

Neutral Citation Number: [2026] EWCA Civ 1482

Case No: CA-2026-000623
CA-2026-000706

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
The Honourable Mrs Justice Stacey
[2026] EWHC 529 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/11/2026

Before :

LADY JUSTICE ANDREWS

- -

Between :

THE KING (on the application of MANDARIN)	**Claimant/ Appellant**
- and -	
THE SECRETARY OF STATE FOR FOREIGN COMMONWEALTH AND DEVELOPMENT AFFAIRS	**Defendant/ Respondent**
And Between :	
THE KING (on the application of POMPE)	**Claimant/ Appellant**
- and -	
THE SECRETARY OF STATE FOR FOREIGN COMMONWEALTH AND DEVELOPMENT AFFAIRS	**Defendant/ Respondent**

- -
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Phillip Rule KC and **James Tumbridge** (instructed by **Keystone Law**) for the **Mandarin Appellants**
Phillip Rule KC and **Michael Polak** (instructed by **Luke and Bridger Law**) for the **Pompe Appellants**
William Irwin and **John Bethell** (instructed by **Government Legal Department**) for the **Respondent**

Hearing date: 5 November 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20th November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Andrews:

INTRODUCTION

1. As Stacey J ("the Judge") observed in the judgment which is the subject of these applications for permission to appeal [2026] EWHC 529 (Admin) at [6], there is a long and shameful history to the treatment of the inhabitants of the Chagos Islands, which became part of the British Indian Ocean Territory ("BIOT") when it was created in 1965. That history is recorded in the findings of a number of judgments in the jurisdiction of England and Wales and the European Court of Human Rights in various proceedings that have been brought since the 1970s. The Judge summarised that history and the previous Chagos litigation in her judgment, and there is no need for me to repeat it here. I will only set out enough of the background to put into context the submissions made on behalf of the Claimants by Phillip Rule KC in support of their applications.

2. In November 1965, the Chagos Islands, formerly governed as part of the British colony of Mauritius, became part of the newly-formed BIOT. The United Kingdom subsequently agreed to make the BIOT available to the USA for defence purposes. Mauritius became independent in 1968. In 1971 the USA took over Diego Garcia, the largest island, as a military base. The BIOT Immigration Ordinance 1971 provided for the indigenous population to be compulsorily removed and, by section 4, prohibited them from returning to the islands.

3. In 2000 Mr Bancoult, who was born in the BIOT, successfully claimed judicial review by way of an order from the Divisional Court quashing section 4 of the 1971 Ordinance. The UK Government did not appeal that decision. It had already commissioned a feasibility study into the prospects of resettling Chagossians on the outer islands, and decided to await its conclusions. A new Immigration Ordinance was promulgated in 2000, and for a brief period thereafter until 2004, Chagossians were allowed to go to any of the islands, other than Diego Garcia, without the need for an entry permit, though other visitors were required to obtain one. However, nobody settled there. The economic reality was that they could not do so without substantial financial support from the UK Government. In practical terms, the only course was to await the outcome of the feasibility study and a decision from the UK Government about whether to provide that support.

4. The feasibility study concluded that the long-term cost of resettlement was likely to be prohibitive, and that even in the short term, natural events such as storms and seismic activity were likely to make life difficult for a resettled population. Concerns had also been expressed by the USA about security issues, and although in terms of settlement on the outer islands Lord Hoffmann subsequently remarked that those concerns could be described as "fanciful speculation," they were matters that the UK Government was entitled to take into account. The UK Government decided not to proceed with resettlement, and in 2004 immigration controls were reintroduced.

5. Section 9 of the BIOT (Constitution) Order 2004 ("the Constitution Order") states that:

> "(1) Whereas the Territory was constituted and is set aside to be available for the defence purposes of the Government of the United

> Kingdom and the Government of the United States of America, no person has the right of abode in the Territory.
>
> (2) Accordingly, no person is entitled to enter or be present in the Territory except as authorised by or under this order or any other law for the time being in force in the Territory."

The BIOT (Immigration) Order 2004 ("the Immigration Order") repealed the 2000 Immigration Ordinance and provided, among other matters, that no person shall enter the Territory or be present there without a permit. That remains the position today.

6. Two unsuccessful attempts were made by Chagossians to challenge the lawfulness of the 2004 Orders. The House of Lords in *R(Bancoult) v Foreign Secretary (No 2)* [2008] UKHL 61; [2009] 1 AC 453 ("*Bancoult (No 2)"*) held that an Order in Council made under prerogative powers was susceptible to judicial review. However by a majority (with powerful dissenting judgments by Lord Bingham and Lord Mance) they decided that the UK Government had the power to legislate to create or deny the existence of a right of abode in the BIOT; that the power was rationally exercised; and that the Human Rights Act has no application to the BIOT. Lord Hoffmann acknowledged at [56] that Chagossians would now require immigration consent even to visit the islands, but he said that there was "no reason why, if at some time in the future, circumstances should change, the controls should not be lifted."

7. The lawfulness of the 2004 Orders was reconsidered by the Supreme Court in *R (Bancoult) v Foreign Secretary (No 4)* [2016] UKSC 35, [2017] AC 300 ("*Bancoult (No 4)"*). In *Bancoult (No 2)* the claimants' counsel had disavowed any challenge to the outcome of the feasibility study. However, in 2012 the Government disclosed certain documents which the claimants in that case argued *would* have caused them to challenge the reliability of that study, had they known about them at the time. They submitted that the challenge was likely to have succeeded, and that this would have led to a different outcome in *Bancoult (No 2)*.

8. The attempt to overturn *Bancoult (No 2)* failed in the Supreme Court. Again, the decision was by a 3-2 majority. Lord Mance, who had been in the minority in *Bancoult (No 2)*, delivered the leading judgment, with which Lord Neuberger and Lord Clarke agreed. Lord Mance made it clear that he had not changed his mind about the way in which he thought *Bancoult (No 2)* should have been decided. The challenge on this occasion failed because the Supreme Court decided it was neither likely nor probable that, if they had been disclosed at the time, the further documents would have affected the majority view in *Bancoult (No 2)* that it was not irrational for the Secretary of State to have acted on the conclusions that he did (drawn from the feasibility study) when deciding whether to make section 9 of the Constitution Order.

9. At [72] Lord Mance referred to the fact that there had since been a further feasibility study, published in March 2015. He observed that in practical terms the background had shifted, and logically the constitutional ban needed to be revisited. As counsel for the Secretary of State for Foreign and Commonwealth Affairs ("the Secretary of State") had accepted during oral submissions, it was "open to any Chagossian now or in the future to challenge the failure to abrogate the 2004 Orders in the light of all the information now available." He regarded that as a factor militating strongly against setting aside the previous House of Lords judgment and ordering a rehearing. Lord

Clarke, in his concurring judgment, agreed with those observations at [78] and [79]. He said that it would, in any event, be open in principle to Mr Bancoult to institute judicial review proceedings to challenge any future refusal of the Government to permit or support resettlement as "irrational, unreasonable or disproportionate."

10. Following the 2015 feasibility study, and a consultation undertaken to understand the demand for resettlement from Chagossians, the Secretary of State issued a ministerial statement indicating that the Government would not support resettlement of Chagossians to the BIOT, but would provide a financial support package of approximately £40 million over 10 years for Chagossians living outside the BIOT. That decision was challenged by way of judicial review in *R (Hoareau and another) v Secretary of State for Foreign and Commonwealth Affairs* [2019] EWHC 221 (Admin), [2019] 1 WLR 4105 ("*Bancoult (No 5)").* The Divisional Court dismissed the claim. The Court of Appeal [2020] EWCA Civ 1010; [2021] 1 WLR 472 dismissed the claimants' appeal, and the Supreme Court refused permission to appeal.

11. One of the grounds of challenge in *Bancoult (No 5)* was referred to as "the right of abode challenge". There was no direct challenge to the 2004 Orders, but complaint was made that the Secretary of State had unlawfully failed to reconsider them. A further complaint was that the Government had wrongly regarded the question of resettlement as determinative of the question of whether to revoke the 2004 Orders (and thereby restore or confer a right of abode on Chagossians). The Divisional Court dubbed this ground of challenge "unrealistic" and "wrong", pointing out that even at the time of *Bancoult* (*No 2*) the question of the legal right of abode was inextricably linked to the practicalities of resettlement in the Chagos Islands. This was illustrated by the fact that between 2000 and 2004, no one had chosen to go and live there. They said at [115] that it was:

> "*... wrong as a matter of law to suggest that the Government was under any legal obligation to consider restoring the right of abode either separately or in advance of its consideration of the practical questions which arose in its consideration of whether resettlement should be permitted.* It was entirely rational for the Government to approach its task as it did." [Emphasis added].

12. In the course of argument in the Divisional Court in *Bancoult (No 5)*, the claimants' counsel sought to rely upon the observations of Lord Mance and Lord Clarke in *Bancoult (No 4)* to which I have referred above. The Court (Singh LJ and Carr J) stated that Lord Mance and Lord Clarke were doing no more than setting out what the factual position at the time of the hearing before them was. They were not laying down any rule of public law to suggest that there would be some legal obligation to revisit what had been upheld in *Bancoult* (*No 2*). In any event, the majority were not saying that there was some independent or freestanding obligation on the part of the Government to revisit the constitutional bar. Rather, they were saying that it was part and parcel of the review of the feasibility of resettlement.

13. In an important passage at [126], the Court said this:

> "Further, and in any event, it is important to be clear what the source of the suggested public law obligation to consider abrogating the Constitutional and Immigration Orders of 2004 would be. There is no

> statutory obligation to do so. No authority has been cited to suggest that there is any common law obligation to do so. On correct analysis, in our view, the only source of such an obligation could be the public law doctrine of irrationality. However, *it is impossible to see how it could be said that the defendant's failure to abrogate (or to consider abrogating) the 2004 Orders could be said to be irrational. This is not least because the defendant was rationally entitled to take the view that, if resettlement should not take place, there was no need for, or any practical point in, revisiting the 2004 Orders."* [Emphasis added].

14. In the Court of Appeal the claimants again complained of the Secretary of State's failure to address the question of whether the right of return should be dealt with as a free-standing issue. The Court of Appeal gave that argument short shrift. They said at [168] that there was no legal duty to approach the decision in any set way or to consider revoking the 2004 Orders as a free-standing issue. They then referred to evidence which indicated that a right of return (but not resettlement) *had* been one of the options considered in the process leading to the decision. They also pointed out that removing the need to obtain a permit would not have altered anything on the ground. The only practical way to resettle the islands would be with Government support. (Pausing there, it remains the case that no-one could return to live on the outer islands without economic support either from the UK Government or some other source). The Court of Appeal specifically endorsed the Divisional Court's observation that "the risks of setting up a community without proper economic opportunities, for example, are obvious and would all fall within governmental responsibility." A right of return without any Government support would still engage Government responsibilities.

15. A further factor that was referred to by the Court of Appeal in *Bancoult (No 5)* was a claim by the Government of Mauritius to territorial sovereignty over the Chagos Islands. In February 2019 the International Court of Justice issued an "Advisory Opinion" on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. A resolution of the United Nations General Assembly in May 2019 welcomed and affirmed that opinion and "demanded" that the UK withdraw its colonial administration from the Chagos Archipelago to enable Mauritius to complete the decolonisation of its territory as rapidly as possible (as part of its right of self-determination). The Court of Appeal in *Bancoult (No 5)* observed that the process for achieving this may involve "a series of binding commercial, practical and legal steps and actions by the decolonising power and equivalent and commensurate steps by the transferee state."

16. In November 2022, the Secretary of State made a written ministerial statement which explained that the UK and Mauritius had decided to begin negotiations on the exercise of sovereignty over the BIOT "to secure an agreement on the basis of international law to resolve all outstanding issues, including those relating to the former inhabitants of the Chagos Archipelago". Negotiations were necessarily conducted in private, but as matters progressed, the Secretary of State provided updates in Parliament, and Ministers and officials held a number of engagement events with Chagossian groups. In October 2024 it was announced by both Governments that they had reached a political agreement by which the UK Government would continue to exercise rights

over Diego Garcia, for an initial period of 99 years, to allow the continued operation of the defence facility there. This agreement in principle was subject to finalisation in a treaty.

17. On 22 May 2025 a treaty ("the Treaty") was signed between the Governments of the United Kingdom and the Republic of Mauritius which provides for future sovereignty over the BIOT. In essence, the Treaty provides for the transfer of sovereignty over the Chagos Islands to Mauritius, and the leaseback to the UK of the Diego Garcia military base for 99 years. The Treaty envisages that after the transfer of sovereignty it would be a matter for Mauritius to implement a programme of resettlement on the outer islands, should it choose to do so. As a matter of necessary implication, therefore, both Governments appear to have accepted that it may be feasible to resettle those islands without compromising the security of Diego Garcia. Also, it would appear that the UK Government would no longer be expected to bear the cost (or the entire cost) of resettlement, other than possibly in the short term.

18. Although it was signed more than a year ago, the Treaty has not yet been ratified. A Bill to implement the Treaty by primary legislation was introduced in Parliament, but was dropped in April 2026 in the wake of a change of stance by the US Government, which has now refused to support its terms. In September 2026 the UK Government announced that it would review the agreement. Meanwhile, a private member's bill, the British Sovereignty Protection (Chagos Islands) Bill, which states it is designed to affirm and protect the sovereignty of the United Kingdom over the Chagos Islands and the BIOT, to make provision restricting the cession or transfer of sovereignty without the approval of Parliament and without the consent of the Chagossian people, and to provide for the protection of the BIOT's strategic and defence importance, was introduced in the House of Lords. It has now reached the Committee stage.

19. These proceedings for judicial review arise against that highly-charged political background.

20. One further piece of background history is that in February 2026 a small group of Chagossians (including the claimants in the Mandarin case, one of the two appeals with which I am concerned) made their way to one of the uninhabited outer Islands called the Ile du Coin which is around 153 miles north of Diego Garcia, and set up an encampment there. Since they did not have the necessary permits, the acting Principal Immigration Officer of the BIOT served them with Removal Notices under section 12 of the Immigration Order. They sought judicial review before the courts of the BIOT, challenging the failure to issue them with permits to enter and remain within the territory of the BIOT (for which they had previously applied) and the decision to issue the removal notices.

21. In March 2026 the Chief Justice of the BIOT, James Lewis KC, delivered a judgment in those proceedings which, among other matters, purported to quash section 9 of the Constitution Order and declared it to be unlawful and *Wednesbury* unreasonable. He found that the claimants in that case were acting unlawfully by being on the island without a permit as required by the Immigration Order, but that there had been a lack of procedural fairness in refusing to issue them the necessary permits. The defendant to those proceedings, the Commissioner for the BIOT, appealed to the Court of Appeal of the BIOT, which heard the appeal in July 2026.

22. In the course of the hearing before me, I was informed by John Bethell (who appeared for the Respondent (the Secretary of State) with William Irwin) that a draft judgment had been circulated, and that he had been given express permission by the BIOT Court of Appeal to tell me that the appeal had been allowed. The judgment has since been handed down, but I have not read it. Strictly speaking, neither decision is relevant to the question whether permission to appeal should be granted in the present case. This Court is bound by previous decisions of the House of Lords, the Supreme Court and Court of Appeal irrespective of whether they are binding on the courts of the BIOT. The only relevance of the proceedings in the BIOT is that the Claimants have sought to rely on certain documents that were disclosed to them in the course of those proceedings as supporting their case, and seek permission to amend their Statements of Facts and Grounds ("SFG") to refer to them.

THE CLAIMS FOR JUDICIAL REVIEW

23. In the light of the way in which the claims for judicial review have been formulated, I consider it to be important to set out some basic principles before explaining why I have decided to dismiss these applications.

24. If a public body or authority makes a conscious decision to do something (or not to do something), that decision may be challenged either because (in broad terms) (a) there was something wrong with the process by which it was reached, or (b) because the substantive decision was one which no reasonable decision maker, armed with all relevant information, could have reached, or was otherwise unlawful. Complaints about a lack of procedural fairness (such as a lack of consultation) or about an unreasonable failure to take into account an obviously relevant matter before reaching the decision fall into the former category.

25. There may be cases in which (b) is said to be the consequence of (a). However it is possible for a decision which is taken in a procedurally impeccable fashion to fall outside the parameters of reasonable decision-making (this is often described, by way of shorthand, as being "irrational"). Likewise, it is possible that even though a reasonable decision maker could have reached the conclusion that this decision maker did, the process by which it was reached was unfair or flawed. In both situations, the real target of the complaint is the decision that was taken, and the remedy sought will normally include an order for the decision to be quashed and re-taken, though sometimes all that will be sought is a declaration that it was unlawful or taken in an unlawful manner.

26. So, where there has been a conscious decision, one cannot formulate a viable claim for judicial review just by complaining of the manner in which it was reached (including a failure to take a relevant matter into account) without identifying the decision. For example, if the complaint is of a failure to consult, it must be shown that there was a duty or an agreement to consult with the claimant about something before making a decision about it, and the subject of the consultation and the decision must be identified.

27. As a general rule, the question whether something is a material (relevant) matter to take into account is a matter for the decision maker, and the court will only interfere if it was so obviously relevant that no reasonable decision maker in that situation would have failed to consider it (i.e. it was irrational not to take it into account). If the

complaint is of a failure to take something obviously relevant into account, the decision to which it is said to be relevant must be identified. Otherwise, in the event of a dispute about it, it is impossible for the court to be able to gauge its relevance, and whether the decision maker was entitled to decide it was unnecessary to consider it, or whether it was irrational not to consider it. One cannot get round this problem by seeking to characterise the claim as a challenge to the decision to leave that factor out of account. There would be no obligation to take it into account were it not relevant/material to some other decision.

28. Therefore, if the decision said to have been reached by a flawed or unfair process is one which is non-justiciable, for example, a decision by the UK Government to enter into an international treaty with another sovereign state, a person who complains of the way in which that decision was reached does not get round the problem of non-justiciability by formulating their claim for judicial review as attacking only the procedural failings that allegedly undermine the lawfulness of the decision, and recharacterizing them as "decisions" taken in the domestic sphere to do or not to do something. However well-founded the complaint about the process may be, its true target is the decision reached by that process. It may not be a direct attack on the treaty, but an indirect attack based on the way in which its terms were reached and the matters which were or were not considered and weighed in the balance along the way is just as objectionable as a direct attack on the exercise of the sovereign power to enter into a treaty on those terms.

29. It should be relatively straightforward to formulate a public law challenge to a decision. A decision, when taken, is usually easy enough to identify, as it is likely to have been communicated in some readily identifiable way, such as in a letter or a public announcement. A challenge to a failure to act is more problematic. As was recognised in *Bancoult (No 5)*, a failure to act, which is entirely passive, is only susceptible of challenge on public law grounds in circumstances where it can be established that there is a legal duty to act, either as a consequence of a statutory or common law obligation or, exceptionally, where no reasonable public authority would have failed to act in those circumstances, and further, there is only one rational course of action that they could have taken. A challenge of that nature would have to identify any factual circumstances relied on as giving rise to the legal compulsion to act in a particular way and explain the basis on which it is alleged that there was no rational alternative.

30. In cases about failure to act, complaints about process failures do not arise as they would in the context of a decision, because there is no process involved in maintaining the status quo. The rationality challenge must be substantive in nature, and its target must be the inactivity or failure to do something. It is almost the mirror image of a challenge to a decision, and its nature cannot be obscured by mischaracterising it as a decision to do nothing. Simply carrying on as normal does not involve any conscious decision-making process at all.

31. Unfortunately the blurring of the distinctions between these different forms of challenge has been a major feature of this latest round of Chagos-related litigation.

The Pre-Action correspondence

32. Prior to the signing of the Treaty, a firm of solicitors acting for Ms Pompe, a Chagossian who is also a British citizen, sent a Pre-Action Protocol ("PAP") letter to the Respondent on 11 March 2025 complaining of "the taking of decisions, or proposals to take further decisions, and failures to act on matters that affect, concern or determine the interests of Chagossians." Amongst many other matters, the letter complained of an alleged failure by the UK Government to conduct a lawful consultation with the Chagossian community; and a failure to rationally consider (i.e. take account of) relevant matters. That begs the question, relevant to what?

33. The list of "relevant matters" that were said not to have been considered included an alleged need for express recognition by the UK or Mauritius that Chagossians are a group defined by their shared ethnic origins; the amendment of existing legislative provisions by Order in Council to reinstate, restore or afford to Chagossians rights of abode; the need to preserve or improve rights of visitation to the ancestral islands; and alleged discrimination suffered by Chagossians in Mauritius. So, as presented in the letter, the complaint that no thought had been given to restoring or conferring rights of abode on Chagossians was just one facet of an argument that relevant matters had not been considered or taken into account by the Secretary of State before taking a decision, or in the lead up to a proposed decision.

34. The letter failed to identify the decision to which these factors were said to be relevant. However, the relief asked for included an agreement and undertaking by the UK Government "to protect the interests of Chagossians resident in the UK and who do not hold Mauritian nationality *in reaching the terms of any agreement to transfer sovereignty to Mauritius.* This would include (a) *restoring rights of abode before secession (now that it is accepted that the national security justification for removal of the same from all islands no longer applies or prior UK views on feasibility of resettlement cost is no longer a matter to prevent future resettlement in principle)* (b) *guaranteeing the continued existence of visitation rights* for non-Mauritian Chagossians, including funding of visits, *without increased impediment or risk of future prevention…*" [Emphasis added]. So, in essence, the complaint was that the UK Government had not done enough or was not doing enough for the Chagossians to secure for them certain advantages, protections, rights and benefits under the Treaty which was then still being negotiated.

35. The Respondent provided a detailed response on 26 March 2025. At paragraph 51 of that document they said that:

> "even taking into account the historic experiences of the Chagossians, *there is no arguable unfairness to them which would justify according them additional rights prior to any transfer of sovereignty. It is plainly not arguable that UK citizens of Chagossian origin should be granted rights of abode in the Territory. Since, with the transfer of sovereignty, control over leave to enter and to remain in the Chagos Archipelago (apart from Diego Garcia) will transfer to Mauritius, it is denied that any right granted now would confer any real benefit.* However the UK will capitalise a new trust fund for Chagossians to be established by Mauritius, as well as separately provide other

> project support. Both will have a positive benefit for Chagossians." [Emphasis added].

36. It is clear from that exchange that at that stage, at least, Ms Pompe was demanding that the UK Government should consider the restoration of rights of abode and all the other matters identified as "material factors" as part and parcel of the ongoing negotiations for the Treaty (and, at least implicitly, that the UK Government should be seeking an agreement by the Mauritian Government to terms that would guarantee rights to British Chagossians that would survive the transfer of sovereignty). Thus, whether directly or indirectly, the target of any claim for judicial review was undoubtedly the prospective Treaty with Mauritius and/or the terms on which it should be concluded. That was confirmed by the fact that the relief sought by Ms Pompe included "*quashing of the decision to agree to transfer the sovereignty of the Chagos Islands to the government of Mauritius*" – something that was plainly non-justiciable.

37. On 9 June 2025 (after the Treaty was signed) a PAP letter was sent to the Respondent on behalf of the two Messrs Mandarin – a father and son, both of whom are British citizens. Mr Mandarin senior was born in the BIOT. Mr Mandarin junior, who was born in Mauritius, describes himself as "a proud Chagossian". Everything that is complained of in that letter is an alleged failure or omission to act by the Secretary of State. Although the failures are said to have occurred "*before taking key decisions on resettlement, rights of abode or territorial interests as to fishing and natural resources, sovereignty and access rights*" those "key decisions" are not otherwise identified. In context, however, they can only be a reference to the way in which those matters are dealt with in the Treaty. There is express mention of the Treaty at point 7, where it is claimed that the Secretary of State misinterpreted international law "by claiming he could not include provisions for Chagossian access or rights in a bilateral treaty."

38. Although the overarching complaint is clearly aimed at the decision to enter into the Treaty without first doing or considering doing all the various things the Claimants say the Secretary of State should have done, or at the failure to make certain provisions within the Treaty to preserve the rights of Chagossians, there are some facets of it which, if extracted and considered in isolation, could be regarded as potential subjects of a claim for judicial review which would not necessarily run into the problem of non-justiciability. For example, a complaint is made at point (xv) that the Secretary of State *has not considered resettlement since 2016* "despite the obvious importance of a concession that resettlement may occur on islands other than Diego Garcia without jeopardising national security." [Emphasis added].

39. At point (xxi) it is stated "that the Government's previous justifications for prohibiting the right of abode of the Chagossian people have fallen away *is plainly an obviously relevant matter for the Defendant to be obliged to take into account*, and *that obliges him to re-evaluate the policy decision and current provision*… therefore the UK legal prohibition on the right of abode of the Chagossian people should rationally be removed (and that must be done *before any revocation of the BIOT constitution*.)" Again that raises the question, what is the matter "obviously relevant" to? The way in which the complaint is couched in this paragraph is again only appropriate for a challenge to a decision on *Wednesbury* unreasonableness grounds on the basis that an obviously material factor was left out of consideration.

40. However, the next paragraph suggests that there is an "added importance to a decision to allow the right to abode *prior to any final transfer of sovereignty*" and sets out a number of reasons for this, which appear to be based upon concerns about how the Mauritian Government is likely to behave towards non-Mauritian Chagossians in future. It would be possible to treat this as a complaint that it is irrational for the Secretary of State not to revisit the question of rights of abode before the transfer of sovereignty to Mauritius, but it is equally possible to characterise it as a complaint about failure to take relevant factors into account.

41. The response from the GLD to that letter is dated 23 June 2025. It is clear that the Respondent understood the overarching complaint to be that various steps were not taken to confer rights on the Claimants which they do not currently enjoy, or to consider matters pertaining to the Claimants that were said to be "relevant", before the implementation of the Treaty or the transfer of sovereignty to Mauritius. That seems to me to be not only the most natural interpretation of the letter, but the correct one. In context, "relevant" could only mean relevant to the way in which the Treaty dealt with matters which were of interest to the Chagossians.

42. In answer, the Respondent said (correctly) that the UK has no control over the independent actions (or omissions) of another sovereign state. "*The UK will not be granting a right of abode or itself providing resettlement.* It will be for Mauritius, once the Treaty has been ratified and entered into force, to set the terms of and manage any future resettlement." In paragraph 51 of the response it said that: "it is denied (and the contrary is not arguable) that HMG is obliged to grant your clients or any other Chagossian a right of abode prior to a transfer of sovereignty… *there is no obligation on the UK to consider altering the long-standing position regarding the absence of any right of abode for Chagossians prior to that transfer.*"

History of the claims

43. When Ms Pompe began judicial review proceedings in the Administrative Court on 22 May 2025 she sought (and initially obtained) a short-term injunction preventing the signature of the Treaty. Chamberlain J discharged that injunction later the same day, finding among other matters that the claim did not even meet the threshold of demonstrating a serious issue to be tried. He made orders and directions for lodging and filing the SFG and documents necessary for the permission stage. The Treaty was signed, as I have said, on 22 May 2025. Mr Rule made the fair point that it is always open to a claimant to refine their claim for judicial review by deciding not to pursue certain aspects of it that might be objectionable. That is true, but the fact that the relief sought was modified did not necessarily cure the problems with the claim.

44. The detailed SFG lodged on 30 June 2025, which was considered by the Judge, runs to 41 pages. It largely mirrors the complaints in the pre-action protocol letter, but studiously avoids any mention of the Treaty save for a section headed "justiciable matters" which asserts that the claim is not concerned with any non-justiciable function of government in foreign relations. Since the refusal of permission to proceed with the claim for judicial review, Ms Pompe has sought permission to amend the SFG to expand it to 53 pages. The proposed amendments are said to "formally record reliance placed upon evidence disclosed since the drawing of the grounds of judicial review," but they are not confined to that. Some amendments are said to be justified because it is alleged the claim was mischaracterised by the

Respondent and/or misunderstood by both Sheldon J (who refused permission to proceed on the papers) and the Judge.

45. The Mandarin proceedings were commenced on 25 June 2025. The SFG runs to 47 pages. Again, there is an application post-judgment to extend it – this time to 58 pages. There is a considerable overlap between the grounds in the Mandarin proceedings and in the Pompe proceedings.

46. Sheldon J refused permission to apply for judicial review in both cases on 15 September 2025, and directed that if a valid request were made for reconsideration, the two matters should be heard together. Thus it was that the renewed applications came before Stacey J at an oral hearing on 28 October 2025. Argument was heard within the normal time constraints on such applications. The Judge reserved her judgment, which was handed down on 10 March 2026, refusing permission to apply for judicial review. Both sets of Claimants have sought permission to appeal.

THE APPLICATION FOR PERMISSION TO APPEAL

47. This Court's function is to decide whether it is arguable, with a real prospect of success, that the Judge erred in the exercise of her judicial discretion to refuse to allow the claim, *as presented to her*, to proceed. In principle that decision should be taken on the basis of the material placed before the Judge at the time. However, I have considered the proposed amended Grounds in both cases *de bene esse*. I have concluded that the proposed amendments, even if permitted, would not improve the Claimants' position.

48. When an application is made for permission to appeal against a refusal by the High Court to grant permission to proceed with a claim for judicial review, if this Court considers that there is a sufficiently arguable ground or grounds for judicial review, it has the option, instead of granting permission to appeal, to grant permission to proceed with the claim for judicial review. In a case like this, that option would have undoubted attractions. Were that to happen, the Respondent expressed a firm view that the usual course of sending the matter back to the Administrative Court should be taken, whereas the Claimants expressed a more muted preference for this Court retaining the matter.

49. Ms Pompe's appellant's notice was issued slightly later than it should have been because the papers, though filed in time, were filed in error in the Administrative Court. No prejudice was caused by this and the error, whilst regrettable, was not so serious as to justify refusing to extend time. I therefore indicated at the hearing that I would grant the necessary extension of time.

The grounds of appeal

50. The question for this Court is not whether it would have reached the same view as the Judge, but rather, whether there is any sufficiently arguable basis for interference with her decision. It is only if the Claimants surmount that hurdle that this Court would consider for itself whether the claim for judicial review should have been permitted to proceed or whether, even if (as they allege) the Judge misunderstood the nature of the claim, there is a "knock-out blow" which would prevent it from proceeding to a full hearing.

Ground 1

51. Six grounds of appeal are raised. The first, a complaint of procedural unfairness, can be swiftly dismissed. It was contended that it was "procedurally unfair and irregular" to seek to address at the permission stage a level of complex and detailed legal argument that required a hearing at which the Claimants could present their case.

52. That objection is fundamentally misconceived, and Mr Rule wisely did not press it in his oral submissions. If a SFG is prolix, opaque, and unfocused, it does not mean that the numerous points raised in it have any merit, and the Judge was not only entitled but obliged to examine them to see if they would have a real prospect of success at a full hearing of the claim. The conspicuous care with which she did that in her judgment is to be commended rather than condemned; there is no basis for the allegation of procedural unfairness.

53. The Judge was well aware of the importance to the Claimants of these matters and her decision not to deliver an ex tempore judgment in these circumstances was both sensible and fair. She explained why she took it, and she has explained and apologised for the delay. It is quite clear from what she said at the end of her judgment that on her perusal of the papers the Secretary of State's arguments "shone through" and she would have refused permission to proceed had she dealt with matters there and then. However, had she taken that course, it is likely that the Claimants would have felt that their arguments had not been properly considered.

54. The Judge addressed the correct legal test; she was clearly aware that the threshold for permission is a low one, and that it requires a distinct "knock-out blow" to refuse permission. If on further examination it transpired that the Judge was wrong about the existence of the knock-out blows she identified, that would be a substantive basis for an appeal, not a procedural one. The same applies to the criticism that the Judge failed to understand the nature of the Claimants' case. There was no procedural unfairness involved. Ground 1 is not arguable with a real prospect of success.

55. The remaining substantive grounds of appeal (2-5) are allegations of legal or factual error. Ground 2 is that the Judge approached her analysis from an incorrect starting point, namely that there was never any right of abode on the islands. Ground 3 is that the Judge was wrong to find that the claim is not justiciable. Ground 4 is that the Judge failed to appreciate that the challenge to the failure to abrogate the removal of the right of abode and preclusion of settlement on islands other than Diego Garcia needs to be considered in the light of what is described as "the current national security stance" of the Defendant. In practical terms those two Grounds stand and fall together, and are really different aspects of the complaint that the Judge misunderstood the nature of the Claimants' case. Ground 5 is that the Judge was wrong to ignore the principle of legality that requires the Respondent in lawful decision-making to give consideration to the international law obligations binding upon the UK. Ground 6 is a general sweep-up proposition that in the light of the alleged errors, the Judge was wrong not to allow the claim for judicial review to be heard; it is not an independent ground of appeal, but depends on the viability of the others. I will consider the grounds in order.

Ground 2

56. This is a complaint that the Judge started her analysis from the erroneous premise that there has never been any right of abode or settlement on the Islands. Although that is the position of the Respondent, Mr Rule contended that this was an error, and that it was clear from what Lord Hoffmann said in *Bancoult (No 2)* that it was accepted that such a right existed prior to 2004. He took the Court to passages in subsequent judgments that supported that interpretation.

57. I appreciate that there is a dispute about the legal position pre-2004, which cannot be resolved at this stage of proceedings, and that what Lord Hoffmann said *could* be interpreted as an acceptance by him that, at the very least, the 2000 Ordinance conferred on Chagossians a right of abode (one facet of which is the right to enter without immigration control) which was then taken away by the 2004 Orders. However, what cannot possibly be in dispute is that no such right has existed at least since the Constitution Order, the lawfulness of which has been upheld by the House of Lords and reaffirmed by the Supreme Court. For the purposes of the claim for judicial review it really does not matter whether the complaint is couched in terms of a failure to restore a pre-existing right or a failure to confer on the Chagossians a right they currently do not possess.

58. The key point which the Judge was making at [36] of her judgment, which is a good one, is that the Chagossians are no worse off after the making of the Treaty than they were before it, because they are not being deprived of any current right (including a right of abode) that pre-dated the Treaty. That being so, there was no conspicuous unfairness to them caused by the proposed transfer of sovereignty. Even if I were to assume in the Claimants' favour that the Judge was wrong to say that the Chagossians have never had any right of abode or settlement on the Islands since their ancestors were first brought there, the assumed error was immaterial. Accordingly there is no substance in the second ground of appeal, and it too has no real prospect of success.

Grounds 3 and 4

59. Grounds 3 and 4 of the Grounds of Appeal were the focus of the oral argument. Mr Rule's main complaint was that the Judge did not understand the Claimants' case and failed to appreciate that it was justiciable. Mr Rule expressly disavowed any challenge to the Treaty, claiming that the case was all about domestic law, which operates in a different sphere from international treaty obligations. In essence, this claim was a re-run of *Bancoult (No 5)* based on a material change of circumstances.

60. I must first consider the way in which the claim for judicial review has been formulated in the SFG, because that is key to determining whether it is arguable that the Judge fundamentally misunderstood it, and if so, whether the claim for judicial review (or any of the individual grounds for judicial review) has a real prospect of success. As the Respondent said in the summary grounds of resistance, the precise target of the Claimants' proposed challenge is unclear. Falk LJ decided to direct an oral hearing of the application for permission to appeal. In doing so, she said this:

> "At the oral hearing, the Appellants will need to explain with clarity why the judge was arguably wrong to decide that the challenge is really a challenge to the government's decision to enter into the treaty

> signed on 22 May 2025 which addresses the future sovereignty of the BIOT ("the Treaty") and introduce a bill to implement it, and that it seeks to reopen matters decided in earlier litigation, in particular [*Bancoult* (*No 2*)]… and *Bancoult (No 5)*.
>
> Further the Appellants will need to explain precisely (a) why it is said that the Respondent was under a duty to consult, what the Respondent should have consulted about and what decision the alleged failure to consult was relevant to, and b) to the extent that the Appellants are relying on a change of circumstances since (in particular) *Bancoult (No 5)*, the nature and relevance of such changes."

61. Those observations were understandable in the light of the opacity of the SFG in both cases. If this claim were truly a re-run of *Bancoult (No 5)* on the basis of an alleged material change in circumstances since the decision not to fund resettlement which was challenged in that case was taken, it could have been articulated far more clearly and in far fewer pages. Very few passages in the SFG are of any relevance to a claim of that nature.

62. I readily accept that if the Claimants' pleaded case was that the Secretary of State took an identifiable decision (other than the decision to enter into the Treaty) which may be challenged by way of judicial review, the fact that the decision might have political ramifications, or affect the UK Government's obligations under a treaty, would not make it non-justiciable. The same may be true of a free-standing failure to act. However, as I have explained, failures to act are only capable of challenge if it can be established that there is a legal duty to do so, or that the failure to do so is irrational, and the assessment of rationality can only be made in the light of the factual circumstances in which the obligation to act is said to have arisen, so those circumstances need to be set out with precision in the SFG.

63. Although it is now suggested that only one "decision" is the target of the claim, six matters are identified in the SFG as "unlawfully taken *decisions* and ongoing failures" by the Secretary of State. These are expressed in different ways in different sections, but are listed in this order in paragraph 50 of the Mandarin SFG:

    i) A failure to carry out lawful consultation with the Chagossian community;

    ii) *Wednesbury* unreasonableness (a) in failing to properly consider or irrationally disregarding relevant considerations and/or (b) in coming to irrational *decisions* that no reasonable Minister could arrive at in all the circumstances;

    iii) Failure to discharge the Public Sector Equality Duty, particularly regarding non-Mauritian Chagossians and those in the UK, given that they will lose present temporary visitation rights at the precise time of sovereignty transfer and include those who have no automatic right to be allowed entrance to Mauritius;

iv) Unlawful discrimination on grounds of race, nationality or ethnicity (including the treatment of non-Mauritian Chagossians) and failure to recognise them as a distinct group;

v) Procedural unfairness, including failure to undertake a proper survey of Chagossian views, and

vi) Violation of Art 8 ECHR.

64. Considering Ground 1 of the grounds for judicial review, a duty to consult must be a duty to consult about *something* that the public authority *proposes to do or is at least thinking about doing,* which may have an impact on the claimant in the sense that their position will change from the position in which they currently find themselves. It is nonsensical to suggest that there is a duty to consult about maintaining the status quo, even if the claimant does not like the status quo. As the Respondent has also pointed out, there is no general duty to consult at common law; a person who is or is likely to be affected by a proposed decision is only able to complain about a failure to consult them if there has been a promise to do so, or there is an established practice of consultation, or if the failure to do so would result in conspicuous unfairness. The Claimants failed to establish any of those matters.

65. The same problem, namely, that it is only if they are complaints about the process leading up to the decision to enter into the Treaty, that there would be any arguable duty on the UK Government to do or consider doing any of these things, affect most of the other complaints of "failures" by the UK Government, such as the failure to discharge the Public Sector Equality Duty. That duty, which is procedural in nature, does not exist in a vacuum. As for the alleged failures to take certain "relevant" matters into account or to consider conferring rights upon the Chagossians because that was a material consideration, those matters could only be "relevant" to the political decision to hand over sovereignty – and with it any responsibility for resettlement of the Chagos Islands - to Mauritius. The position is not improved by re-casting the "failures" as "decisions not to consider" relevant matters.

66. Realistically, when read in the context of the pre-action protocol correspondence, the majority of the complaints in both these claims for judicial review can *only* be about a failure to consult about the terms of the Treaty, or to take any of the other steps the Chagossians wanted to be taken to protect their interests before it was finalised. The Judge's reasoning on justiciability at [33] and [34] provides a complete answer to those complaints which challenge, directly or indirectly, the Treaty or the process by which its terms were reached.

67. I likewise find no arguable error in the Judge's treatment of Grounds 3–6 of the grounds for judicial review. These grounds concern the alleged failure to secure rights of return and related rights in the Treaty, and are inextricably bound up with high policy in international relations, where the Secretary of State enjoys a wide margin of discretion. The Judge was plainly right to find those matters non-justiciable for the reasons that she gave.

68. Only the complaint in paragraph 50(ii)(b), which is characterised in the SFG as a *Wednesbury* unreasonableness challenge, is capable of being characterised as

anything other than a challenge to the Treaty. Its formulation in the SFG therefore requires closer examination.

69. Paragraph 1(v) of the SFG identifies among the alleged "unlawful decisions and ongoing failures of the Defendant":

> " a failure to consider properly and adequately (or at all) the interests or rights of Chagossians, including, following the decision that national security did not compel the retention of unoccupied territory, whether (i) to reinstate, restore or bestow to Chagossians rights of abode, or of resettlement, or return or other rights or status presently deprived by the British Indian Ocean Territory (Constitution) Order 2004."

However, this too is pleaded as a failure to consider a matter relevant to an unidentified decision, not as a stand-alone challenge. In context, that decision can only be the decision to enter into the Treaty. That complaint falls within paragraph 50(ii)(a), not (b): it challenges the negotiating or decision-making process, alleging a failure to *consider* restoring rights of abode, not a failure to *restore* them despite a legal obligation to do so. Again, the Judge was right to decide that this way of putting the case did not meet the threshold for permission.

70. Paragraph 1(vi) comes closer to a substantive challenge, alleging a decision:

> "Not to provide or return to the Chagossian people a right to reside in or right to return to any part of the Chagos Archipelago (even when national security or cost does not mandate that no settlement be permitted at all.) This may be termed a 'failure to abrogate the 2004 Orders in the light of all the information now available'."

This conflates a conscious decision not to confer a benefit with a failure to remove a disadvantage. Describing the alleged decision as a "failure to abrogate" obscures the distinction between them. However, it does appear that the apparent target is a decision not to confer/a failure to confer rights of residence or return before transferring sovereignty to Mauritius. It could therefore be characterised as a freestanding challenge of the kind considered in *Bancoult (No 5)*.

71. Mr Rule submitted that this was indeed a freestanding challenge to the "failure to abrogate the 2004 Orders" and the Judge wrongly treated it as non-justiciable. He argued that *Bancoult (No 5)* did not bar such a claim where circumstances had materially changed since the 2016 decision not to support resettlement.

72. The Respondent maintains that the only significant change since 2016 is the negotiation and signature of the Treaty. However, the Claimants rely on alleged changes in the UK Government's assessment of the security implications and cost of resettling the outer islands. Although arising in the negotiations, those changes are said to provide an independent basis for reconsideration. Mr Rule submitted that security remained a significant obstacle in 2016: the US would not permit use of the Diego Garcia airstrip, and construction of an airstrip on the outer islands was impracticable. He contended that the UK now accepts that resettlement need not compromise security, as the Treaty's provision for possible resettlement by Mauritius

implies. Documents disclosed since the judgment as part of the Respondent's duty of candour, he said, support that position.

73. Mr Bethell disputed that security grounds had ruled out resettlement in 2016. That factual dispute cannot be resolved at the permission stage. I therefore assume in the Claimants' favour that national security is no longer regarded as an absolute bar, if it ever was, although, as the Judge recognised, it remains relevant.

74. A *refusal* to consider abrogating the Orders could in principle be amenable to judicial review, as in *Bancoult (No 5)*, though it would face similar difficulties. A challenge to an identified refusal would avoid the need to establish a freestanding duty to depart from the status quo. In the present context, however, the Government would still enjoy a very wide margin of appreciation. However, the SFG does not identify any positive decision or refusal to revisit the Orders, when that decision was made, or any request to which it responded.

75. Although at the hearing Mr Rule sought to rely on the PAP correspondence, neither the original nor the proposed amended SFG pleads the Respondent's refusal to confer rights of abode on the Chagossians prior to the transfer of sovereignty or the reasons given for it. The Mandarin pre-action correspondence, at least, might have supported such a pleaded challenge, but this formulation emerged only following Falk LJ's direction and in argument on this application, when I asked Mr Rule to identify the decision challenged. No amendment to plead that case was proposed. If I had been prepared to grant permission to proceed with a claim for judicial review it would have been on the basis of considerable revision to the SFG to clarify the claims and to distinguish between the Claimants' challenge to a "decision" and their challenge to a (passive) failure to abrogate the 2004 Orders.

76. Regardless of how the challenge to the continued existence of the 2004 Orders is articulated, unless there is a public law obligation to depart from a position which has survived every challenge thus far and remains lawful until a court determines otherwise, there is no basis for seeking judicial review even of a refusal, let alone of a failure to consider, such a departure. The SFG does not clearly identify the source of any public law duty to revisit the 2004 Orders. The assertion that national security or cost no longer precludes settlement does not suffice: acceptance that something *could* be done does not establish that it *must* be done, or that inaction is irrational.

77. The first question I must consider is whether the Judge arguably misunderstood the case *as pleaded* when addressing it at [41]–[43]. The distinction between paragraphs 1(v) and 1(vi) (and 50 (ii)(a) and (b)) that I have drawn above does not immediately leap from the page. It was far from clear that the Claimants were complaining of irrational inaction or of an irrational decision, rather than of an irrational failure or refusal to consider a matter that was relevant to another decision.

78. The way in which Judge interpreted the pleaded case is shown at [41]:

> "The claimants seek to argue that the circumstances have changed since the earlier litigation in which rationality challenges were rejected by the courts. It is argued that the defendant can no longer rely on national security, defence, cost and feasibility to deny resettlement on the Islands, other than Diego Garcia, since those

> arguments have fallen away on the decision to allow transfer of sovereignty to Mauritius. In the context of the history of the treatment of the Chagossians by the UK and also Mauritius it is argued that Chagossians should have been allowed the right of abode to the outer islands (i.e. all the islands other than Diego Garcia) before any transfer of sovereignty to Mauritius which is an important matter that the defendant has failed to consider."

The crucial words are "*which is an important matter that the defendant has failed to consider.*" The Judge interpreted the pleaded case as complaining about the process leading to the transfer of sovereignty. In the light of the fact that the pleaded complaints could all be regarded as facets of a *Wednesbury* challenge to an (unidentified) decision, that reading was entirely understandable. On that reading, her conclusion on non-justiciability was unimpeachable.

79. I accept that if that reading were mistaken and a challenge of the *Bancoult (No 5)* kind was included in the SFG, it would be justiciable. But the Judge also held, at [42], that *Bancoult (No 5)* answered any justiciable challenge and, at [43], that the Respondent's wide margin of appreciation defeated the irrationality argument. For the purpose of testing whether there is a real prospect of challenging the Judge's conclusions in those paragraphs I will assume, without deciding, that the SFG does encompass a completely freestanding claim that it was, and remains, irrational for the Secretary of State not to reconsider the 2004 Orders following the 2016 decision and the judgments in *Bancoult (No 5)*.

80. In *Bancoult (No 5)*, the Government had reconsidered resettlement following the KPMG study, and rejected it, providing an identifiable decision to challenge. No further reconsideration was required unless no rational Government could have failed to undertake it in circumstances where Mauritius has agreed to assume responsibility for any resettlement. As *Bancoult (No 5)* establishes, there is no statutory or common law obligation to revisit the Orders periodically. The Claimants would therefore have to show that the alleged "material changes of circumstance" left abrogation as the only rational course. That ambitious proposition is not articulated in the SFG.

81. More fundamentally, the Court of Appeal in *Bancoult (No 5)* rejected any obligation to consider rights of abode independently of a UK-funded resettlement scheme. None of the alleged changes, even if established, justifies reopening that argument. As matters stand, the UK is not expected to undertake resettlement. Further, as Mr Bethell pointed out, implementation of the Treaty would bring the BIOT and the 2004 Orders to an end. Any replacement Orders conferring rights of abode would likewise cease to have effect. Even assuming that the original justification for the controls had entirely fallen away, the Respondent could rationally regard their removal now as serving no practical purpose. The Respondent was also rationally entitled to regard future rights of access, residence and settlement as matters for Mauritius to determine once it assumed sovereignty. The feasibility of resettlement arose in the negotiations on that basis, not on the basis that the UK would undertake it.

82. These are, in any event, matters of high policy attracting a wide margin of appreciation. Unilateral changes would interfere with a Treaty negotiated on the basis of the lawful status quo.

83. For those reasons, even a properly pleaded rationality challenge to an express refusal to reconsider rights of abode whilst the negotiations were ongoing would fail; the argument is weaker still after signature of the Treaty. These are complete answers to the (assumed) claim, not merely reasons to doubt its ultimate success. The modest threshold for permission is not crossed. Therefore, regardless of whether it is arguable that the Judge misunderstood the pleaded case (and I am not persuaded that she did) I would refuse permission to appeal on Grounds 3 and 4.

84. The proposed amendments also seek directly to challenge the lawfulness of the 2004 Orders. Their rationality when made has been upheld by the highest authority and cannot be reopened. Even if their original justification has ceased to exist, that does not invalidate a lawful exercise of the prerogative. The Orders remain valid unless revoked or brought to an end with the BIOT.

Ground 5

85. Ground 5 of the grounds of appeal fails for the reasons in paragraphs 30 and 31 of the Respondent's skeleton argument. The Judge adequately explained why each ground for judicial review was unarguable and was not required to engage further with arguments which took the case no further. Unincorporated treaties confer no domestic rights, and this argument is inconsistent with *Bancoult (No 5)* and the decisions that preceded it. Absent an arguable rationality challenge to a decision not to revisit the Orders, or a failure to do so, the Respondent remains entitled to rely on *Bancoult (No 2)* and *Bancoult (No 4)*.

CONCLUSION

86. I understand the Claimants' strongly held view that the agreement with Mauritius is insufficient to safeguard their interests, and that the UK Government should have done more. Nevertheless, none of the grounds of appeal is arguable with a real prospect of success. Even if it were, the Judge was right that the claims as articulated did not meet the threshold for permission to apply for judicial review. There is no viable means of saving them by reformulation. I dismiss both applications. There is therefore no need to determine the applications for permission to amend or for a costs capping order.