice is validly issued. Parliament cannot have intended that its validity should turn on the happenstance of whether the witness is in the territory of the UK or not on the date of issue. Similarly, if the witness happens to be outside the territory of the UK on the date when the notice is served upon him or her. It cannot be the date of the service of the notice that is critical. What is critical is that the witness is required to be in the UK on a certain date at a certain time. It is only at that moment that the breach of the notice and the potential criminal consequences in section 35 arise.
86. This brings us to the nub of the problem in the present case. The purpose of a section 21 notice is to require the witness to attend the inquiry on a certain date at a certain time. The failure to attend at the due time is an offence of omission. Up to that moment, it is still possible in law for the witness to comply and so avoid criminal liability.
87. The fact that the witness happens to be resident in another country outside the UK does not alter the nature of that offence of omission at that time and place. In principle, there is no material difference between that scenario and the one where the witness is abroad on holiday or business: in both scenarios the witness is outside the territory of the UK at the relevant time, when they should be in London at the inquiry. We consider that, in neither scenario, is this in substance an exercise of extra-territorial jurisdiction by the UK Parliament. The offence, or at least a substantial part of it, takes place in the territory of the UK: where there should be a witness, there is an empty chair.
88. We emphasise that we are here addressing the subject of prescriptive jurisdiction, as that term is used in international law, and as explained by Brownlie (above). In one or more of the hypothetical scenarios there may arise questions about what practical steps could be taken by the inquiry to secure compliance with the notice if the witness is abroad but those problems could arise in principle even if the witness is not resident abroad but has chosen to go there simply to avoid compliance with the notice. As is common ground, an offence in section 35 is not an extraditable one under the Extradition Act 2003. But, in principle, these are problems to do with *enforcement* jurisdiction, not *prescriptive* jurisdiction. Indeed, such problems can arise even in a case where everyone accepts that a person is subject to the prescriptive jurisdiction of the UK, for example where he commits a murder in another state with which there is no extradition treaty. Police officers from the UK cannot arrest that person in the territory of that other state nor take any other steps by way of enforcement without the consent of that state. While we recognise, as we must in accordance with the authorities (to which we refer below), that practical problems of enforcement are relevant to the question of statutory interpretation, they cannot be dispositive, and they are conceptually distinct from the question of prescriptive jurisdiction.
89. In our view, the correct analysis of the present legislative context is that it is not in truth an exercise of extra-territorial jurisdiction but rather is an example of the “substantial measure” doctrine to which we have referred above. The substantial measure of the activities which are made criminal by section 35 takes place in the UK.
90. Although this is not necessary to that conclusion, our view about section 21(1) of the 2005 Act is reinforced by the consideration that, in our view, a notice issued under

section 21(2) could also be breached by a person who is outside the territory of the UK. A notice under that subsection may require a person, for example, to provide evidence to the inquiry in the form of a witness statement, or to provide any documents in his custody or under his control that relate to a matter at the inquiry. Suppose a hypothetical case in which the person on whom such a notice is served deliberately gives false evidence in a witness statement, or alters or fabricates documents that are provided to the inquiry. The fact that that person is outside the territory of the UK at the time when they write the witness statement or send the documents, or even that they are permanently resident overseas, would not, in our view, detract from the fundamental feature of such a case that they had done acts which have highly damaging consequences in the UK. That would be a legitimate application of the “effects doctrine” to which we have referred above. It would also be an example where the “substantial measure” test in cases such as *Sheppard* would be satisfied. We note that, in a section 21(2) case, there would clearly be “acts” and not simply omissions which had taken place abroad but, as we have observed, they would have serious consequences in the UK. For section 35 to criminalise such conduct in a section 21(2) case would not, in our view, contravene any rule of international law or comity.

The main authorities relied on by the Claimant

91. We turn to the main authorities which are relied on by Mr Sanders in support of the Claimant’s submissions, to see whether they require a different analysis from the one that we consider to be correct in principle. In doing so, we bear in mind that the main authorities are decisions of the Supreme Court, which deserve great respect even if not strictly binding in this case. But we also bear in mind the guidance that has been given by the Supreme Court itself that caution needs to be exercised in applying statements which were made in one statutory context to a different one.
92. The case of *Serious Organised Crime Agency v Perry (Nos 1 and 2)* [2012] UKSC 35; [2013] 1 AC 182 (“*Perry*”) was concerned with a different statute but, more importantly, a different kind of process. It concerned preliminary steps that the claimant (“SOCA”) had taken to allow it to later invoke the powers of Part 5 of the Proceeds of Crime Act 2002 (“POCA”). SOCA intended to use Part 5 of POCA to deprive the first defendant (Mr Perry) and members of his family of the fruits of serious criminal fraud for which Mr Perry had been convicted in Israel (*Perry*, para 1). The Supreme Court’s judgment decided two appeals. The property freezing order appeal (“the PFO appeal”) concerned the lawfulness of a worldwide property freezing order obtained in respect of property held by the defendants (*Perry*, para 1). The disclosure order appeal (“the DO appeal”) concerned the lawfulness of notices given to the defendants under a disclosure order whilst the defendants were outside the jurisdiction (*Perry*, para 1); the notices were communicated to the defendants by letter addressed to a residence that Mr Perry maintained in London (*Perry*, para 6).
93. Regarding the PFO appeal, SOCA had obtained a worldwide PFO pursuant to section 245A of POCA (*Perry*, para 2). The PFO also required all the defendants to disclose all their worldwide assets (*Perry*, para 7). It was common ground that a PFO could only relate to property that can properly be made the subject of a civil recovery order (*Perry*, para 2). The Court concluded that Part 5 of POCA makes provision for *in rem* proceedings in respect of property within the UK but not outside it (*Perry*, paras 12, 74 and 78).

94. The DO appeal challenged the validity of information notices addressed to Mr Perry and his daughters pursuant to a DO issued under Part 8 of POCA (*Perry*, para 84). The Court noted that in relation to Part 5 a disclosure order can be made only if property specified in the application for the order is subject to a civil recovery investigation and the order is sought for the purposes of the investigation (*Perry*, para 84).
95. The relevant provisions concerning the making of a DO under POCA were set out by Lord Phillips PSC at paras 85-87:

“85. Section 357 defines a disclosure order as follows:

‘(4) A disclosure order is an order authorising an appropriate officer to give to any person the appropriate officer considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following - (a) answer questions, either at a time specified in the notice or at once, at a place so specified; (b) provide information specified in the notice, by a time and in a manner so specified; (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(5) Relevant information is information (whether or not contained in a document) which the appropriate officer concerned considers to be relevant to the investigation.’

86. Section 358 sets out the requirements for making a “disclosure order”:

‘(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that ... (b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property ...

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.’

87. Section 359(1) provides that a person commits an offence if without reasonable excuse he fails to comply with a requirement

imposed on him under a disclosure order. The offence carries a maximum sentence on summary conviction of imprisonment for six months. Section 359(3) provides for the more serious offence of knowingly or recklessly making a false statement in purported compliance with a requirement imposed under a disclosure order. This carries a maximum sentence of two years' imprisonment in respect of a conviction after a trial on indictment."

96. The Court of Appeal had held, by a majority, that the notices in question were valid, despite having been given to persons who were outside the territory of the UK (*Perry*, paras 91-92). Carnwath LJ had reasoned as follows (cited by the Supreme Court in *Perry* at para 92):

"50. ... is there any reason why persons who are reasonably considered to have an interest in property validly subject to a disclosure order, and who have a sufficient presence within the jurisdiction for a notice to be effectively given to them, should be treated as outside the 'legislative grasp' of the statutory scheme?

51. As a matter of common sense, it is difficult to see why mere presence in or absence from the country at the time of sending or delivery of the notice is the critical factor. For example, a person normally resident at an address in this country could not sensibly seek to deny that the notice had been 'given' to him at that address, merely because he happened to be out of the country at the time (for example, on a business or holiday trip)."

97. Ward LJ had concluded that Part 5 of POCA had extra-territorial effect and that Part 8 acted in the same way (as explained by the Supreme Court in *Perry* at para 93).
98. By contrast, the Supreme Court held that the authority under section 357 of POCA to give a notice requiring a person to provide information could only be exercised in respect of a person within the territory of the UK (per Lord Phillips PSC):

"94. The point is a very short one. No authority is required under English law for a person to request information from another person anywhere in the world. But section 357 authorises orders for requests for information with which the recipient is obliged to comply, subject to penal sanction. Subject to limited exceptions, it is contrary to international law for country A to purport to make criminal conduct in country B committed by persons who are not citizens of country A. Section 357, read with section 359, does not simply make proscribed conduct a criminal offence. It confers on a United Kingdom public authority the power to impose on persons positive obligations to provide information subject to criminal sanction in the event of non-compliance. To confer such authority in respect of persons outside the jurisdiction would be a particularly startling breach

of international law. For this reason alone I consider it implicit that the authority given under section 357 can only be exercised in respect of persons who are within the jurisdiction.”

99. In our view, the case of *Perry* can be distinguished from the present one. Not only was it concerned with a different statute, albeit we acknowledge that the terms of section 357 of POCA bear some similarity to section 21 of the 2005 Act, but the facts were far removed from the context of a public inquiry with which we are concerned. The particular issue in that case was concerned with a person who was a foreign national, resident abroad, who was required by the notice in that case to provide documents. A failure to comply with that notice would have taken place entirely outside the territory of the UK, and so the analysis of the present case which we have set out above would not apply. We note that the line of authority from *Treacy* to *Sheppard* which we have cited above is not mentioned or discussed in the judgment of Lord Phillips, although it is recorded in the law report that *Treacy* was cited in argument. This is another indicator that the issue in that case was very different from that which we have to decide in the present case.
100. In the case of *R (KBR Inc) v Director of Serious Fraud Office* [2021] UKSC 2; [2022] AC 519 (“*KBR*”), the Serious Fraud Office (“SFO”) had given a notice on behalf of the Director of the SFO to an officer of the appellant company (“KBR Inc”) at a meeting in London, pursuant to section 2(3) of the Criminal Justice Act 1987 (“the 1987 Act”) (*KBR*, para 1). As set out at para 1 of the judgment, the notice required KBR Inc, a US company, to collate material held abroad and produce it to the SFO under criminal penalty for failing to do so. KBR Inc did not have a fixed place of business in the UK and had never carried on business in the UK. KBR Inc sought to quash the notice on the ground that section 2(3) of the 1987 Act does not have extra-territorial effect. KBR Inc contended that there was no jurisdiction for the SFO to issue the notice requiring the production of material held by it outside the UK.

101. The Supreme Court set out the relevant provisions at paras 14-16:

“14. Section 2(3) provides:

‘The Director may by notice in writing require the person under investigation or any other person to produce at such place as may be specified in the notice and either forthwith or at such time as may be so specified, any specified documents which appear to the Director to relate to any matter relevant to the investigation or any documents of a specified description which appear to him so to relate; and— (a) if any such documents are produced, the Director may— (i) take copies or extracts from them; (ii) require the person producing them to provide an explanation of any of them; (b) if any such documents are not produced, the Director may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.’

15. Sections 2(4) and 2(5) provide:

‘(4) Where, on information on oath laid by a member of the Serious Fraud Office, a justice of the peace is satisfied, in relation to any documents, that there are reasonable grounds for believing— (a) that— (i) a person has failed to comply with an obligation under this section to produce them; (ii) it is not practicable to serve a notice under subsection (3) above in relation to them; or (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and (b) that they are on premises specified in the information, he may issue such a warrant as is mentioned in subsection (5) below.

‘(5) The warrant referred to above is a warrant authorising any constable— (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises, and (b) to take possession of any documents appearing to be documents of the description specified in the information or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.’

16. Section 2(13) provides that any person who without reasonable excuse fails to comply with a requirement imposed on him under section 2 shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine, or both.”

102. The judgment was given by Lord Lloyd-Jones JSC, with whom the other members of the Court agreed. In interpreting section 2(3) of the 1987 Act, the Supreme Court took the following steps:
- i) The starting point was the domestic law presumption that legislation is generally not intended to have extra-territorial effect (*KBR*, para 21).
 - ii) International law recognises a legitimate interest of states in legislating in respect of the conduct of their nationals abroad. Nationals travelling or residing abroad remain within the personal authority of their state of nationality and, consequently, a state may legislate regarding their conduct when abroad subject to limits imposed by the sovereignty of the foreign state. In such circumstances the strength of the presumption against extra-territorial application of legislation will be considerably diminished and may not apply at all (*KBR*, para 23).
 - iii) The rationale of the presumption against extra-territorial effect is also rooted in the concept of comity (*KBR*, para 24). This makes the resulting presumption in domestic law more extensive than if it was rooted in international law obligations alone (*KBR*, para 25). The Court noted that “it is not necessary, in invoking the presumption, to demonstrate that the extra-territorial application of the legislation in issue would infringe the sovereignty of another state in violation of international law”.

- iv) It was common ground between the parties that if the addressee had been a British registered company section 2(3) would have authorised the service of a notice to produce documents held abroad by that company. It was emphasised that KBR Inc had never carried on business in the UK or had a registered office or any other presence here. These factors meant the presumption against extra-territorial effect clearly applied (*KBR*, para 26).
- v) The Court stated that whether the presumption was rebutted by the language of the statute depended “on the wording, purpose and context of the legislation considered in the light of relevant principles of interpretation and principles of international law and comity” (*KBR*, para 27).
- vi) With regards to whether the presumption was rebutted, the Supreme Court noted:
 - a) Where legislation is intended to have extra-territorial effect Parliament frequently makes express provision to that effect (*KBR*, para 28). The more exorbitant the jurisdiction, the more likely an express provision is required (*KBR*, para 28).
 - b) “An intention on the part of Parliament to give extra-territorial effect to a statutory provision may also be implied, *inter alia*, from the scheme, context and subject matter of the legislation” (*KBR*, para 29). Lord Lloyd-Jones was “unable to find any clear indication, either for or against the extra-territorial effect, in the other provisions of the 1987 Act” (*KBR*, para 29).
 - c) Impracticability of enforcement is a particularly relevant consideration when determining whether a statutory provision has extra-territorial scope but it does not follow that all provisions in a statute have the same territorial ambit (*KBR*, para 29). That section 2(4) and (5) provided for a requirement to provide documents to be enforced by the issuing of a warrant authorising any constable to enter and search premises and to take possession of documents, this did not necessarily prevent the extra-territorial application of section 2(3) “notwithstanding the fact that the enforcement procedure for which they provide would not be available” (*KBR*, para 29).
 - d) With regards to whether an intention to give a statute extra-territorial effect may be implied having regards to the purpose of the legislation, Lord Lloyd-Jones said as follows:

“31. There is, however, greater force in a further submission on behalf of the SFO. It is clear that an intention to give a statute extra-territorial effect may be implied if the purpose of the legislation could not effectually be achieved without such effect (*Cox v Ergo Versicherung AG* [2014] AC 1379, para 29, per Lord Sumption JSC). On behalf of the SFO, Sir James Eadie QC submits that the territorial scope of section 2(3) must be considered in the light of the public interest in the effective investigation of serious fraud, as reflected in international instruments such as the

Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) ('the OECD Convention'). [...]

32. The question whether such a purposive reading is capable of rebutting the presumption against extra-territorial application will depend on the provisions, purpose and context of the particular statute. It also requires consideration of the legislative history of the statute and whether Parliament can be taken to have intended that the purpose of the legislation be achieved by other means, matters to which I now turn."

- vii) Lord Lloyd-Jones noted that the relevant provisions of the 1987 Act were enacted to give effect to the Roskill Report and concluded that there was nothing in the report "which recommends the creation of a statutory power which would permit UK authorities unilaterally to compel, under threat of criminal sanction, the production in this country of documents held out of the jurisdiction by a foreign company. On the contrary it emphasises the importance of establishing reciprocal arrangements for obtaining evidence from abroad." (*KBR*, para 36). Consideration of the legislative history of the Bill that became the 1987 Act and the history of subsequent legislation led to the conclusion that Parliament had "developed the structures in domestic law which permit the United Kingdom to participate in international systems of mutual legal assistance in relation to both criminal proceedings and investigations" and that it was "improbable" that Parliament had intended a parallel system to exist under s.2(3) of the 1987 Act (*KBR*, paras 37-45).
- viii) With regards to the decision in *Perry*, in *KBR* Lord Lloyd-Jones noted that judicial decisions concerning the effect of different statutory provisions may be instructive by way of analogy but they need to be approached with some caution (*KBR*, para 46). However, Lord Lloyd-Jones noted the "close similarities" between the provisions in *Perry* and in *KBR* (*KBR*, para 49) and, with regards to the Divisional Court's attempts to distinguish *Perry*, said as follows:

"53. In the present case the Divisional Court attempted to distinguish *Perry*. First, *Perry* obviously concerned a different statute and a different issue. The exercise of statutory interpretation must address the specific provisions and context of the statute under consideration. However, as I have already observed, there is a striking similarity between *Perry* and the present case. While it is not possible simply to read over the conclusion as to the ambit of the legislation in *Perry* to the circumstances of the present case, the similarity of the provisions and the issues under consideration is such that the reasoning of *Perry* is strongly supportive of the view that section 2(3) of the 1987 Act was not intended to confer a power to require disclosure by a foreign person abroad.

54. Secondly, Gross LJ observed that the critical consideration in *Perry* was that the persons to whom the notices were given were outside the jurisdiction and that it can fairly be said that *Perry* was not concerned with the giving of a notice to a person within the jurisdiction, in respect of documents or information held outside the jurisdiction. However, to my mind the fact that in the present case the July notice was served on Ms Akerson when she was induced to travel to the United Kingdom to attend a meeting with the SFO in London is not a material distinction. The intended recipient of the notice was KBR Inc and it remains the case that the SFO is seeking disclosure of documents situated abroad from a company incorporated in the United States which had no fixed place of business in the United Kingdom and did not carry on business here.

55. Thirdly, Gross LJ sought to distinguish *Perry* on the basis that the addressees of the notices in that case had no connection with the United Kingdom other than the presence of assets here. That, of course, begs the question whether such a test should be applied in the present context, a matter to which I will return. Such a test played no part in the reasoning of Lord Phillips PSC with whose judgment and reasoning on this point all the other members of the court agreed. Hughes LJ, in a concurring judgment, went on to make the following observation (at para 156) which is particularly pertinent to the present case:

‘For my part, if it were possible to construe the complex provisions of POCA in such a way as to admit of limited extraterritorial effect for Part 5, but only where there is a sufficient jurisdictional connection between a part of the UK and the criminal proceeds, I should have wished to do so. I am, however, reluctantly persuaded that this cannot be achieved by construction and would involve illegitimately re-writing the statute.’

56. Following the decision of the Supreme Court in *Perry*, Parliament responded by amending the 2002 Act in the Crime and Courts Act 2013, Schedule 19, paragraph 26 which introduced sections 375A and B. It is significant that in this amendment Parliament has not conferred on SOCA the power to demand information from abroad on pain of criminal penalties but has made provision for a mutual legal assistance procedure which respects international comity through international agreement, reciprocity and mutually agreed conditions.”

- ix) Lord Lloyd-Jones noted the decision in *R (Jimenez) v First-tier Tribunal (Tax Chamber)* [2019] 1 WLR 2956; [2019] EWCA Civ 51, in which the Court of Appeal had held that para 1 of Schedule 36 to the Finance Act 2008 empowered HMRC to issue a notice requiring a UK taxpayer resident outside the United

Kingdom to provide information for the purpose of checking his tax position. Lord Lloyd-Jones observed that the Court of Appeal in that case had explicitly had regard to the considerations (1) that the subject matter and purpose of the legislation was not concerned with the facilitation of private litigation but with the prevention of tax evasion which often has a cross-border aspect to it and which serves an important public purpose in maintaining public revenue; and (2) that the strong policy objectives of conferring effective investigatory powers on HMRC were bolstered by the language of Schedule 36 itself (*KBR*, para 58). Lord Lloyd-Jones then identified two factors said to implicitly influence the Court's decision in *Jimenez* (*KBR*, para 58): (1) "the powers were necessarily and only exercisable in relation to someone who is or may be liable for tax in the United Kingdom and who, to that extent, had an identifiable relationship with the United Kingdom". It was therefore a person's status as a UK taxpayer rather than their place of residence which was the key to the availability and operation of the power; and (2) "non-compliance with a notice was not made a criminal offence and so the presumption that a statute should not be construed as making conduct abroad a criminal offence had no application". With regards to the facts of *KBR*, Lord Lloyd-Jones concluded that the case bore a much stronger resemblance to *Perry* than to *Jimenez* (*KBR*, para 59), on the basis that: (1) section 2(3) of the 1987 Act did not identify any connection between a non-UK based recipient of a section 2(3) notice capable of founding and limiting subject-matter jurisdiction; and (2) the failure to comply with a notice imposed under section 2(3) of the 1987 Act could amount to a criminal offence.

103. In our view, the decision in *KBR* is also distinguishable from the present case, essentially for the same reasons as *Perry*, which the Supreme Court considered was materially similar to *KBR*, although it concerned a different statute. The facts were again far removed from those of a public inquiry and the issue that arose for determination was different from that which arises in the present case. Again, we note that the line of authority to which we have referred above, from *Treacy* to *Sheppard*, was not mentioned or discussed in *KBR*, doubtless because it did not need to be.

Further considerations

104. We also bear in mind the following features of the present context:
- i) In cases involving section 21 of the IA 2005, it can be said that the statute itself ensures that there is a sufficient connection with the UK to ground subject-matter jurisdiction, which was not the case with regards to section 357 of POCA in *Perry* or section 2(3) of the 1987 Act in *KBR*. In cases where the chairman of an inquiry requires a person to give evidence or produce documents, there must be a connection between that person and the events that are the subject of the inquiry. If there is no such connection, the section 21 notice could be challenged under section 21(4) or by judicial review proceedings. This distinguishes the situation from that in *Perry*, where disclosure was sought to allow for the confiscation of property following conviction in a foreign jurisdiction, and the situation in *KBR*, where it was emphasised that *KBR* Inc had no fixed place of business in the UK and did not carry on business in the UK (*KBR*, para 54).
 - ii) There is a very strong public interest in ensuring that public inquiries have access to the information necessary to ensure their efficacy. In *KBR*, it was

noted that the case of *Jimenez* had not been concerned with the facilitation of private litigation and that collection of tax revenue serves an important public purpose (at para 58). There is a particularly strong public interest in ensuring the effectiveness of public inquiries, given that inquiries often investigate actions taken by the state or public institutions, rather than the actions of private individuals.

- iii) This is reinforced by the consideration that the “events” mentioned in section 1 of the Act are not stated to be only events in the UK. It is notorious that events that take place abroad but which have a close connection to the UK, for example because its armed forces or intelligence services have been or may have been involved, may well give rise to public concern in the UK. It would be unfortunate, to say the least, if the effectiveness of an inquiry into such events was hampered by the happenstance that one or more witnesses was resident abroad and was not willing to attend voluntarily to give evidence.
- iv) Although HN86 was and remains a British national, in our view, this is not the, or even a, crucial factor in the present context. On analysis, this is not a context in which the UK needs to rely on the nationality principle because it is not in truth seeking to exercise prescriptive jurisdiction outside its territory. We do not consider that the principled answer to the issue which arises in the present case would differ even if the relevant witness were a foreign national. Again take a hypothetical case. Suppose a public inquiry is taking place in the UK investigating matters of concern to the British public about something that has happened in a National Health Service hospital. It is entirely possible that an important witness may be a foreign national, perhaps a retired doctor or nurse, who is now resident in another country. If one asks what was the intention of Parliament in enacting section 21 of the IA 2005, it is entirely reasonable to consider that it must have intended that it should be lawful for the chairman of the inquiry to issue a section 21 notice requiring that person to give evidence at the inquiry in the UK.
- v) Of course we recognise that in that kind of situation, as in many others, practical considerations will mean that the inquiry will have to act sensitively to meet the reasonable concerns of a witness. If there are medical or other good reasons why a witness cannot attend to give evidence in person, no doubt practical arrangements will be explored to assist that witness to give evidence remotely. If they do travel to the UK, no doubt their reasonable expenses of travel and accommodation will be paid by the inquiry. But those practical considerations do not mean that a witness is able simply to defy the notice requiring their evidence to be given. We have concluded that Parliament has given the chairman of the inquiry the power to issue a section 21 notice in a case like the present.

Conclusion on Ground 1

105. For the reasons we have given, we reject Ground 1.

GROUND 2

106. Although the Defendant's skeleton argument raised an issue as to the Claimant's lack of standing to bring this aspect of the claim, the objection rather fell away during the course of oral argument. Given that the issue of standing goes to jurisdiction, we consider that we should still address it.
107. Mr Bishop drew attention to para 6.3.2.7 of the *Administrative Court Judicial Review Guide 2025* which states:
- “If one or more claimants are directly affected or otherwise well placed to bring the claim that may mean that others who are not directly affected, or are less well-placed to bring the claim, will lack standing.”
108. Whereas there is some force in the contention that HN86 is better placed to advance Ground 2 than the Claimant, it does not follow, nor does the *Guide* suggest, that the latter inevitably lacks standing. It is simply a factor to be borne in mind by the Court.
109. The general principles have been recently restated in the decision of this Court (Singh LJ and Swift J) in *R (Good Law Project Ltd and another) v Prime Minister and another* [2022] EWHC 298 (Admin), at paras 16-29. This Court held that the Claimants did not have a sufficient interest to bring an indirect discrimination claim. For the purposes of section 19 of the Equality Act 2010, individuals who were directly and personally affected by the measure complained of did exist but had not come forward, and the Claimants were not permitted to advance on a surrogate or vicarious basis the claims that could have been brought.
110. We consider that the position in the instant case is rather different. The Claimant was established in 2017 as the means of providing optional independent inquiry representation to some but not all serving and former MPS personnel. The Defendant granted the Claimant core participant status to achieve that objective. HN86 is one of the former MPS personnel whom the Claimant represents in the Inquiry. In our judgment, the Claimant should be permitted to represent all the Claimant's interests before us. We do not consider that it can be right either in principle or authority (see *R (Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370; [2003] 1 P&CR 19) to hold that the Claimant has a sufficient interest in relation to the first ground but not the second, even if the second ground is more closely concerned with HN86's own specific personal circumstances. To be fair to him, Mr Bishop accepted this point in oral argument.
111. Turning to the substance of Ground 2, it is not in dispute that the Defendant owes both statutory (see section 17(3) of the IA 2005) and common law duties of fairness to the Claimant. We were referred to a number of authorities and textbook citations which it is unnecessary to mention specifically. What fairness requires in any given factual structure depends on the context, including the statutory scheme within which the Defendant must operate. As Toulson LJ pithily stated in para 35 of his judgment in *R (Associated Newspapers Ltd v The Rt Hon Lord Justice Leveson (as Chairman of the Leveson Inquiry))* [2012] EWHC 57 (Admin), “a duty of fairness does not exist in a vacuum”.
112. There have been no decisions in this jurisdiction which address what fairness may require in the context of section 21 of the IA 2005. In the High Court of Justice in

Northern Ireland, Scoffield J addressed that very question in a slightly different context in *The Muckamore Abbey Hospital Inquiry* case [2023] NIKB 107. Following an extensive review of authority, much of it from this jurisdiction, Scoffield J held that fairness did not demand that a witness be given advance notice of an Inquiry's intention to issue a section 21 notice should the need arise, and that there were a number of public policy reasons militating to the contrary. We have carefully considered this judgment and respectfully agree with the conclusion reached. It is further supported by Mr Bishop's submission, which we accept, that an opportunity for the subject of a section 21 notice to make representations about it arises under sub-section (4). Subject to the Claimant's narrower legitimate expectation argument, this disposes of Ground 2.

113. The Claimant's written argument mentions, without explaining or developing, the principle of "procedural legitimate expectation", although its solicitor, Ms Sabrina Castiglione, has set out in her first witness statement statements made by the Defendant on which reliance is placed. However, we accept Mr Bishop's submission, as foreshadowed in the Inquiry's letter dated 9 October, that the Claimant cannot identify any clear, unambiguous and unqualified statement made or practice adopted by the Defendant which might satisfy this principle. Whereas it is true that the Defendant did clearly state that a witness cannot be forcibly brought to this country from overseas (which is correct), he did not state that a section 21 notice either could not or would not be issued should the need arise. It follows that the Claimant's legitimate expectation argument cannot succeed.
114. In any event, an examination of what happened in this case demonstrates that the Defendant did not act unfairly. On 1 August 2025 a provisional indication was given that the Defendant would like HN86 to give oral evidence. On 24 September, after having been informed that the Claimant was taking instructions from HN86 and after some delay had accrued, the Defendant's view was communicated to the Claimant that if HN86 was not willing to return to the jurisdiction but was prepared to give evidence remotely, that would be something that the Defendant would be happy to facilitate. On the same day, there was a flurry of email correspondence culminating in the Claimant stating that HN86 was not agreeing to give evidence either in person or remotely, but was not applying to be excused on medical grounds. On 29 September the Deputy Solicitor to the Inquiry explained to the Claimant that it was now necessary to serve a section 21 notice, but the offer to attend remotely was repeated. The Inquiry Solicitor has given a detailed explanation in these proceedings as to why, in the Defendant's assessment, it was necessary to serve a section 21 notice at that time. In our judgment, this did not come as a "bolt from the blue", and the Defendant did not act unfairly.
115. Furthermore, the subsequent history is illuminating. Very shortly after the s. 21 notice was served, both parties' positions were very clearly articulated. Had that process occurred before the notice was issued, it is impossible to accept that the outcome would have been any different. Notwithstanding the Claimant's express jurisdictional objection, the Defendant would still have issued the notice and have sought to defend that position should the need arise, as indeed it has done.
116. Mr Sanders submitted that had the Defendant given proper notice then the Claimant could and would have made representations to the Defendant on extra-territoriality, explored the possibility of HN86 giving evidence remotely, and obtained psychiatric evidence. This first point is captured by the Claimant's submissions on the first ground and stands or falls with it (see para 47 of the judgment of Lewis LJ in *R (Wickford*

Development Co Ltd) v Secretary of State for Environment, Food and Rural Affairs [2025] EWCA 882; [2026] PTSR 268). In our judgment, there is a complete air of unreality about the second and third points. As matters stand nearly eight months after the section 21 notice was served, it is only recently that progress has been made in arranging for HN86's evidence to be given remotely, should he wish to do so, and no psychiatric report is available, despite the Defendant pressing for one. Given that the Claimant's stance both before the section 21 notice was issued and in its immediate aftermath was that excusal was not being sought on medical grounds, this third point is particularly unattractive. In our judgment, even on the Claimant's best conceivable case we consider that the time has long since passed when the Defendant would have had to serve a section 21 notice in order to preserve the July hearing dates, assuming for the purposes of this argument that such a notice could not fairly be served in September 2025. It follows that, even if we were wrong in concluding that the Defendant did not act unfairly when the notice was served, we think that for the purposes of section 31(2A) of the Senior Courts Act it is highly likely that the outcome would have been the same had the conduct complained of not occurred; and that relief must be refused. We cannot accept Mr Sanders' submission that declaratory relief could be ordered. Section 31(2A) deals with all forms of relief, not just quashing orders.

117. For all these reasons, we reject Ground 2.

Disposal

118. For all the reasons set out in our judgment, this application for judicial review fails and must be dismissed.