



**SUPREME COURT  
BRITISH INDIAN OCEAN TERRITORY**

**Before:**

**THE HONOURABLE JAMES LEWIS KC  
CHIEF JUSTICE OF THE BRITISH INDIAN OCEAN TERRITORY**

**B E T W E E N:**

THE KING, on the application of

- (1) LOUIS MISLEY MANDARIN
- (2) LOUIS MICHEL MANDARIN
- (3) LOUIS ANTOINE LEMETTRE
- (4) GUY SHANE ADRIEN CASTEL

Claimants

-v-

HIS MAJESTY'S COMMISSIONER FOR THE  
BRITISH INDIAN OCEAN TERRITORY

Defendant

**Representation:**

Philip Rule KC, James Tumbridge and Susana Ferrín instructed by Keystone Law for the Claimants.

Marie Demetriou KC, William Irwin, Yaaser Vanderman and Emile Simpson instructed by the GLD for the Defendant.

Date of hearing: 13 March 2026

Date of Judgment: 31 March 2026

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I. INTRODUCTION

1. At present the Claimants, who are Chagossians, are encamped on the Ile du Coin, which is an uninhabited outer island in the Chagos archipelago, which is within the British Indian Ocean Territory (BIOT) in the Indian Ocean, a British Overseas Territory administered by the Defendant. The Ile du Coin is roughly 135 miles north of Diego Garcia which is the principal island of the Territory and the home to a joint UK and USA military base. They arrived on the Ile du Coin on the 16 February 2026. They do not have a permit to enter or remain in the BIOT, such permits being issued by the Principal Immigration Officer of the BIOT (PIO), acting under the supervision of the Defendant. On 18 February 2026 the Acting PIO issued Removal Notices to all the Claimants under section 12 of the British Indian Ocean Territory (Immigration) Order 2004, (“the Immigration Order 2004”).
2. On an application for out of hours urgent interim relief this Court on the 19 February 2026 issued interim injunctive relief to prevent execution of the Section 12 Removal Orders until this judicial review could be determined. The decisions on interim relief are set out in separate judgments.
3. This is an application for judicial review of: (1) the Defendant’s failure to issue the Claimants with permits to enter and remain within the territory of the BIOT under Section 7 of the Immigration Order 2004; and (2) the Defendant’s decision to issue removal notices to the Claimants under Section 12 of the Immigration Order 2004 (“Removal Notices”). The hearing before me was treated as a rolled-up application. I grant permission and proceed to give a final judgment.
4. Originally this application was conjoined with an application for judicial review by the ‘Broughton’ Claimants. Those Claimants consisted of the owner and crew of the SV ‘No Excuse’ which carried the Claimants in this matter to the Ile du Coin. They were also all served with Removal Notices, sought urgent interim relief and issued a claim for judicial review; but they have since discontinued their claims. In order not to overburden this judgment I will not further refer to them, save to say that their Section 12(1) and 12(6) Removal Notices accordingly remain extant; and the details of their arrival is set out at paragraph [42] to [47] below.

## II. BACKGROUND

### 1. *The Islands and Inhabitants*

5. The background and history to this matter are all important, as are the previous legal proceedings. It is necessary to deal with the background and previous proceedings in a little detail.
6. The Chagos Archipelago is a group of coral islands in the middle of the Indian Ocean. It was occupied by the Dutch from 1638 to 1710; the first colonial administration of Mauritius was established in 1715 by France which named it Ile de France. In 1810, the British captured Ile de France and renamed it Mauritius. In 1814 by the Treaty of Paris, following Napoleon's abdication, Mauritius and the Chagos Islands were ceded by France to Great Britain. From that date until 1965 the archipelago was governed as part of the British colony of Mauritius. The principal and largest island is Diego Garcia, which surrounds a large lagoon, but the Territory includes the 'outer islands' of Peros Banhos. The Ile du Coin is an island within the Peros Banhos atoll which historically had a settled administrative center and now has an abandoned church, graves and derelict buildings. The Ile du Coin currently has a mooring place where visiting yachts can moor and land. Permits are usually given for up to four weeks' stay on the Ile du Coin.
7. During the 19th and early 20th centuries, the Chagos Islands' economy depended on coconut plantations that produced copra and coconut oil. Plantation companies owned and operated the land, and they effectively controlled life on the islands. Managers exercised significant authority over workers due to the islands' isolation and the infrequent presence of government officials.
8. Most employment was provided by the plantation companies. Workers received low wages but were given food rations, basic medical care, and limited education. Transport to Mauritius was occasionally provided for leave, medical treatment, or childbirth.
9. Following the abolition of slavery in 1833, many freed slaves remained on the plantations. Over time, the population grew to include Mauritian and Seychellois contract labourers as well as locally born residents whose families had lived on the islands for generations. These locally born inhabitants became known as the Ilois, later preferring the term "Chagossians."

10. By the 1960s it is clear there was a settled population living in the Chagos Islands, albeit small. This fact was expressly conceded by the Commissioner before me at the hearing. This is important as we shall see the Foreign and Commonwealth Office (now the Foreign, Commonwealth and Development Office) for inglorious reasons, has for many years sought to perpetuate the fiction that there was no settled or permanent population on the islands at the time.
11. There was a forced exile of the entire population between 1966 and 1972 from their homeland on the Islands. No Chagossian has lived on any of the Islands since 1973.

## 2. *The creation of BIOT*

12. The history of the creation of BIOT is well documented, and I have drawn here upon the history helpfully set out by Ouseley J. in *Chagos Islanders v (1) The Attorney General and (2) HM British Indian Ocean Territory Commissioner* [2003] EWHC 2222 (QB); and that by Laws L.J. in *Bancoult No.1 v SSFCA* [2001] QB 1067.

### *Strategic Interest and Detachment of the Islands*

13. In 1964 discussions began between the United Kingdom and the United States regarding the establishment of defence facilities in the Indian Ocean. A joint memorandum concluded that the islands required for military purposes should be separated from Mauritius and the Seychelles and placed under direct British control. The United States did not wish military installations to depend on newly independent states.
14. In 1965 the British Indian Ocean Territory (BIOT) was created by Order in Council. The new Territory included the Chagos Archipelago and several islands previously administered by Mauritius and the Seychelles. An Exchange of Notes in 1966 confirmed that the islands would be made available for United States defence purposes for an initial period of fifty years with renewals thereafter.

### *Government attitudes toward the population*

15. Internal government documents reveal concern about how the presence of island inhabitants would affect the legal status of the Territory. Officials sought to avoid recognising the population as permanent residents because this could create obligations under the United Nations Charter, in particular General Assembly Resolution 1514 (XV)

of 14 December 1960, "*Declaration on the Granting of Independence to Colonial Countries and Peoples*".

16. To avoid these problems a fiction was put forward that there was no settled population. As Laws L.J. recites at [9]:

"9 ... It is clear that by 11 May 1964, the date of a secret memorandum headed "Defence Interests in the Indian Ocean" by C M Rose, prospective initiatives relating to the arrangements which would need to be made were well advanced. The document states, at paragraph 3:

"In his telegram No 977 Sir P Dean draws attention to the difficulties we are likely to have to face in the United Nations if these proposals became known at the present time. In connection with our proposal for placing the various territories concerned under direct UK administration, he draws attention to paragraph 6 of Resolution No 1514 (of 14 December 1960) which reads:—'Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.' He also suggests that we might face demands for separate transmission of information about these territories under article 73 of the Charter which requires members 'to transmit regularly to the Secretary General. . . statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they are responsible'."

10 A revised memorandum of May 1964 jointly agreed between the UK and American governments, headed "Indian Ocean Territories" refers in terms to "the repatriation or resettlement of persons currently living on the islands selected". Paragraph 9 of that document states:

"The line taken with regard to those persons now living and working in the dependencies would relate to their exact status. If, in fact, they are only contract labourers rather than permanent residents, they would be evacuated with appropriate compensation and re-employment. If, on the other hand some of the persons now living and working on the islands could be considered permanent residents, i.e., their families have lived there for a number of generations, then political effects of their removal might be reduced if some element of choice could be introduced in their resettlement and compensation."

No element of choice was in the event provided.

...

12. ...A note of 12 November 1965 read:

"I agree that there is an awkward problem here which the Secretary of State should know about. The present idea is that the inhabitants (1,500 altogether) would not be removed from any of the islands until they are required for defence purposes. This is going to make it very difficult to avoid having to report on the new territory under article 73(e) of the Charter."

Then on 15 November 1965, in the words of another official:

"the territory is a non-self-governing territory and there is a civilian population even though it is small. In practice, however, I would advise a policy of 'quiet disregard'—in other words, let's forget about this one until the United Nations challenge us on it."

17. On 25 February 1966, a confidential message from the Secretary of State for the Colonies to the Commissioner of BIOT in the Seychelles shows a recognition at a very high level in government of the tensions between British policy interests and the interests of the islanders:

“3. Our primary objective in dealing with the people who are at present in the Territory must be to deal with them in the way which will best meet our future administrative and military needs and will at the same time ensure that they are given fair and just treatment ... 4. **With these objectives in view we propose to avoid any reference to 'permanent inhabitants', ...**

7. Whatever arrangements are made to establish the status of the people in the BIOT as belongers of either Mauritius or Seychelles, there will in any case be a need for the enactment of appropriate immigration legislation for the Territory itself.” [Emphasis added]

18. The Commissioner's views were sought as to the proposal relating to temporary residence permits and other matters. A minute of June 1966 confronts the nub of the problem with considerable candour:

“ ‘They’—the Colonial Office—‘wish to avoid using the phrase 'permanent inhabitants' in relation to any of the islands in the territory because to recognise **that there are permanent inhabitants will imply that there is a population whose democratic rights will have to be safeguarded** and which will therefore be deemed by the UN Committee of Twenty-four to come within its purview ... It is ... **of particular importance that the decision taken by the Colonial Office should be that there are no permanent inhabitants in the BIOT...**” [Emphasis added]

19. A striking internal remark dated 24 August 1966 to an official, Mr D A Greenhill, described the policy objective as ensuring that the islands would have “no indigenous population except seagulls.”:

“We must surely be very tough about this. The object of the exercise was to get some rocks which will remain ours; there will be no indigenous population except seagulls who have not yet got a committee (the Status of Women Committee does not cover the rights of birds).”

20. Further light was shone on the situation by the proceedings in the United Nations. The Divisional Court recited that history in *Bancoult No.2 [2006] EWHC 1038 (Admin)*. In that case there was a dispute before the Divisional Court as to the statement made by the Court of Appeal refusing permission to appeal from the Judgment of Ouseley J. where the Court of Appeal, [2004] EWCA Civ 997 at [6] had said:

“it would be wrong of us to move on to the legal issues without acknowledging, ...the shameful treatment to which the islanders were apparently subjected. The deliberate misrepresentation of the Ilois' history and status, designed to deflect any investigation by the United Nations; the use of legal powers designed for the governance of the islands for the illicit purpose of depopulating them; the uprooting of scores of families from the only

way of life and means of subsistence that they knew; the want of anything like adequate provision for their resettlement: all of this and more is now part of the historical record. It is difficult to ignore the parallel with the Highland clearances of the second quarter of the nineteenth century. Defence may have replaced agricultural improvement as the reason, but the pauperisation and expulsion of the weak in the interests of the powerful still gives little to be proud of.”

21. Counsel for the Secretary of State for Foreign and Commonwealth Affairs stated that this statement by the Court of Appeal was not accepted. Accordingly, at some length the Divisional Court went through the record of the proceedings before the United Nations and found the statement of the Court of Appeal to be correct, saying at [61]:

“We confess to being considerably disappointed by this attempt to obfuscate the history. It runs counter to what Mr Robin Cook said in 2000.”

22. It is commendable that the Commissioner accepts before this Court that there was a settled population in 1965.
23. Although there are no accurate figures it is believed that between 1400 and 1700 were removed from the islands according to the BIOT.gov.io website exhibited before the Court.

### 3. *The BIOT Constitutional Orders*

24. Pursuant to the plans to move the entire population from the Chagos Islands, on 16 April 1971, the BIOT Commissioner enacted the Immigration Ordinance 1971, No 1 of 1971. Section 4 of the Ordinance made it unlawful for a person to enter or remain in the territory without a permit; it also provided for the Commissioner to make an order directing that person's removal from the territory. The 1971 Ordinance reflects the agreement reached in the 1966 Minute mentioned above.
25. In *Bancoult (1)* [*ibid*] the Divisional Court held that Section 4 of the Immigration Ordinance 1971 made by the Commissioner for the BIOT was outwith the Commissioner's power (conferred by section 11(1) of the BIOT Order 1965) to “make laws for the peace, order and good government of the Territory”.
26. The then government stated that they accepted the judgment and would not appeal it. At the same time, the 1971 Immigration Ordinance was repealed and replaced by the British Indian Ocean Territory Ordinance No. 4 of 2000 (the Immigration Ordinance 2000).
27. Section 4 of Ordinance 4 of 2000 (Restriction on entering or remaining in the Territory) enacted by the Commissioner provided an exception for Chagossians to enter and be

present in the outer islands (not Diego Garcia) if they were a British Dependent Territories citizen and were such a citizen by virtue of their connection with BIOT. This included their spouse or dependent children.

28. So the position from the year 2000 was that Chagossians could enter and remain on the outer islands of the BIOT. This position remained until 10 June 2004 when Her Majesty by Order in Council enacted the Constitution Order 2004 (“the Constitutional Order 2004”) and the Immigration Order 2004 (“the Immigration Order 2004”). Section 9 of the Constitutional Order 2004 stated that:

“9. (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.**” [Emphasis added]

29. This removed the right of the Chagossians to enter and remain on the outer islands of the BIOT (although they could do so if granted a permit like anyone else).
30. In *Bancoult No.2* [*ibid*] the Claimant sought a declaration from the Divisional Court that the provisions of Section 9 of the Constitutional Order 2004 were unlawful. That case and its consideration by the Court of Appeal and House of Lords is important as the very same issue is being put forward before this Court. Accordingly, I will deal with the details of the judgments and speeches when I come to analysing the arguments. However, it is convenient to say at this point that the Divisional Court (Hooper L.J. and Cresswell J.) held that Section 9 of the Constitutional Order 2004 was unlawful; the Court of Appeal (Sir Anthony Clark MR, Waller and Sedley L.JJ.) dismissed the appeal also holding that Section 9 of the Constitutional Order 2004 was unlawful; and the House of Lords allowed the appeal by a majority (Lords Hoffman, Rodger and Carswell holding Section 9 of the Constitutional Order 2004 was lawful and Lords Bingham and Mance that Section 9 of the Constitutional Order 2004 was unlawful).
31. In *Bancoult No.4* [2016] UKSC 35, the Claimant applied to set aside the decision of the House of Lords in *Bancoult No.2* because of candour failing during those proceedings, concerning a feasibility report into the prospects of resettling the population relied upon by the Foreign Secretary and accepted by the claimant in *No.2*. It reported that while resettlement would be feasible in the short term, in the long term costs would be prohibitive. During those proceedings no challenge was made to the feasibility report. In separate subsequent litigation the Foreign Secretary disclosed certain relevant documents

(the “Rashid documents”) relating to the preparation and finalisation of the feasibility report which cast doubt on its reliability.

32. The headnote at (2) states:

“But (2), refusing the application (Baroness Hale of Richmond DPSC and Lord Kerr of Tonaghmore JSC dissenting), that on detailed examination of the 2008 decision and the Rashid documents, and, having regard to the general conclusions and the assessment of the vulnerability involved in resettlement expressed in the draft report which remained unaltered in the final report, there was no real possibility, likelihood or prospect that a court would or could have seen in the process of finalising the report or in the associated materials now adduced anything which made it irrational or otherwise unjustifiable for the Foreign Secretary to act as he had done in 2004; that there was nothing in the fresh evidence and materials to indicate that there was any basis for setting aside the House of Lords’ decision; that the new circumstances created by the new feasibility study would provide a fresh opportunity for the executive to consider the question of resettlement and for any islander to challenge the 2004 Orders in the light of all the information now available; and that, accordingly, the House of Lords’ decision would not be set aside (post, paras 64—76, 77—80).”

33. Lord Mance, while saying his opinion in *Bancoult No.2* had not changed, acknowledged that the threshold for setting aside their decision was not met. He also said at [72]:

“...But there has been a new 2014—2015 feasibility study, published by KPMG in March 2015, which assesses the risks differently from the prior report and finds that, at some cost and taking into account (for the first time) the possibility of resettlement on Diego Garcia itself, there would be scope for supported resettlement. In practical terms, the background has shifted, and logically the constitutional ban needs to be revisited. As Mr Steven Kovats QC expressly accepted during oral submissions, **it is 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.** That is in my opinion a factor militating strongly against the setting aside of the House of Lords’ judgment and ordering a rehearing.. “[Emphasis added]

34. Lord Clarke said at [78]:

“Given that new factor, the study concludes that there would be scope for supported resettlement. **As Lord Mance JSC puts it, the background has now shifted and logically the constitutional ban needs to be revisited.** The outcome of the new (and ongoing) feasibility study will no doubt consider the prospects of resettlement.” Emphasis added]”

35. Baroness Hale, in the dissenting minority said at [198]:

“Ultimately, this is a case about justice. While I deeply admire the industry and intellectual honesty of Lord Mance JSC, which has led him to the conclusion that the decision with which he disagreed at the time should not be set aside, for the reasons given by Lord Kerr JSC, with which I agree, I would grant this application. Justice to my mind demands that the applicant be given a fair chance to satisfy this court that the decision to re-impose the denial of the islanders’ right of abode was not a rational one.”

#### 4. *The Advisory Opinion and UN Resolution*

36. On 25 February 2019 the International Court of Justice (“ICJ”) delivered an Advisory Opinion on the status of the BIOT (“the advisory opinion”) and a consequential resolution of the General Assembly of the United Nations of 22 May 2019, 73/295, was passed to give effect to the advisory opinion (“the UN resolution”). The United Kingdom has made its position clear in a detailed and full response to the request from the Secretary General of the UN for information about the implementation of the UN resolution. The responses of all states responding are now published in a Report of the Secretary General dated 18 May 2020.
37. The ICJ held that the process of decolonisation of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968 following the separation of the Chagos Archipelago and that:
- “as regards the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, this is an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonisation of Mauritius.”
38. Prior to 1965 the Chagos islands were part of the Colony territory administered by Mauritius. The advisory opinion concluded although the Government of Mauritius had, upon independence, agreed to the severance of the Chagos Islands, this detachment was not based upon the free and genuine expression of the will of the people of Mauritius, and the decolonisation of Mauritius has not therefore been lawfully completed. The Chagos Archipelago thus still formed an integral part of the territory of Mauritius. The conclusion was that the failure to complete the process was unlawful.
39. In the UN resolution, paragraph 4, the General Assembly said:
- “4. Urges the United Kingdom of Great Britain and Northern Ireland to cooperate with Mauritius in facilitating **the resettlement of Mauritian nationals, including those of Chagossian origin, in the Chagos Archipelago**, and to pose no impediment or obstacle to such resettlement;” [Emphasis added]
40. The UN resolution has no direct legal effect in domestic law and does not create rights or obligations enforceable in the BIOT courts. Unlike Orders in right of BIOT, Ordinances or incorporated treaties, it is not a source of law. Nevertheless, it can contribute to the formation of Customary International Law and have persuasive effect.

41. In *R (Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs (Amnesty International intervening)* [2019] QB 1075, at paragraphs [113—117] it was held that while customary international law is a source of the common law it will only be received into the common law if such reception is compatible with general principles of domestic constitutional law.

### **III. THE ARRIVAL OF THE CLAIMANTS ON THE ILE DU COIN**

42. On 16 February 2026, a yacht called the SY No Excuse (“the Yacht”) entered BIOT territorial waters and travelled to Peros Banhos. There were nine people on board the Yacht. The Yacht entered BIOT territorial waters without seeking or being granted permission to do so. All of the occupants of the Yacht were aware that they were entering the BIOT illegally. The Yacht’s Automatic Identification System was switched off whilst it entered BIOT waters.
43. Of the nine people on the Yacht:
- (i) four men of Chagossian origin (the Mandarin Claimants) whose intention transpired to be to set up a permanent camp;
  - (ii) three people who appear to have been the mariners, actually responsible for navigation of the Yacht. Those were Michael and Peter Broughton and Rachel Trevallion;
  - (iii) a journalist, Paul Wood who – on 25 February 2026 – published an article in The Spectator magazine entitled “Inside the daring plan to reclaim the Chagos Islands”; and
  - (iv) Adam Holloway, a former Army Officer and Conservative Member of Parliament who is now a member of the Reform UK party.
44. It appears the camp was well prepared and supplied, and it even had Starlink communications. On 19 February 2026, the Claimants in this action made an application for urgent out of hours interim relief to this Court. It was essentially based on the refusal of the Defendant to grant the Claimants a heritage visit, to visit the Ile Du Coin, the birthplace of the Second Claimant and for them to visit graves etc. Nowhere in that application did the Claimants inform the Court that their intention was not to carry out a temporary visit but rather was to establish a permanent camp, nor that their plan to enter

the BIOT in breach of entry restrictions without a permit had been developed over the course of some months. Rather the impression given to the Court was that the Claimants had been ignored in their request for a heritage visit and were driven to take matters into their own hands.

45. It appears on the evening of 21 February 2026, media reported that Nigel Farage MP, had at some point the previous week flown to the Maldives. His stated intention was to embark on the Yacht and travel to Ile du Coin. In the event this did not happen, perhaps owing to this Court's interim order that the Yacht could only be used for resupply and not the transport of others to the Ile du Coin.
46. On arrival into Gan, Maldives, on 21 February 2026 two people - Rachel Trevallion and Paul Wood - left the Yacht. However, notwithstanding the Court's direction the Yacht picked up six new people whilst in Gan purportedly as crew.
47. On 26 February 2026, the Yacht returned to the Ile du Coin and unloaded supplies. However, two of the 'crew' jumped ship and went ashore, apparently a total surprise to the Master of the Yacht. Those two still remain on the Ile du Coin. Adam Holloway reboarded the Yacht. The Yacht then left the Ile du Coin indicating it would not be returning.
48. When the Commissioner became aware of Michael Broughton's decision not to return in his Yacht to the Ile du Coin, mindful of the danger to those on the Ile du Coin he wrote to the Mandarin Claimants' legal representatives on 2 March 2026. He informed the Mandarin Claimants' legal representatives that the British Patrol Vessel ("BVP") operated by the BIOT which had returned to Diego Garcia on 2 March 2026, would be travelling North to Male, Maldives on 3 March 2026; and that, subject to necessary permission being received from the company which operates the BPV, it might be possible for those on the Ile du Coin to be picked up and transported to safety. The Mandarin Claimants did not take up this offer.

#### **IV. THE EVIDENCE**

##### **A. The Claimants' evidence**

###### **1. *Louis Misley Mandarin***

49. Louis Misley Mandarin, the First Claimant, has made 3 witness statements. In his first statement he said he was elected First Minister of the Chagossian Government-in-Exile in December 2025. He said:

“I’m a proud British Chagossian, some might call me a BIOT Citizen (British Indian Ocean Territory Citizen). My great great Grandfather was a resident of the islands, and my family remained so through to my father. My ancestor was an elder and leader of our people. My family for several generations were all born on the Chagos Islands where our culture and way of life are unique. We are Chagossians. My father was born on and lived on Peros Bahnos. We have long wanted to return, and we had sought permits to visit, but no one answered us, so we have come here to prove we would still like to return.”

50. He initially said that the Claimants landed on the Chagos Islands on 16 February 2026 to visit, repair graves and press for consultation and resettlement rights; and that they did so after their attempts to apply for permits were fruitless.
51. He explains his family’s multi-generational ties to the islands, the forced removal of Chagossians historically and the urgency for elderly community members to return.
52. He accepts the Claimants received a Removal Order but he asserts that the statutory procedure was not followed. There was no interview, no reasons given and no proper opportunity to be heard.
53. He stressed time sensitivity owing to many Chagossians being elderly and facing the prospect of losing the opportunity to return. He gave the following reasons for his visit:

“13. There are several reasons for my visit:

- a. I wanted to see my homeland.
- b. I wanted to experience it with my father.
- c. I wanted to find and visit the graves of my ancestors, something I have partially achieved last week. I was even able to do some repairs to those graves, which matters very much to me.
- d. I want to protest, the treatment of my people. I consider that it was an unlawful act (and crime against humanity) to remove my people forcibly from our islands. This view is shared by others like the Human Rights Watch.
- e. Since 2012 and in the Labour Manifesto in 2024 successive British Governments have promised self-determination, but it has been denied to me and my people. Now, I want to protest. I tried to have my voice heard in England, but it was not enough, now I am home I can tell the world this is where I want to be.
- f. Now I see my islands I want us to have the right of settlement, and I want to campaign and protest our treatment from the islands.

14. In 2009 I am aware there was a court case about the rights to visit the islands in the English Court of Appeal. His Majesty’s British Government said then that immigration consent would be a formality, yet for four months I could not get an answer on whether I could have a permit to visit. My fellow Chagossians and I ultimately decided to just go.

Our homeland was calling us, and we could not wait for ever. We decided to try and make our voices heard from our homeland.”

54. In his second statement he said that they are based on the island at a place of permitted mooring for yachts, as is shown on an attached map. Neither Mr Teixeira, sent by Mr Goddard, or the man called Gerland who accompanied him, asked them any questions about the environmental impact of their presence during their two visits.
55. He confirmed they were not eating the crabs or leaving rubbish, they had started to repair the graves. All their waste is bagged and taken away by the boat.
56. In his third statement signed on 5th March 2026 he says that his visit was influenced by the failure of the Defendant to respond to his attempts to get permission for a visit. He said:

4. In October last year my lawyer started asking the BIOT about permission to visit. This was because my father and I hoped to do so with journalists to tell our story from our islands, as part of the visit to our homeland and our ancestor’s graves. We never received any permit or any indication as to when or if we would be allowed to come despite my understanding that this was to be arranged in 2025. The request was nothing to do with the subsequent plan led by Adam Holloway to come without any permit.

5. Adam approached me in December 2025, he swore me to secrecy. I first met him on January 15th 2026 at my then place of work as a bus driver. He explained he wanted to take me to the islands and others that wanted to go. I met him again on January 17th, and on January 24th I left for Thailand with my co-claimants. We agreed because we wanted to return to our islands. We hoped they would be a place we can stay, and once we had arrived we knew that we could make a home here and we want to stay.”

...

10. I would like to tell the Court more about my representation of my people as I am told the Commissioner is questioning this. I have already explained there was a vote of the Chagossian people. I was elected as First Minister of the Chagos Government, then described as being government in exile. This came about because for months across 2025 my people begged HM Government to talk to us, to consult us, and we hoped that an election amongst my people would make it more difficult to ignore our pleas. Due to the problem of not being heard, kind supporters offered to conduct a poll of the people and see if they wanted to elect a leader to speak for them, it was hoped then HM Government might actually talk to us if we had a Government.

...

13. I have explained in my previous statements that I had a number of reasons for coming here, and now without question we want to stay. I understand that it is not the question for the Court whether we should or should not be allowed to stay, but rather whether it is unlawful to remove us and whether unlawful decisions or omissions have been taken by the Commissioner in not permitting my visit or stay. But I can of course say what I would like to happen and what I consider to be the only lawful and fair way for the Defendant retaking any of those decisions to act. Whilst when we first arrived the island seemed basic and inhospitable, we have made it hospitable and now things are much improved. We do

have coconuts, fish, breadfruit and water, and now a store of other food that will sustain us for at least 3 more weeks. We only need re-supply towards the end of March as a result. My father is doing well. My father is stronger than when he arrived, and he is so happy to stay..”

57. He reconfirms that they are living comfortably, have no need for more supplies until the end of March and his father is in good health.

## 2. *Louis Michel Mandarin*

58. Louis Michel Mandarin, the Second Claimant, has made two witness statements. In his first witness statement he says he returned to the islands because he was homesick and wanted to share the islands with his son. It was also an act of protest. He considers their removal to have been an unlawful act and crime against humanity.
59. He was born on the Chagos Archipelago on 6 September 1953 and has multi-generational ties going back to his great-grandparents. In the 1960s till the late 1970s, his family and community, who are the indigenous inhabitants of the Chagos Archipelago, were forcibly uprooted from their homeland. He says his family were dumped on the Mauritian capital wharf in Port Louis without any support from the local government. They were not permitted to return home. He said as his family did not have any connection in Mauritius, they struggled to meet basic needs, such as food, safety and shelter. He gave the following reasons for his entry and stay on the Ile du Coin:

12. I made this journey for myself and in the public interest on behalf of the Chagossian people. The right of self-determination matters, the right to visit or settle on our islands is of the utmost importance to me and my community. We were removed and excluded from our homes. I had a terrible experience, and my family and many others suffered. This case matters for other descendants of the Chagos islands, within what is known as the British Indian Ocean Territory (BIOT). His Majesty's British Government has not thought it needs to consult our people properly and to treat us lawfully, we will forever lose our rights as BIOT citizens to comment on what should happen to our homeland. Our concerns are also of public interest in terms of how the indigenous people dispossessed from these islands are treated.

13. I came here because:

- a. I wanted to see my homeland again, I have been home sick for nearly 60 years.
- b. I wanted to show my son our islands.
- c. I wanted to find and visit the graves of my ancestors, something I have partially achieved this week with my son.
- d. I want to support my son and First Minister in protesting the treatment of my people. I consider that it was an unlawful act (and crime against humanity) to remove my people forcibly from our islands.
- e. Successive British Governments have promised self-determination, but denied it to Chagossians, I want to protest this. No one listened in England until we came here.

f. I always wanted us to have the right of settlement, and I want to campaign and protest our treatment from the islands.

60. In a press release, exhibited in the bundle, there is a quote that Michel Mandarin remembers being taken off the island 59 years ago on a cargo ship, spending eight days at sea in the hold with livestock for company. According to the Chagossians, the American troops who rounded them up corralled their dogs into a building and then gassed them with vehicle exhaust. The Chagossians were told, says Misley Mandarin, that “you’ll be gassed too if you don’t leave now”.

61. In his second witness statement he said:

“I have had type 2 diabetes since 2019, after nearly 7 years I am used to managing it. Sadly, as I explain in my first statement exile from this island, it led to alcoholism and that led to my diabetes, so my health issues stem from my forced removal. I never want to be removed again.”

### 3. *Louis Antoine Lemette*

62. Louis Antoine Lemette, the Third Claimant made one witness statement. He was born on 25 April 1958 outside the Archipelago as he claims his mother was deported. He is presently on the Ile du Coin as well as the other Claimants. He says:

8. I came here because:

- a. I wanted to see my homeland again.
- b. I want to visit the graves of my ancestors
- c. I consider that it was an unlawful act (and crime against humanity) to remove my people forcibly from our islands.
- d. Successive British Governments have promised self-determination, but denied it to Chagossians, I want to protest this.
- e. Now I want to speak up for us to have the right of settlement, and I want to campaign and protest our treatment from our islands.

9. I want our people properly consulted. I hope the Court will protect us so that we can pursue justice.

### 4. *Guy Shane Adrien Castel*

63. Guy Castel is the Fourth Claimant. He is 32 years old and is a descendant of the Chagossian people. His grandmother was born in the Islands. He said he came to the Ile du Coin because:

- a. I wanted to see my homeland again.
- b. I want to visit the graves of my ancestors
- c. I consider that it was an unlawful act (and crime against humanity) to remove my people forcibly from our islands.

- d. Successive British Governments have promised self-determination, but denied it to Chagossians, I want to protest this.
- e. Now I want to speak up for us to have the right of settlement, and I want to campaign and protest our treatment from our islands.
- 9. I want our people properly consulted. I hope the Court will protect us so that we can pursue justice.

5. ***Robert Elliott Peake***

64. Robert Peake is the Claimants' solicitor and through three witness statements produces various materials as does his paralegal Anne-Marie Harding. I will refer to such of those documents that I find material.

**B. The Defendant's evidence**

1. ***Peter Charles Goddard***

65. Mr Goddard is the Acting Commissioner's Representative and Acting Principal Immigration Officer ("Acting PIO") for the BIOT and has been since 9 February 2026. He issued the Section 12 Removal Notices against the Claimants on the 18 February 2026 and made a witness statement explaining matters on the 24 February 2026.
66. In his witness statement he says the Vessel SY 'No Excuse' entered the British Indian Ocean Territory without a permit and without giving notice of its intended arrival to the BIOT Administration. A number of persons aboard the Vessel then travelled by small boat to land on Ile du Coin, an island forming part of Peros Banhos lying some 120 miles north of Diego Garcia.
67. Mr Goddard became aware of the vessel on 17 February 2026 via email from the Commissioner. The BIOT Patrol Vessel was sent to make contact. The Administration had also seen some media post and videos, such as a Conservative Post article, where individuals had stated their intention to stay permanently.
68. He said when the Section 12 Removal Notices were prepared and issued, the Administration had not seen any correspondence sent by the Claimants' representatives to the FCDO on 16-19 February 2026.
69. The Section 12 Removal Notices, on their face record the only reason for their issue as being:

“ .. being a person unlawfully present in the Territory shall be removed from the Territory and shall remain out of the Territory until further Notice.”

70. He confirms the Section 12 Removal Notices were prepared on 18 February 2026 and served on the Claimants by Mr Teixeira, the Senior Fisheries Officer of the BIOT. Anyone not personally served had their notice left in a clearly visible place.
71. In his witness statement dated the 24 February 2026 he emphasises the legal scope behind the decision (BIOT Immigration Order 2004), the safety risks, lack of infrastructure on Ile du Coin, and the environmental concerns stating these factors informed his decision to issue the Removal Notices.

## 2. *Nishi Rajendra Dholakia*

72. Nishi Rajendra Dholakia is His Majesty’s Commissioner for the British Indian Ocean Territory and has made two witness statements. In the first, dated 25 February 2026, he begins with an uncontroversial position:

“2. The BIOT is constitutionally separate from the UK Government. It is a fundamental principle that the undivided Crown acts in different capacities across its territories, and that the Crown in right of the Government of BIOT is a separate legal entity from the Crown in right of the Government of the UK. His Majesty’s Commissioner for the BIOT is not responsible for any action of the Secretary of State of the Foreign Commonwealth and Development Affairs and any actions undertaken by the Foreign, Commonwealth, and Development Office (“FCDO”) are attributable to the Government of the UK, as opposed to the BIOT Administration.”

73. He is clearly conscious of the context. He says:

“7. It is a matter of historical record the harrowing experiences of Chagossians taken from their homes on the BIOT. That episode in British history and the resulting displacement of Chagossians is not something which should be ignored.

8. I understand that this is why the FCDO established ‘Heritage Visits’ for Chagossians, with the support and facilitation of the BIOT Administration. I have been informed how valuable participants have found these visits and I can understand why.

9. The Heritage Visits have been highly regulated, with the FCDO advertising the visits ahead of time and collaborating with the BIOT Administration to implement them. The process has been understood widely within the Chagossian community. All previous participants have lawfully entered the Territory, after careful preparation by the BIOT Administration, so that there are resources put in place to ensure the safety of those visiting. Participants were either housed in accommodation on Diego Garcia or on the BIOT Patrol Vessel (BPV) during transit to outer islands of the Territory. They were provided with food on the BPV, with personnel on hand to provide support in cases of risks to wellbeing. The last Heritage Visit took place in 2020, from 10 to 19 February, with 27 participants

attending. The Heritage Visits were subsequently paused in 2020 due to the COVID-19 pandemic and during Diego Garcia Treaty negotiations with Mauritius. I am aware that that UK government has committed to resuming the Heritage Visits and that it remains a priority of the Government to do so.

10. In this case, the Claimants state that they were unable to access a Heritage Visit, and so they decided to set sail themselves.”

74. He accepts that the FCDO agreed with Mauritius to resume heritage visits in 2025, but that we are now in 2026 and there have been none.

75. In respect of Ile du Coin he says it is part of the Peros Banhos atoll in the Chagos Archipelago. It has been uninhabited since 1971. He says there is no functioning civil infrastructure on the island, nor is there access to safe drinking water, adequate food sources or medical facilities.

76. In summary he further dealt with:

#### *The Chronology*

- (i) 16 February 2026 the vessel SY NO Excuse transports a group to Ile du Coin. Evidence of a meeting in Phuket and Sri Lanka suggests preplanning.
- (ii) 17-18 February 2026 BIOT Patrol Vessel is dispatched to make contact in light of media posts indicating an intention to remain on the island forever.
- (iii) 18 February 2026, Acting Principal Immigration Officer issues Section 12(1) Removal Notice to the individuals and s.12(6) Notice to the vessel master.

#### *Humanitarian, safety and environmental concerns*

- (iv) Ile du Coin has been uninhabited since 1971 and lacks infrastructure. He considers there to be a real risk to life and health for people setting up a permanent camp there.
- (v) The BIOT Patrol Vessel remains in the area but it cannot remain there indefinitely and if it departed then there would be limited capacity to help.
- (vi) Ile du Coin is within a marine protected area. There is a risk to this posed by the Claimants.
- (vii) There are concerns surrounding conflicting public statements indicating the Claimant’s intention to remain permanently.

### *Security Concerns*

77. He says if it is established that individuals can enter the Territory without permission, even if they are of Chagossian descent, this might encourage further such voyages. This could include Chagossians from outside the UK, with the support of foreign members of armed forces or parliamentarians on other islands or atolls within the Territory.

### *FCDO Concerns*

78. He said:

“36. On 20 February 2026, the FCDO wrote to the BIOT Administration to explain that a Note Verbale had been sent to the Maldivian authorities requesting that they block harbour access to the Vessel, in an attempt to disrupt the potential movement of more Chagossians to Ile du Coin but that if this was implemented, it would cause significant logistical issues for those remaining on the island. Further, Stephen Doughty MP, the UK Minister of State for Europe, North America and Overseas Territories, had asked that a contingency plan be drawn up on how the group on Ile du Coin could be supported if a ‘risk to life’ emerged.

37. On the same day we responded confirming that we had limited options to meet any emergencies. Essentially, any support would have to be delivered through the BPV, which was due at some point to have a crew change and replenish supplies. But provided that it was present, we would instruct that it take them urgently to a safe third country for assistance but that if it was not there, we would have no capability to assist without HMG’s assistance.”

79. He concluded his first witness statement by pointing out discrepancies in the Claimants’ evidence as opposed to what they had told the press or was other ways available publicly.

He reports:

“45. I note there is extensive media coverage in which members of the Group have made statements that their intention is to establish a permanent settlement on Ile du Coin.

a. In a clip posted on the GB News website on 17 February 2026 an interview was conducted by GB News journalists with Louis Misley Mandarin and Adam Holloway from 0:40 to 4:19, with Mr Mandarin confirming at 1:32 “I came here Adam helped me a lot during this plan we are here to stay.”

b. In a further clip posted on the GB News website on 18 February 2026 of an interview conducted by Nigel Farage with Louis Misley Mandarin and Adam Holloway at 0:42 to 8:52.

i. At 1:26, Mr Holloway confirmed that “...we have established in the last 36 hours a permanent settlement um and the plan is for Misley to be joined by other people in the coming weeks”.

ii. At 4:00, Mr Holloway stated “... pretty unprecedented um infiltration in the sense that we’ve moved from Asia via Sri Lanka with a very long crossing right across the Indian ocean to get here basically because I wanted to make sure we did it in the most covert way we possibly can...”.

iii. At 4:40, Mr Holloway states “...this has been 4 months in the preparation...”.

iv. At 5:00, Mr Holloway states "...life cannot be sustained here without unless we sort the wells..."

v. At 6:42, Mr Mandarin stated "stay on the island - we're not visiting - a permanent settlement..."

vi. At 8:02, Mr Mandarin stated "...but we are determined to stay, we're not going anywhere."

vii. At 8:26, a video clip of the Group travelling on a boat to the island, Ile du Coin is shown and at 8:42 Louis Misley Mandarin is heard speaking "This is our homeland - more to come in a few weeks - we are not visitors - we are belongers - and we be here to stay - forever..."

80. In his second Witness statement, dated 4 March 2026, he deals with various further matters:

*Heritage visits, correspondence and claimed intent*

81. He says heritage visits are led and organised by the FCDO. The BIOT facilitates them by issuing permits only after the FCDO decides on the participants and dates. They were paused in 2020 owing to COVID and treaty negotiations and the UK has publicly committed to resuming them when safe to do so. He cites the current security context as a preventative factor.

82. He says on 8 October 2025, Anne-Marie Harding (for the Claimants) sent an email inquiring about visits. The same email was resent by James Tumbidge with some small added details on 17 October 2025. On 23 October 2025, a BIOT official replied informing them that this was a matter to be dealt with by the FCDO.

83. On 6 February 2026, Mr Tumbidge sent a further email, citing for the first time, that he had a client.

84. He highlights a contradiction between the Claimant's formal correspondence, seeking Heritage Visit information, and public media statements that indicates that the voyage was covert, planned for months and with the intention to establish a permanent settlement.

*Arrival, planning and evidence of premeditation*

85. He describes media interviews and articles that describe months of planning and covert navigation before the trip began.

86. He points to multiple media clips and records including statements such as 'we are not here to visit, we are here to stay'. The Commissioner treats this as evidence that the Claimants knowingly entered without permits.

*Humanitarian and safety concerns*

87. He points out that Ile du Coin has been uninhabited since 1971. It lacks infrastructure, habitable structures and has only limited food sources. The Commissioner repeatedly warns that the island is not suitable for habitation.
88. The Commissioner highlights the vulnerabilities of the two elderly group members and the fact that evacuation options are limited. He describes this as a serious risk to life and health.
89. The Commissioner cites the observations of his officers, including the limited supplies and survival equipment they saw. Crew statements and social media posts indicate that supplies are finite.
90. Social media and on-site evidence suggests the presence of items that may breach BIOT controls, such as drones and spear guns, as well as possibly prohibited fishing activity. There are also concerning statements about exhumation and or DNA sampling of graves. These are concerning matters for security and also interference with the natural resources and wildlife.

*Security, environmental and resourcing concerns*

91. Allowing unauthorised landings would undermine border control, could encourage further illegal voyages (including by non-UK actors) and might create opportunities for hostile actors to exploit outer islands. This raises national security concerns, especially considering the proximity of Diego Garcia.
92. Ile du Coin lies within the Marine Protected Area where unregulated presence risks damage to flora and fauna.
93. The BPVs duties, outer island sovereignty patrols, fisheries patrols etc., have been diverted owing to the Claimants' presence.
94. There are further statements from Daniel Teixeira which do not take the instant matters further.

**V. THE CLAIMANTS' GROUNDS**

95. The Claimants' grounds in summary are:
  - (i) The failure of the Defendant to exercise the power to grant a permit or provide for any form of visitation.

- (ii) The failure to follow a fair procedure in issuing the Section 12 Notices.
- (iii) Procedural unfairness or failure in the Defendant’s conduct of the appeal process against the Section 12 Notices under section 10 of the Immigration Order 2004.
- (iv) Illegality and/or abuse of power. The decision to issue a notice to remove is vitiated by unlawfulness in that for these Chagossians the act of removal and threat of removal would involve:
  - i. Commission of a serious crime; and/or
  - ii. Discrimination.
- (v) The decision to issue a notice to remove is not lawful and fails to comply with public law duties.

96. The Claimants submit that if, and to any extent, that any exercise of the power to permit presence, or discretion not to remove, were said to be precluded or hindered by Section 9 of the Constitutional Order 2004 such construction or effect would render that provision unlawful in light of the present circumstances, and such is also challenged on that basis.

## **VI. THE DEFENDANT’S DEFENCE**

97. The Detailed Grounds of Defence begin with an attack on the candour of the Claimants. They say at paragraph [2]:

“2. An essential feature of this case is that the Claimants appear to have deliberately misled the Commissioner and the Court as to their conduct, intentions and objectives. In particular:

a. The true nature of the Claimants’ trip has been to establish a permanent camp on Ile du Coin: 26 Feb Judgment, §9. They plan “to stay, and to stay forever”: Dholakia 1, §13.

b. The Court was deliberately misinformed by the Claimants about this true nature of their trip. Rather than being open about it, the Claimants’ urgent application, made on 19 February 2026, was falsely predicated on their stated desire to undertake a heritage visit and the failure of the Commissioner to facilitate this: 26 Feb Judgment, §§6-7.

c. The Claimants’ lawyers made enquiries in October 2025 regarding heritage visits and requested information on how to arrange such a visit. No formal application was ever made, presumably because it was never the Claimants’ intention actually to carry out a heritage visit. Indeed, the Claimants’ “covert” trip had been planned for months: Dholakia 1, §13.

3. This serious breach of the Claimants’ duty of candour in and of itself warrants the refusal of permission.”

98. There is no doubt the court was misled about the true nature of the trip, and indeed the return trip to the Ile du Coin of the Vessel No Excuse which took off Adam Holloway from the island and landed another two persons for the camp. A breach of candour should not be condoned. However, I recognise the importance of the issues before me, and it would not be right to dismiss them on this preliminary ground.
99. The Defendant's grounds of Defence can be condensed and summarised as follows (using the formulation of the Claimants' Grounds in the Detailed Grounds of Defence):
- (i) Ground 1 – Unlawful failure to exercise power to grant a permit for heritage visits.
    - i. The Claimants have never made an application to visit BIOT. Their emails of 8 and 17 October 2025 merely asked whether visits to BIOT were “still possible” and “what we would need to do and who we would need to contact in order to arrange such a visit”. They were in the form of a general enquiry ... In the absence of a decision having been made it cannot be said that the Commissioner has acted irrationally. The Commissioner has acted reasonably at all times, and no application or decision ever having been made, no obligation to give reasons can have arisen.
  - (ii) Ground 2 – Procedural unfairness in issuing s.12 Notices.
    - i. The Commissioner was not required to engage with the Claimants or give them a right to be heard before issuing the s.12 Notices ... Alternatively, the circumstances of the present case would render it impossible, impractical and pointless to afford the Claimants an opportunity to make representations.
    - ii. There has been no breach of a duty to give reasons upon the issuing of the Section 12 Notices; the reasons were genuinely and legitimately elucidated and explained by Mr Goddard in his witness statement of the 24 February 2026.
  - (iii) Ground 3 – Procedural unfairness in the s.10 appeals.
    - i. By way of background, it is important that the appeal submitted by the Claimants, dated 18 February 2026, did not set out any grounds for the

appeal... the Claimants had been provided the reasons why the s.12 Notices had been issued – i.e. they were unlawfully present in BIOT, having arrived without a permit.

(iv) Ground 4 – Illegality

- i. The Claimants argue that the s.12 Notices involve the commission of a serious crime and discrimination, by reference to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the UN Charter, and the International Convention on the Elimination of Racial Discrimination. This Ground is hopeless as unincorporated treaties are not part of domestic law such that domestic courts have no jurisdiction to interpret or apply them ... customary international law cannot be prayed in aid in the light of conflicting legislative provisions – i.e. s.9 of the BIOT (Constitution) Order 2004 and the BIOT (Immigration) Order 2004:
- ii. the Claimants’ argument that a crime against humanity would be committed is without foundation.

(v) Ground 5 – S.12 notices failed to comply with public law duties.

- i. No policy on the exercise of the powers contained in s.12 of the Immigration Order exists. By definition, then, the Commissioner has applied his mind to the specific facts of this case and decided to exercise his powers under the Immigration Order 2004.
- ii. The purpose of s.9 of the Constitutional Order is to set out who has a right of abode on BIOT. The sub-heading to the section states, baldly, “No right of abode in the Territory”. Section 9(2) further states that “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 position is then further amplified in the Immigration Order. The reference in s.9(1) to “the defence purposes of the [UK and USA]” sets out some context to this provision but does not seek to condition it. Moreover, the use of the term “Accordingly” in s.9(2) of the Constitutional Order refers back to the phrase “no person has the right of abode in the Territory” in s.9(1).

- iii. Had the draftsman of the Constitutional Order intended to make the substance of s.9 contingent on a national security threat, that would have been made explicit. Moreover, given that the Immigration Order was made on the same day as the of the Constitution Order, had that been the intention of the draftsman it would also have been made explicit in the of the Immigration Order. It was not. Indeed, there is nothing in the Immigration Order to suggest that the relevant powers can only be exercised where there is a national security threat.
- iv. No such limitation was identified by the House of Lords in *R (Bancoult) v SSFCA (No 2) [2009] 1 AC 453*, which referred to s.9 of the Constitution Order as: “den[ying] the existence of such a right [of abode]” on BIOT and its language “could hardly be clearer” (Lord Hoffmann at §45); “a stark provision” (Lord Rodger at §110).
- v. The Claimants set out a list of 18 considerations that the decision-maker failed to have regard to when issuing the s.12 Notices. These factors are either misconceived or are not so obviously material that it was irrational to leave them out of consideration.

## VII. LEGISLATION

100. The British Indian Ocean Territory Order 1965 (SI 1965 No. 1920) created the Territory of the BIOT. It provided for the appointment of a Commissioner who had power to make laws for the Territory:

4. There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during Her Majesty's pleasure.

...

10. The Commissioner, in the name and on behalf of Her Majesty may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise-

(a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted ; and

(b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

...

11.-(1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct.

101. There then followed British Indian Ocean Territory Order 1976 (SI 1976 No.893) much to the same effect but with the return of the Aldabra group of islands to the Seychelles. Then there was the British Indian Ocean Territory Amendment Order 1994.
102. Pursuant to Section 9 of the 1976 Order the Commissioner passed the Courts Ordinance 1983. In that Ordinance, *inter alia*, the jurisdiction of this court was set out:

**Jurisdiction of Supreme Court.**

6. The Supreme Court shall be a superior court of record with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with all the powers, privileges and authority which is vested in or capable of being exercised by the High Court of Justice in England.

...

8. The jurisdiction of the Supreme Court in all its functions shall extend throughout the Territory:

Provided that this section shall not be construed as diminishing any jurisdiction of the Supreme Court relating to persons being, or to matters arising, outside the Territory.

103. The Constitutional Order 2004 revoked the BIOT Orders 1976 to 1994, and provided so far as material: -

**No right of abode in the Territory**

9. (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.

...

**Powers reserved to Her Majesty**

15. - (1) There is hereby reserved to Her Majesty full power to make laws for the peace, order and good government of the Territory, and it is hereby declared, without prejudice to the generality of that expression but for the avoidance of doubt, that-

(a) any law made by Her Majesty in the exercise of that power may make any such provision as Her Majesty considers expedient for or in connection with the administration of the Territory; and (b) no such provision shall be deemed to be invalid except to the extent that it is inconsistent with the status of the Territory as a British overseas territory or otherwise as provided by the Colonial Laws Validity Act 1865.

(2) Without prejudice to the generality of the power to make laws reserved to Her Majesty by subsection (1), any such law may make such provision as Her Majesty considers expedient for the purposes for which the Territory was constituted and is set aside, and accordingly and in particular, to give effect to section 9(1) and to secure compliance with section 9(2), including provision for the prohibition and punishment of unauthorised entry into, or unauthorised presence in, the Territory, for the prevention of such unauthorised

entry and the removal from the Territory of persons whose presence in the Territory is unauthorised, and for empowering public officers to effect such prevention or, as the case may be, such removal (including by the use of such force as is reasonable in the circumstances).

104. The Immigration Order 2004 was passed the same day as the Constitutional Order 2004. This largely reflected the Immigration Ordinance of 1971 which the Divisional Court in *Bancoult No.1* had quashed; and replaced the Immigration Ordinance 2000 which had allowed the Chagossians right of abode in the Territory after the Secretary of State for Foreign and Commonwealth affairs had said he would not appeal *Bancoult No.1* and would pass an Order to reflect the Judgment. The Immigration Order 2004 states in material part:

**Repeal**

3. - (1) The Immigration Ordinance 2000 of the Territory (Ordinance No. 4 of 2000), enacted by the Commissioner on 3 November 2000, is repealed.

...

**Principal Immigration Officer and other immigration officers**

4.- (1) The Commissioner's Representative shall be the Principal Immigration Officer for the Territory and shall have the superintendence and control of all immigration officers.

(2) The Commissioner may appoint such other immigration officers as he deems necessary.

(3) The Commissioner may give the Principal Immigration Officer and other immigration officers general or special directions as to the exercise of their functions under this Order or under any other law for the time being in force in the Territory, and any officer to whom such instructions are given shall comply therewith.

**Restriction on entering or being present in the Territory**

5. - (1) No person shall enter the Territory or be present there unless he is in possession of a permit issued under section 7 or his name is endorsed on a permit under section 9.

(2) This section does not apply to members of Her Majesty's armed forces, or to public officers, or to officers in the public service of the Government of the United Kingdom while on duty, or to such other persons as may be prescribed.

...

**Issue, renewal and cancellation of permits**

7. An immigration officer, acting in his entire discretion, may issue or renew a permit or may cancel a permit before its expiration, subject to the right of appeal provided by section 10.

**Duration of permits**

8. A permit shall, unless cancelled, remain in force for a period of four years from the date of issue or for such shorter period as is stated in it. A permit renewed shall, unless cancelled, remain in force for a period of four years from the date on which the renewal takes effect or for such shorter period as is stated in the renewed permit.

...

**Appeal to the Commissioner**

10. A person aggrieved by any decision of an immigration officer may appeal to the Commissioner, whose decision shall be final and conclusive.

**When unlawful for a person to enter or be present in the Territory**

11. It is unlawful for any person to enter or be present in the Territory in contravention of section 5, or after the expiration or cancellation of his permit, or after the expiration of an endorsement on a permit made in respect of him, or in contravention of a condition to which his permit, or the endorsement made in respect of him, is subject, or when an order made under section 12(1) is in force in respect of him.

**Power to remove persons unlawfully present in the Territory and to prevent unlawful entry into the Territory**

12. - (1) The Commissioner or the Principal Immigration Officer may make an order directing that any person who is unlawfully present in the Territory shall be removed from the Territory and shall remain out of the Territory, either indefinitely or for such period as is specified in the order, or that any person not then present in the Territory shall not enter the Territory and shall remain out of the Territory, either indefinitely or for such period as is specified in the order.

...

**Offences and penalties**

14, - (1) Any person who-

(g) unlawfully enters or is unlawfully present in the Territory;

is guilty of an offence against this Order.

(2) Any person who commits an offence against this Order for which no other penalty is provided by this Order is liable on conviction to imprisonment for 3 years or to a fine of £3,000 or to both such imprisonment and such fine.

105. It is of note that the Commissioner has original jurisdiction to issue a Section 12 Removal Notice from which there appears to be no appeal. Section 4(3) sits unhappily with Section 7 of the Immigration Order 2004 in that the immigration officer is given complete discretion to issue permits under Section 7, but must accept all directions given to him by the Commissioner under Section 4(3) of the Immigration Order.

**VIII. SUBMISSIONS AND ANALYSIS**

106. Neither party comes out well in this matter. The heritage visits for the Chagossians were stopped in 2020 (there had been visits in 2006, 2008, 2009, 2010, 2011, 2013, 2015, 2017, 2018 and 2019) and have not recommenced despite a statement from the FCDO they would do so in 2025; nor is there a timetable to do so. The Chagossians in reality are treated worse than tourists and yachtsmen who are routinely given permits to visit the outer islands. The email chain shown at paragraphs [186] to [189] below demonstrates a disregard, or administrative inertia, to the fact that many of these Chagossians are elderly and infirm and will soon be unable to visit the graves and islands of their forebearers.

107. The Claimants took the law into their own hands and illegally entered the Territory and illegally remain there. As can be seen from paragraphs [42] to [47] above this was deliberate and planned. The Claimants (not their lawyers), at least in part, misled the court when seeking urgent out of hours interim relief by not setting out the full reasons for them being on the Ile du Coin. This Court does not, and cannot, condone their illegal entry into the Territory.
108. That being said, this is a Court of Justice and I must grapple with the situation as it is before me.
109. A pivotal issue that runs through the Chagossians' claim is their right to abode in the outer islands of the Archipelago. As we have seen in paragraphs [24] to [29] above this was removed by Section 4 of the 1971 Ordinance, which was quashed by the Divisional Court in *Bancoult No. 1*, and restored by the Immigration Ordinance 2000, which was in turn repealed and removed by Section 9 of the Constitutional Order 2004 and Section 5 of the Immigration Order 2004.

**A. Section 9 of the Constitutional Order 2004**

110. This issue of the legality of Section 9 of the Constitutional Order 2004 was raised and argued before me. It is convenient to deal with it before dealing with the individual grounds dealing with procedural propriety, rationality and illegality in issuing or failing to issue a permit or Removal Notice.
111. The Defendant took the point that challenge to Section 9 of the Constitutional Order 2004 did not feature in the original grounds. However, it was pleaded in the Claimants' Reply to the Detailed Grounds of Defence at paragraphs [40] to [46]. The Reply was filed pursuant to paragraph 9 of the Court's direction of 26 February 2026; and the issue was addressed in both the Claimants' and Defendant's skeleton arguments as well as in oral argument before me. The hearing was a rolled-up hearing prior to permission being granted, and in my opinion the issue was sufficiently raised, and sufficient opportunity to deal with it has been given.
112. The Claimants' position was essentially that the principal reasons for allowing Section 9 of the Constitutional Order 2004 to override the fundamental right of abode for the Chagossians in the outer Islands have disappeared. There has been a sea change in the circumstances of:

- (i) national defence; and
  - (ii) feasibility / prohibitive cost.
113. The acknowledgment that the outer islands can be re-populated, that there are no security or defence issues in allowing them to be repopulated, the feasibility of doing so, and the issue of cost subsumed in the substantial payments to be made have now changed because of the Treaty agreed and signed (albeit not ratified) between the United Kingdom and Mauritius.
114. The Defendant's position was succinct in relation to a challenge to Section 9 of the Constitutional Order 2004:
- (i) Such a claim does not lie against the Commissioner. Any challenge to the Constitutional Order must be brought against the Secretary of State for Foreign, Commonwealth and Development Affairs in the High Court in England & Wales (the forum in which the *Bancoult* claims were brought and determined). The Commissioner is not the appropriate Defendant to such a challenge; he is bound by the Constitutional Order and is not responsible for its introduction.
  - (ii) This claim raises no new issue regarding the lawfulness of s.9 of the Constitution Order; and insofar as it repeats arguments made in *Bancoult (No 2)* it should be rejected for the same reasons given by the majority of the House of Lords.
115. In oral argument the first submission was supported by the proposition that the Constitutional Order 2004 was made in right of the United Kingdom and not in right of the BIOT, and therefore fell solely within the jurisdiction of the English Courts.

### 1. *Jurisdiction*

116. The first issue to decide is whether this Court has jurisdiction to consider the vires or reviewability of Section 9 of the Constitutional Order 2004. The Claimants submit it has, while the Defendant submits it does not. If this Court does have jurisdiction it is common ground that this Court is not bound by the decision of the House of Lords in *Bancoult No.2* [ibid]: the speeches are highly persuasive but not binding.
117. By letter of 9 March 2026 the Claimants' solicitors wrote to the Defendant requesting their agreement to the addition of the Secretary of State for Foreign, Commonwealth and

Development Affairs to be a Second Defendant or Interested Party in this claim before me. The Defendant replied the same day in these terms:

“1. We write further to your letter of 9 March 2026 where you request our agreement to the addition of the Secretary of State for Foreign, Commonwealth and Development Affairs be added as either a Second Defendant or an Interested Party. We cannot agree to either suggestion. This is for 3 clear reasons.

2. First, as previously set out in correspondence with the Broughton Claimants, it is a fundamental principle that the undivided Crown acts in different capacities across its territories.

...

3. Thus, the acts and responsibilities of the Commissioner of the BIOT is separate to those of the Secretary of State for Foreign Commonwealth and Development Affairs (“SSFCDA”). A claim cannot properly be brought in the BIOT Supreme Court challenging the actions of the SSFCDA acting for the Crown in the Right of the UK. If a Claimant wishes to bring a claim against an emanation of the Crown in right of the UK, in respect of acts or omissions within the system of government of the UK, they must do so in the UK

4. Secondly, the Commissioner of the BIOT is the correctly named Defendant and only Defendant relevant for the consideration of the challenge to the s.12 Notices. The FCDO has no part in consideration of whether a s.12 Notice is issued and was not involved in the decision to issue s.12 Notices, therefore the FCDO would not be in a position to comment on the reasoning for the decision.

5. Thirdly, the Mandarin Claimants have been aware since 23 October 2025 that the Heritage Visits were ‘a matter for the FCDO rather than the BIOT Administration’ from an email from the BIOT Administration to both Mr Tumbridge and Ms Harding at 12:46pm on that date..”

118. The Claimants replied the next day on the 10 March 2026 saying:

“We agree that the existing Defendant is the proper body, as appointed Royal representative, to answer for legal issues concerning the Crown acting in right of government of the BIOT. This includes of course the Orders in Council made by the King concerning the BIOT. It is entirely customary for constitutional issues to be addressed in the courts of the many BOTs, and challenges to constitutional legalities are of course properly a matter within the jurisdiction of the BIOT Supreme Court. We therefore agree there is no need to join the UK Secretary of State for that matter.”

119. As can be seen the submission of the Defendant is that the Constitutional Order 2004 was made ‘in right of the United Kingdom’ and is therefore non justiciable in this court. The Claimants argue the opposite. Reliance was placed in oral argument by the Defendant on the comment by Lord Rogers in *Bancoult No.2* [ibid] where he said this proposition was common ground. This needs some analysis and is not free from difficulty.

120. The Commissioner and the Secretary of State have previously vacillated on this point. In *Bancoult No.1* Counsel for the Secretary of State took the position that the English High

Court should not hear the case, rather this Court should. They said in the reported argument at page 1072F:

“*David Pannick QC, Philip Sales and Cecilia Ivimy* for the respondents. The application for judicial review arises not from the actions of the Crown in right of the United Kingdom Government, but actions and legislation taken and enacted by the British Indian Ocean Territory Commissioner acting on behalf of the Crown in right of the Government of The British Indian Ocean Territory, which possesses a separate and distinct sovereignty of its own. The English High Court in London has nothing to do with it.”

121. However, Laws LJ said: at [28]:

“I have recounted by reference to the contemporary documents, that the making of the Ordinance and its critical provision, section 4, were done on the orders or at the direction of Her Majesty's ministers here, Her ministers in right of the government of the United Kingdom. That government had entered into obligations and understandings with the Americans, not with the government of BIOT. The government of BIOT, indeed, was itself a very creature of those understandings. If the applicant in these proceedings had sought to sue in the BIOT courts, the reply might have been that those courts had no authority to control the Secretary of State sitting in Whitehall, and it would have been a true reply.”

122. As will be seen below, this should not be read as other than acknowledging that the Court of the King's Bench in London can issue prerogative writs to those in London or elsewhere responsible. This point is made eloquently by Lord Bingham in *Quark* [post] at paragraph [143] below.

123. In *Bancoult No.2*, Divisional Court, Hooper LJ said in relation to the Constitutional Order 2004 at [115]:

“Applying what Lord Bingham said in *Quark* to the present case, the challenged Orders were made (at least notionally) by the Queen in right of the Government of BIOT.

At [122]:

122. It follows, in our judgment, that section 9 of the Order is irrational on public law grounds and (subject to the other arguments) must be quashed for this reason. Made by the Queen in right of BIOT...”

124. Again it is clear that Hooper L.J is expressly finding that the Constitutional Order 2004 is made in right of BIOT contrary to the submissions of the Defendant.

125. In *Bancoult No.2*, Court of Appeal, Counsel for the Secretary of State (John Howell QC) again accepted the 2004 Constitutional Order was made in right of BIOT. At 374H he said:

“Such justiciable limitations on Her Majesty's powers, albeit acting in right of BIOT rather than acting in right of the United Kingdom ... Such paramount powers may be exercised by Her Majesty in right of the territory in question, on the advice of her ministers in the UK: see Dicey, Law of the Constitution 8th ed, p 113.

126. Sedley LJ said at 403A:

“This was because, as Mr Howell accepts before us, it was in right of the BIOT and not of the United Kingdom that Her Majesty made the two Orders.”

And at 404H, [62]:

“Mr Howell, recognising that his task would be markedly easier if he were able to say that the Orders were made in right of the United Kingdom, contends nevertheless that the interests to which government may have regard, albeit in right of the BIOT, are both catholic and indivisible.”

127. In *Bancoult No.2* House of Lords, this potential dichotomy is not mentioned until Lord Rogers says at [76]:

“At the hearing of the present appeal, however, it was common ground that the Constitution Order was made by Her Majesty in right of the United”

128. He offers no authority for that, it is clearly inconsistent with the approach of counsel for the Secretary of State in both the Court of Appeal and Divisional Court below, and contrary to the express findings of the Divisional Court and Court of Appeal in the proceedings below. It is trite law that law cannot be made by counsels’ concessions.

129. However, Lord Carswell does say at [127]:

“The Orders in Council, unlike the Ordinance, were made in right of the United Kingdom, not in right of the BIOT.”

130. This comment was made by Lord Carswell it appears, without argument.

131. Lord Hoffman said at [40] in *Bancoult No.2*:

“But these proceedings are concerned with the validity of the Order, not simply as part of the local law of BIOT but, as Professor Finnis says, as imperial legislation made by Her Majesty in Council in the interests of the undivided realm of the United Kingdom and its non-self-governing territories. The Constitution Order created the BIOT legislature, in the form of the Commissioner, and it seems to me to illustrate the amphibious nature of the Order in Council, as both British and colonial legislation, that the legislature which is said to bring BIOT within the definition of a colony for the purposes of the Act was created by the very Order which is said to be a law “made for a colony”...

41 It therefore seems to me that from the point of view of the jurisdiction of the courts of the United Kingdom to review the exercise of prerogative powers by Her Majesty in Council, the Constitution Order is not a colonial law, although it may well have been from the point of view of a BIOT court applying BIOT law..”

132. It does not appear the issue of whether the Constitutional Order 2004 was made in right of BIOT or right of the United Kingdom was fully argued in the House of Lords in *Bancoult No.2*.

133. In *Regina (Hoareau and another) v Secretary of State for Foreign and Commonwealth Affairs* [2019] EWHC 221 (Admin) the Divisional Court (Singh L.J.; Carr J.) said at [4]:

“The defendant is the principal Secretary of State with responsibility for the oversight of British Overseas Territories, including the BIOT. However, the BIOT itself is a separate constitutional entity from the Foreign and Commonwealth Office (“FCO”) and the United Kingdom Government (“the Government”). It has its own legislature, executive and judiciary, established by its own constitution. The FCO discharges its functions in respect of the BIOT on behalf of the Crown in right of the BIOT.

134. Kerr LJ in *R v Secretary of State for Foreign and Commonwealth Affairs ex parte Alberta* [1982] QB 892, 920 said:

“It is settled law that, although Her Majesty is the personal sovereign of the peoples inhabiting many of the territories within the Commonwealth, all rights and obligations of the Crown - other than those concerning the Queen in her personal capacity - can only arise in relation to a particular government within those territories. The reason is that such rights and obligations can only be exercised and enforced, if at all, through some governmental emanation or representation of the Crown. Thus, the [Crown Proceedings Act 1947, section 40 \(2\) \(b\) and \(c\)](#), distinguishes between liabilities in respect of, and proceedings in right of, Her Majesty in the United Kingdom on the one hand and outside the United Kingdom on the other.

...

The principles which govern the situs of rights and obligations of the Crown are conveniently summarised in *Halsbury's Laws of England*, 4th ed., vol. 6 (1974), paragraph 820, under the heading "Unity and Divisibility of the Crown in Her Majesty's Dominions." For present purposes it is sufficient to refer to two passages and to a number of authorities cited in support of these.

First, as there stated, it is clear that

"on the grant of a representative legislature, and perhaps even as from the setting up of courts, legislative council and other such structures of government, Her Majesty's Government in a colony is to be regarded as distinct from Her Majesty's Government in the United Kingdom."

135. In *BAA v Commissioner of The British Indian Ocean Territory Administration* [2023] EWHC 767 (KB), the Divisional Court grappled with jurisdiction:

“45. There is no dispute as to the key principles governing the constitutional status of British Overseas Territories. They are set out in Hendry and Dickson, *British Overseas Territories Law* (2nd ed., 2018), p. 23, and may be summarised as follows:

(a) On the international legal plane, the UK and its overseas territories exist as one undivided realm. The overseas territories, including the BIOT, are not sovereign and the UK is responsible for their external relations.

(b) Within that undivided realm, as a matter of constitutional principle, the Crown acts in different capacities in relation to the different parts of the realm. This is commonly described as actions of the Crown ‘in right of’, or ‘in right of the Government of’ a

particular territory. Thus, the Crown in right of the Government of BIOT is a separate legal entity from the Crown in right of the Government of the UK.

(c) Obligations owed by the Crown in right of the Government of one territory are owed only by that Government and do not give rise to any obligations on the part of another of the King's Governments. That principle applies regardless of the degree of functional autonomy enjoyed by the territory concerned.

...

48. As the Quark case shows, there are some cases where the King does some legal act through or on the advice of the Foreign Secretary, but the act is nonetheless done under the system of government of an overseas territory. The act will still be attributable to the Crown in right of the government of the territory.

...

53. In writing, the Commissioner argued vigorously that the BIOT Supreme Court is the proper venue for this claim, which alleges torts committed in BIOT by the Commissioner acting as an officer of CBIOT...

56... Thirdly, there is some authority that, even in the public law sphere, the supervisory jurisdiction of the High Court in England and Wales can in principle extend to acts done by the Crown in right of the government of an overseas territory: see *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067, [21]-[29] (*Laws LJ*), endorsed in *Quark*, at [65] (*Lord Hoffmann*)."

136. It follows that while the supervisory jurisdiction of the High Court in England and Wales can in principle extend to acts done by the Crown in right of the government of an overseas territory, that does not mean that the jurisdiction of the courts of the overseas territory is excluded or ousted.
137. The Divisional Court took the view that the Commissioner was unable to show that the BIOT Supreme Court is "clearly and distinctly" more appropriate and accordingly assumed jurisdiction. There was no question that the BIOT Supreme Court did have jurisdiction, only whether the jurisdiction was shared with the UK High Court.
138. Given the above it is necessary to return to *R. (on the application of Quark Fishing Ltd) v Secretary of State for Foreign and Commonwealth Affairs (No.2)* [2006] 1 AC 529. In that case, an issue arose under the Constitutional Order for South Georgia and the South Sandwich Islands ("SGSSI") as to whether an instruction given by the Secretary of State was in right of the United Kingdom or in right of SGSSI. At first instance Collins J. held that when giving his unlawful instruction, the Secretary of State was acting for Her Majesty the Queen in right of the SGSSI. The Court of Appeal disagreed and held that the Secretary of State was acting in right of the United Kingdom. The House of Lords reversed the Court of Appeal and reinstated the decision of Collins J., namely that the

Secretary of State was acting for Her Majesty the Queen in right of the SGSSI. It is of note that the 1985 Constitutional Order in *Quark* is very similar in material provisions to the Constitutional Order 2004.

139. The SGSSI was acquired by settlement while it is clear that the BIOT is formed from a ceded territory. That makes no difference here (it primarily affects the common law which in settled territories is brought with them by the settlers from the United Kingdom while ceded territories have laws imposed upon them usually by the conquering sovereign) as His Majesty rules as sovereign in both territories. SGSSI is a remote territory, far to the south of the Falkland Islands, close to the Antarctic Circle, and it has no inhabitants other than a transient population of some scientists. However, the House of Lords held it as having all the functions of government and judiciary. Its Constitutional Order in Council is very similar to that of the BIOT's.

140. Lord Bingham said at [9]:

**“But it is now clear, whatever may once have been thought, that the Crown is not one and indivisible: R v Secretary of State for Foreign and Commonwealth Affairs, Ex p Indian Association of Alberta [1982] QB 892, 911, 916-917, 920-921, 928. The Queen is as much the Queen of New South Wales (In re Bateman's Trust (1873) LR 15 Eq 355, 361) and Mauritius (R v Secretary of State for the Home Department, Ex p Bhurosah [1968] 1 QB 266, 284) and other territories acknowledging her as head of state as she is of England and Wales, Scotland, Northern Ireland or the United Kingdom. Thus the Secretary of State as a servant of the Crown exercises executive power on behalf of the Crown in whatever is, for purposes of that exercise of executive power, the relevant capacity of the Crown. [Emphasis added]**

...

While instructions may be transmitted to the Commissioner by the Secretary of State he does so, in constitutional theory, as her mouthpiece or medium. He is passing on her instructions as Queen of SGSSI, not acting as Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom.”

141. The argument put forward and rejected by the House of Lords was that the decision to instruct the Commissioner was animated by concern for the wider interests of the United Kingdom and not solely by concern for the particular interests of SGSSI. Reliance was placed on the political and diplomatic motivation of the Secretary of State's instruction to suggest that this was, in truth, an exercise of power on behalf of Her Majesty's Government of the United Kingdom, not Her Majesty's Government of SGSSI. This is a similar position as was put forward before me in relation to the Constitutional Order 2004.

142. Lord Bingham then turned to the case of *Bancoult No.1*. He said at [16]:

“The decision to instruct the Commissioner was animated by concern for the wider interests of the United Kingdom and not solely by concern for the particular interests of SGSSI. He places reliance on the political and diplomatic motivation of the Secretary of State's instruction to suggest that this was, in truth, an exercise of power on behalf of Her Majesty's Government of the United Kingdom, not Her Majesty's Government of SGSSI...”

143. After referring to the *dicta* of Laws LJ, Lord Bingham said at [16]:

“...I do not understand the court in *Bancoult* to have ruled or found it necessary to rule, in order to resolve the jurisdictional issue, whether the ordinance had been made by Her Majesty in right of the Government of the BIOT or in right of the Government of the United Kingdom.”

144. With that statement I agree. It was not in dispute that the prerogative writs run from the Court of the King's Bench to His Majesty's dominions. That is an entirely different thing from saying that because such a writ may issue from the United Kingdom to the BIOT that an Order of Her Majesty in Council creating laws for BIOT must be made in right of the United Kingdom.

145. Lord Bingham went on to say that to treat the allocation of motive as the basis for attributing an exercise of executive power to one government rather than another would, in his opinion, be hazardous and unreliable. Lord Nicholls differing in reasoning from the other members of the Appellate Committee said:

“But characterising the instruction the Secretary of State gave in this case as an instruction issued by Her Majesty "in right of South Georgia", as distinct from "in right of the United Kingdom", leads nowhere. It does not provide an answer to the question raised in the present proceedings. Far from being an anterior question, in this context it is an irrelevant question. It does not provide the answer, either way.”

146. Lord Hoffman said at [64]:

“The test for whether someone exercising statutory powers was exercising them as a United Kingdom public authority is in my opinion whether they were exercised under the law of the United Kingdom. In this case they were not. The acts of the Secretary of State in advising Her Majesty and communicating her instructions to the Commissioner had legal effect only by virtue of the Order, which is the constitution of SGSSI and not part of the law of the United Kingdom. The court is neither concerned nor equipped to decide in whose interests the act was done.

65. It is not in my opinion inconsistent with this construction of the 1998 Act that the Secretary of State conceded the jurisdiction of the High Court to quash the instruction by judicial review. There is authority both ancient and modern for the High Court's exercise of jurisdiction, first by prerogative writ and then by judicial review, over all Her Majesty's territories: see *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067. But that does not mean that the acts in question are acts of United Kingdom public authorities. On the contrary, the jurisdiction exists whether the act is one of a United Kingdom public authority or not.”

147. Lord Hope said at [71]:

“The question, in simple terms, is whether the instruction was issued by Her Majesty the Queen as Head of State of the United Kingdom (Mr Vaughan referred throughout his speech to Her Majesty as Queen of England, but the state of which she is the head is the United Kingdom) or by Her Majesty the Queen as Head of State of SGSSI.

...

76 If one approaches the 1985 Order, as one should, as an instrument which sets out the constitution of SGSSI, the references that it makes to Her Majesty fall to be read as references to Her Majesty in the exercise of her rights as Head of State and Queen of the territory unless that there is a clear indication to the contrary.

...

79 But there is an underlying and, as I see it, an irremediable flaw in the argument. The reasons of policy that led to the giving of the instruction, or the motives that lay behind it, are irrelevant. The question is simply in what capacity was the instruction given by Her Majesty. The constitutional machinery provides the answer to it. It was that machinery that was being used to give the instruction. So it was in right of her position as Head of State of SGSSI that it was given by Her Majesty.

148. These passages make it clear that while the Court of the King’s Bench in London may issue writs in relation to British Overseas Territories that does not prevent the Constitutional Order 2004 being a law of the BIOT passed by Her Majesty in Council in right of BIOT. Applying the principle in *Quark*, as did Hooper LJ in *Bancoult No.2* when considering the very same Constitutional Order 2004 (at paragraph [123] above), in my judgment the Claimants are right the Constitutional Order is an Order passed in right of BIOT and the reasons given by the Defendant that it is an Order passed in right of the United Kingdom are incorrect.
149. But in any event there is a more principled answer to this issue. In the present case the Claimants have been said by the Defendant to have committed a criminal offence in the BIOT, see Section 14 of the Immigration Order 2004. The Section 12 Removal Notice is issued under the laws of the BIOT. The Claimant in defending himself or seeking review of the Removal Notice must be able to invoke the jurisdiction of this Court if he challenges the Removal Notice as unlawful. This Court determines the scope of the laws of the BIOT including the Constitutional Order 2004. The suggestion by the Defendant that such a person subject to enforcement procedures in the BIOT, under BIOT laws, must seek judicial review in England and Wales to argue unlawfulness is fanciful. Accordingly I find that this court has jurisdiction to consider the lawfulness of Section 9 of the Constitutional Order 2004.

## 2. *Section 9 of the Constitutional Order 2004*

150. I then turn to consider Section 9 of the Constitutional Order 2004. First, the prerogative power of the Crown to legislate by order in council on the advice of Her Majesty's ministers in relation to a territory such as the BIOT is subject to judicial review, that should not be in doubt. All members of the House of Lords in *Bancoult No.2* accepted that the Constitutional Order 2004 was susceptible to judicial review on ordinary principles of legality, rationality and procedural impropriety.
151. In this case, as we have seen above, in the *Bancoult No.2* proceedings the exact same question concerning the lawfulness of Section 9 of the Constitutional Order 2004 has been considered by ten judges in the courts of England and Wales (Hooper L.J, Cresswell J. (Div Ct); Sir Anthony Clarke MR, Sedley L.J., Waller L.J. (Court of Appeal); Lord Bingham, Lord Mance, Lord Hoffman, Lord Rodger, and Lord Carswell (House of Lords)). The Claimants in those proceedings succeeded before the Divisional Court and Court of Appeal, but failed by a majority of three to two before the House of Lords; Lords Mance and Bingham being in the minority. The majority (Lord Hoffmann, Lord Rodger and Lord Carswell) held: that, although the Chagossians had had important common law rights of abode, they were not so fundamental that they could not be removed by section 9; that the Secretary of State's decision to remove such rights, to reimpose immigration control and to prevent resettlement was in the circumstances neither unreasonable nor an abuse of power.
152. There are fundamental differences between legislation enacted by the executive through Her Majesty in Council and legislation subject to democratic debate in Parliament. There is clearly a qualitative difference between legislation by the Crown in Council (exercise of the prerogative) and legislation by the Crown in Parliament (Acts of Parliament). The former is reviewable while the latter is not. The Constitutional Order 2004 is an exercise of the royal prerogative alone.
153. The prerogative is the residual power of the executive. As Lord Bingham said in *Bancoult No.2*, at [69]:
- “.. It is for the courts to inquire into whether a particular prerogative power exists or not, and, if it does exist, into its extent..”
154. I would add to that it is for the courts to inquire into whether a particular prerogative power continues to exist owing to material changes in circumstances.

155. As Lord Bingham points out, the House was not referred to a single instance in which the royal prerogative had been exercised to exile an indigenous population from its homeland. He went on to say:

“[71] I accordingly conclude that there was no royal prerogative power to make an Order in Council containing section 9, and it is accordingly void. But if (contrary to that conclusion) there was power to make it, I agree with my noble and learned friends that the section is susceptible in principle to review by the courts. Applying familiar judicial review principles, I am satisfied that section 9 was unlawful on two main grounds.

[72] First, section 9 was irrational in the sense that there was, quite simply, no good reason for making it ...”

156. In relation to the prerogative, Lord Mance said at [147] in *Bancoult No. 2*, and with which I respectfully agree:

“147. Thirdly, in *Campbell v Hall* the court laid down six general propositions which it thought “quite clear” and which included limitations on the Crown's power: the first was that a conquered country becomes a dominion of the King in right of his Crown and therefore necessarily subject to the legislature, the Parliament of Great Britain; the second, that the conquered inhabitants once received under the King's protection, become subjects and are to be universally considered in that regard, not as enemies or aliens; the third, that the articles of capitulation and peace are sacred and inviolable according to their true intent and meaning; the fourth, that the law and legislative government of every dominion equally affects all persons and all property within the limits thereof; and is the rule of decision for all questions which arise there; the fifth, that the laws of a conquered country continue in force, until they are altered by the conqueror; and the sixth and last “that, if the King (and when I say the King, I always mean the King without the concurrence of Parliament) has a power to alter the old and to introduce new laws in a conquered country, this legislation being subordinate, that is, subordinate to his own authority in Parliament, **he cannot make any new change contrary to fundamental principles**: he cannot exempt an inhabitant from that particular dominion; as, for instance, from the laws of trade, or from the power of Parliament, or give him privileges exclusive of his other subjects; and so in many instances which might be put” (pp 208-209).” [Emphasis added]

...

150. The present case concerns the legitimacy of using the royal prerogative to introduce into a constitution for BIOT a provision that no Chagossian has a right of abode or a right to enter or be present in BIOT except as authorised under the constitution (which contains no presently relevant authorisation) or by any other law (the only other relevant law being the Immigration Ordinance, under which entry and presence depend on executive discretion). It would be surprising if any precedent could be found for such a provision, and none has been shown. The operational words of section 9 of the BIOT Order 2004 (“no person has the right of abode”) were prefaced by the apologia that BIOT was “constituted and is set aside to be available for the defence purposes” of the two governments. That would be innocuous if BIOT had been without inhabitants or (to use a word much deployed at the time in government and civil service memoranda) “belongs” when BIOT was in 1965 constituted by its separation from other British territories. But the history of this sad case shows that, despite attempts to make the facts fit another picture,

BIOT had a not inconsiderable number of such inhabitants, certainly hundreds, maybe approaching a thousand. Once BIOT was created with such inhabitants, they in Lord Mansfield's words were by virtue of their connection with BIOT "under the King's protection, ... subjects and are to be universally considered in that regard, not as enemies or aliens".

157. There is no historical authority for a prerogative power to expel or permanently exclude a population of British subjects from the territory to which their citizenship belongs. See *Entick v Carrington* (1765) 19 St Tr 1030; *Blackstone, Commentaries*; *Chitty, Treatise on the Prerogatives of the Crown*; *Holdsworth, A History of English Law vol X*; *R v Bhagwan* [1972] AC 60; *AG for Canada v Cain* [1906] AC 542 (distinguishing aliens).
158. Lord Mance opined that the common law position must be that every British citizen has a fundamental right to enter and remain in the constitutional unit to which his or her citizenship relates. See *Magna Carta c 29*; *R v Bhagwan* [1972] AC 60; *R v Governor of Pentonville Prison, Ex p Azam* [1974] AC 18; *Ex p Khawaja* [1984] 1 AC 74. The executive argument that the Chagossians had no public-law right of abode comes close to treating them as aliens.
159. Lord Mance further opined at [160]:

160. In my opinion, the royal prerogative to legislate in relation to BIOT did not extend to enacting legislation aimed at depriving BIOT of its inhabitants' right to enter and be present there, if they wished, and so reducing BIOT to mere territory (apart from the military use of Diego Garcia reserved to the United States).

...

161. For the reasons I have given, it would not as a matter of public law have been permissible for the Crown to legislate by order in council to introduce a provision such as section 9 of the BIOT Order during the period 1965 to 1973 while Chagossians continued to live in BIOT ... The present issue is however concerned with *vires*, and, if section 9 could not have been enacted by order in council during the period 1965 to 1973, it remained in my opinion outside the legitimate scope of the exercise of the legislative prerogative in 2004. That, I reiterate, would not prevent the Crown legislating by United Kingdom statute in any terms which proved acceptable to Parliament, a process which would involve open debate.

160. The opposite view, in *Bancoult No.2* by the majority (Lord Hoffmann, Lord Rodger of Earlsferry and Lord Carswell) was that, although the Chagossians had had important common law rights of abode, they were not so fundamental that they could not be removed by section 9 of the Constitution Order 2004, and that it was not irrational to do so.
161. It is important to consider the reasoning of the majority.

162. Lord Hoffman took a pragmatic approach seeing the Chagossians' right of abode as merely symbolic and a way of them protesting. As such it was outweighed by the defence and diplomatic interest of the state. He said at [53]:

**“The practicalities of today are that they would be unable to exercise any right to live in the outer islands without financial support which the British government is unwilling to provide and which does not appear to be forthcoming from any other source.** During the four years that the Immigration Ordinance 2000 was in force, nothing happened. No one went to live on the islands. Thus their right of abode is, as I said earlier, purely symbolic. If it is exercised by setting up some camp on the islands, that will be a symbol, a gesture, aimed at putting pressure on the government. The whole of this litigation is, as I said in *R v Jones (Margaret)* [2007] 1 AC 136, 177, the continuation of protest by other means. No one denies the importance of the right to protest, but when one considers the rights in issue in this case, which have to be weighed in the balance against the defence and diplomatic interests of the state, it should be seen for what it is, as a right to protest in a particular way and not as a right to the security of one's home or to live in one's homeland... But when a legislative body is considering a change in the law which will deprive him of that right, it cannot be irrational or unfair to consider the practical consequences of doing so.” [Emphasis added]

163. Lord Rogers took a similar approach, he said at [110] – [114]:

110. Section 9 of the Constitution Order removes any right of abode on the Chagos Archipelago which the claimant or anyone else may have had. It is a stark provision. But the Secretary of State's decision to have it enacted and the effect of that decision have to be judged against the circumstances at the time it was taken. No-one was then actually living on the outer islands and, even though the islanders had enjoyed a right to return since November 2000, none of them had done so. They were instead ‘seeking support from the UK and US governments to financially assist their return or alternatively to provide compensation’: *Feasibility Study Phase 2B*, Executive Summary, para 1.1. More importantly, there was no prospect that anyone would be able to live on the outer islands, except on a subsistence basis, in the foreseeable future: *Feasibility Study Phase 2B*, Executive Summary, para 1.11. Sir Sydney did not dispute this, but contended that it was irrelevant. In other words, the position was just the same as if people had actually been living on the islands when the Orders were made. I am unable to accept that submission. The impact of the legislation on the people concerned would be very different in the two situations. In my view, in reviewing the Secretary of State's decision to remove the right of abode, **it is relevant that there was actually no prospect of the Chagossians being able to live on the outer islands in the foreseeable future.** [Emphasis added]

164. Lord Carswell said at paragraph 120, that he agreed “with very little qualification” with the reasoning of Lord Hoffmann and Lord Rodger, but his specific reasoning focused on the lack of long term feasibility. He said at [121]:

“put on an abstract basis by their counsel, for it is quite clear that for them to resettle in the islands is wholly impracticable **without very substantial and disproportionate expenditure. They are not in a position to meet such a cost.** It could only be shouldered by the British Government, which has made it clear that it is willing to permit and fund

from time to time short visits to the outlying islands, **but not to support a large-scale permanent resettlement.**”

165. In my judgment the decision of the majority of the Appellate Committee in *Bancoult No.2* was based on pragmatic reasons. These reasons centered on the requirements for national defence based upon the US base at Diego Garcia and the feasibility and cost of the Chagossians being able to live on the outer islands, to be shouldered by the British Government which was not willing to do so.

166. It should not be overlooked that there is embodied in the provision itself the purpose for its enactment. It reads:

No right of abode in the Territory

9. (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. [Emphasis added]

167. Ms Demetriou KC for the Defendant says these words should be treated as mere surplusage and do not detract from the stark removal of right of abode. I do not agree. It is unusual to see the purpose for a provision embodied in the provision itself, they are not in a recital, but in my judgment that simply reinforces the force necessary to remove a fundamental right. If circumstances change, and as a fact that purpose is removed, the necessity for, and reasonableness of, the provision is reduced to vanishing point.

168. The feasibility study the Appellate Committee in *Bancoult No.2* relied upon, was challenged in *Bancoult No.4*. for material non-disclosure. The comments are set out above at paragraphs [31] to [35]. Moreover, in 2015 KPMG produced another feasibility report, which, with some fear of over simplifying, said resettlement came down to cost.

169. With the speeches of Lord Bingham and Lord Mance in *Bancoult No.2* I respectfully agree. It follows I also find that the use of the prerogative to enact Section 9 of the Constitutional Order 2004 was not permissible and it is therefore void. Further, any rational reason for passing the provision has now disappeared, if there ever was one. A claimed power to exclude a whole population must be justified by legal source, not administrative necessity. The 2025 Treaty, set out in the next section, removes any claimed reliance on defence or security issues in repopulating the outer islands, as well as rendering funding issues otiose.

### 3. *The 2025 Treaty*

170. On the 22 May 2025 the United Kingdom and Mauritius signed the BIOT treaty. The Diego Garcia Military Base and British Indian Ocean Territory Bill is passing through Parliament (its 3<sup>rd</sup> Readings completed and it is in the final stage with consideration of amendments) but has not yet received Royal assent.

171. Article 6 reads:

#### **Resettlement of Chagossians**

In the exercise of its sovereignty over the Chagos Archipelago, Mauritius is free to implement a programme of resettlement on the islands of the Chagos Archipelago other than Diego Garcia. Such resettlement shall be implemented in conformity with the terms of this Agreement and the laws of Mauritius.

172. From this Article, agreed by HMG, it is clear that there is no defence or national security concerns anymore against repopulating the outer islands by Chagossians.

173. Further the prohibitive costs reason has also disappeared. The costs are set out in the Letter attached to the Treaty dated 22 May 2025:

Pursuant to Article 11(1)(a) of the Agreement, the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom") agrees to make annual payment to the Republic of Mauritius ("Mauritius") on the following terms:

a. the annual payment value for the first (1<sup>st</sup>) three (3) years of the Agreement shall be one hundred and sixty-five million pounds sterling (GBP 165,000,000);

b. the annual payment value for the ten (10) year period from years four (4) to thirteen (13) of the Agreement shall be one hundred and twenty million pounds sterling (GBP 120,000,000);

...

f. a payment in respect of the period between the end of the thirteenth (13<sup>th</sup>) year from the date of entry into force of the Agreement and 31 December of that calendar year shall be made on a pro-rata basis of the annual payment value of one hundred and twenty million pounds sterling (GBP 120,000,000). This payment shall be made on the first (1<sup>st</sup>) day of the month following the end of the thirteenth (13<sup>th</sup>) year from the date of entry into force of the Agreement, or within twenty-one (21) days of that date, unless extended by agreement;

g. the value of the fourteenth (14<sup>th</sup>) annual payment and all subsequent annual payments shall be the value of the preceding annual payment adjusted for inflation using the Gross Domestic Product ("GDP") Deflator for the preceding calendar year, as published by the Government of the United Kingdom;

...

2. Pursuant to Article 11(1)(b) of the Agreement, the United Kingdom agrees to capitalise a trust fund for the benefit of Chagossians on the following terms:

a. the trust fund shall be established by Mauritius through regulations under the Finance and Audit Act for the benefit of Chagossians. Mauritius shall consult the United Kingdom on the modalities of the operation of the trust fund before making the regulations;

b. the United Kingdom shall pay an amount of forty million pounds sterling (GBP 40,000,000) to Mauritius to be transferred to the trust fund;

3. Pursuant to Article 11(1)(c) of the Agreement, the United Kingdom agrees to provide grant funding as part of a development framework for projects to be undertaken by Mauritius as follows:

a. the United Kingdom shall grant Mauritius a sum of forty-five million pounds sterling (GBP 45,000,000) each year for a period of twenty-five (25) years;

174. The costs this represent can be roughly summarised approximately as follows in pure cash terms:

(i) Annual Sovereignty Payments (Article 11(1)(a) and (b), subtotal (first 13 years) = £1,695,000,000.

(ii) Trust Fund (Article 11(2)(b) £40,000,000.

(iii) Development Grants (Article 11(1)(c)) £45m annually for 25 years = £1,125,000,000.

(iv) Payments from year 14 to year 99 without inflation £10,320,000,000 or assuming 3% compounded inflation = £48,228,000,000.

175. This gives a grand total of many, many billions of GBP. No official figures are available save from a calculation of what was agreed. The House of Commons library cites a total figure of £3.4 billion in today's money on a Net Present Value calculated basis. The actual cash value would be much more.

176. However, for the purposes of this judgment the actual figures are immaterial. All that is needed to be said is that that HMG has committed to pay substantial sums to Mauritius for a commitment that includes the costs of resettlement, albeit this resettlement is not guaranteed under the Treaty.

177. It follows from this Treaty that it is not possible to say that the outer islands are required for the defence purposes of the Government of the United Kingdom and the Government of the United States of America as set out in Section 9 of the Constitutional Order 2004 nor that repopulation is no longer feasible on economic grounds.

4. ***Conclusions on Section 9 of the Constitutional Order 2004***

178. It follows I prefer the reasoning of the minority in *Bancoult No.2* and would apply that in this court. Further, I am satisfied that the majority would not now find that the practical and pragmatic considerations they then took into account overrode the fundamental rights of the Chagossians.
179. I am satisfied that Section 9 of the Constitutional Order cannot stand and that it is an unlawful and irrational exercise of the prerogative and should be quashed.

5. ***Consequences of quashing Section 9 of the Constitutional Order 2004***

180. I have considered if it automatically follows that Section 5 of the Immigration Order 2004 should also be declared unlawful and quashed. This has not been fully argued before me.
181. Lord Bingham in *Bancoult No.2* did not opine on whether Section 5 of the Immigration Order 2004 should also be quashed, notwithstanding the point was before the House. He specifically limited his speech to Section 9 of the Constitutional Order 2004. Lord Mance did not specifically refer to Section 5 of the Immigration Order 2004, albeit he did include references to entering and remaining on the outer island.
182. In any event I do not think it does automatically follow notwithstanding Section 15(2) of the Constitutional Order 2004. In that provision is a ‘without prejudice’ power to make laws for the Territory. Immigration control by permit may be seen in a different category to the right to abode. Obviously the refusal of a permit to those who can legitimately claim a right to abode would require very strong reasons indeed. Permits may be on varying terms and involve different locations. Applying for a permit to set up a permanent camp on an uninhabited island with no adequate resources and safety concerns requires different discretionary considerations from that applying for a temporary permit to visit graves for example where as Lord Hoffman said “immigration consent will be no more than an additional formality” - set out at paragraph [220] below.
183. I recognise a government has the legitimate right to control entry to specific locations, albeit with different concerns, and on different terms, for those with a right to abode. Many factors could properly inform any immigration controls, including *inter alia*

habitability and safety, so I cannot say that Section 5 of the Immigration Order 2004 falls automatically with Section 9 of the Constitutional Order 2004.

184. Given the importance of Section 9 of the Constitutional Order 2004, now being a Chagossian is clearly a highly relevant factor in relation to the issue of a permit under Section 7 of the Immigration Order 2004 or the removal order under Section 12 of that Order. That factor was clearly not considered by either the Acting PIO or the Commissioner and is enough to order that they reconsider their decisions in the light of the quashing of Section 9 of the Constitutional Order 2004. However, in case I am wrong and this Court does not have jurisdiction to question the validity of Section 9 of the Constitutional Order 2004 I will proceed to consider the other grounds as set out in paragraph [95] above put forward by the Claimants on ordinary public law principles.

#### **B. Procedural fairness**

185. An irrationality and procedural fairness challenge is made of the failure to issue a permit; the issuance of the Section 12 Removal Notices, and the appeal against the Section 12 Removal Notices. The matter was put in a number of different ways which to some extent were repetitious and overlapping. I have dealt with them in the round rather than *seriatim* as set out in the grounds, but I have considered all the points brought forward by both sides.

186. The sequence of events is important. “On 8 October 2025 the Claimants’ solicitors raised the potential for a visit to be made to the Chagos Islands, as native Chagossians. The email was sent to [BIOTAdmin@fco.gov.uk](mailto:BIOTAdmin@fco.gov.uk). An automatic response was received, from the British Indian Ocean Territory Administration. *Inter alia*, it stated that:

“If your email relates to a yacht permit application, please be aware that it can take up to 6 weeks from receipt of your application to issue your permit”.

187. On 17 October 2025 a second email was sent, seeking a response without delay. Again, an automated response was received.

188. On 23 October 2025 a response was provided, by email, that stated:

“This is a matter for the FCDO rather than the BIOT Administration. However, I have liaised with the FCDO and they have indicated the following.

Chagossian visits to the Chagos Archipelago were paused in 2020 due to the Covid-19 pandemic, after which there were the sovereignty negotiations. Following the conclusion

of negotiations, the UK is working with Mauritius to initiate resumed visits to the Archipelago. However, no dates are available for such visits at this moment.

More information will be available in due course.”

189. On 6 February 2026 an email was sent in terms:

“My client still awaits news on arranging a visit. The message below some 3 months ago promised more information – please now supply it.

FCDO agreed with Mauritius to resume heritage visits in 2025, we are now in 2026 and there have been none.

Please respond by Monday with when my client can visit.”

190. On 16 February 2026, the Claimants landed in Ile du Coin.

191. On 18 February 2026 the Acting Principal Immigration Officer Mr Goddard issued Removal Notices under section 12 of the Immigration Order 2004. The only reasons given in the Notice were:

“...Hereby Order that you [named Claimant] being a person unlawfully present in the Territory shall be removed from the Territory and shall remain out of the Territory until further notice”.

192. On the same day, to the email address BIOTFCDO@fcdo.gov.uk and to the same email address as used for the BIOT Administration previously, the Claimants’ solicitors sent a letter by which the Claimants appealed the decision to issue the removal order notice taken by the immigration officer to the Commissioner (pursuant to s.10 of the 2004 Immigration Order, set out below). The letter also stated:

“Our clients, and specifically the two Mandarins are persona aggrieved. The decision is therefore appealed to you. We request that you forthwith allow an appeal against the decision of the Principal Immigration Officer to issue a s.12 notice.

Further our clients have for many months been seeking a permit from you to visit the islands, and so hereby ask you to immediately instruct your immigration officer to issue a permit for our clients to be on the islands under the Order permitting them to remain on the particular island they are on. If you do not accept the appeal or grant the permit, we request written reasons for your decision before any action is taken to remove our clients. We request an undertaking and confirmation that no steps shall be taken to remove the Mandarins from the islands or to detain them pending resolution of (a) the decision-making requested, and (b) the outcome of any judicial proceedings promptly lodged to challenge by way of judicial review any refusal to grant the permit, or refusal to revoke the s12 notice.”

193. It does not appear at any stage the Acting PIO or Defendant specifically considered issuing a permit. It appears that the refusal to revoke the Section 12 Removal Notice implicitly contains a decision not to grant a permit.
194. The Acting PIO supplemented his reasons for making a Section 12 Removal Notice in his witness statement dated 24 February 2026, see paragraphs [65] to [71] above.
195. The Defendant dismissed the appeal on 25 February 2026 giving the following reasons:
8. As noted above, you have failed to articulate any grounds of appeal. It is incumbent on you to set out why you think that the appealed decision is wrong. Your failure to do so is, without more, sufficient grounds to dismiss this appeal.
9. I have in any event, however, considered whether the section 12 notices ought to have been issued. In considering this appeal I have considered the decision made by the PIO. Since this appeal he has issued a Witness Statement outlining his reasoning. Having read that, I am satisfied that he has properly exercised his discretion under BIOT law for the reasons he set out in that statement. I am satisfied that he was correct to issue the section 12 statements for the reasons in that statement.
10. I therefore dismiss the appeals by the Appellants.
196. The Claimants' challenge the failure to issue a permit before the landing of the Claimants on the Ile du Coin is hopeless and unarguable. No application for a permit was made.
197. The appeal against the Section 12 Removal Notices and application for a permit made on the 18 February 2026 has more merit.
198. Public law procedural fairness is a standard imposed upon a public authority, and it does not require a legal right to first, or independently, be established in order that the duty of fairness apply. The Court determines itself what, objectively, procedural fairness required: *Osborn v Parole Board*; *Booth v (the same)*; *In Re. Reilly* [2014] AC 1115, at [65].
199. Mr Rule KC submits that in this case the Defendant has not acted fairly but has proceeded by:
- (i) absence of any inquiry or discussion with the Claimants of their circumstances (No conversation. No interview. No opportunity to explain anything to inform the decision-making);
  - (ii) absence of any warning that the issuing of the notice was under consideration and no opportunity afforded to make representations (No minded-to process. No opportunity to make representations); and

(iii) absence of any reasons provided in the Removal Notice issued.

200. Missing from the BIOT procedures are any policy or written procedures in this area. The Removal Order (Process of Determination) Regulations 2022 SI No.7 of 2022 empower the Commissioner to issue a statement on process.

201. In *R(VT and others) v Commissioner of the British Indian Ocean Territory, BIOT/SC/No.2/2023* the Commissioner consented to the withdrawal of all the Section 12 Removal Notices he had issued when there was a judicial review challenge to the fairness of their issuance. Pursuant to the *Removal Order (Process of Determination) Regulations 2022 SI No.7 of 2022* a complete statement of process was issued by the Commissioner dated 22 July 2022 which set out procedures relating to interviews, records, legal representation and determination of Section 12 Removal Notices. However, that statement of process was expressly limited to the migrants that landed in 2022 and does not apply to these Claimants. Nevertheless, it is worth reciting the terms of the consent order in that case:

**“UPON** the Defendant having decided to withdraw the decisions to make removal orders in respect of the Claimants pursuant to section 12 of the BIOT (Immigration) Order 2004 challenged in these proceedings (and like decisions taken in respect of other migrants present in the BIOT or in Rwanda having previously been in the BIOT) (**“the Withdrawn Decisions”**)

**AND UPON** the Defendant agreeing to adopt the following process (as further set out in the Statement of Reasons) in respect of each Claimant:

(i) the Claimant’s file, together with all evidence and submissions filed in these proceedings, will be considered by two independent reviewers, not being the reviewers that provided the advice that informed the Withdrawn Decisions (**“the New Reviewers”**)

(ii) the New Reviewers will then provide to the Defendant a list of any points which in their view are and/or may be adverse to him or her (**“the List”**);

(iii) the Defendant will then provide to any Claimant who, in the provisional view of the New Reviewers, is not entitled to international protection on non-refoulement grounds (a) the List, and (b) a further reasonable opportunity to submit evidence and/or submissions in relation to the points identified therein;

(iv) the New Reviewers will then consider any such evidence and/or submissions and provide advice to the Defendant as to whether that Claimant is entitled to protection on non-refoulement grounds; and,

(v) the Defendant will then make a final decision as to whether to make a removal order in respect of him or her.

**AND UPON** the Claimants reserving their right to further advance Issues 1-7 (as defined in their skeleton argument of 19 September 2023) in respect of the final decisions to be taken in their cases in due course and in any other proceedings in which the issue arises

IT IS ORDERED BY CONSENT THAT:

1. The claims for judicial review be withdrawn.”
202. It follows that the Defendant cannot have been but alive to the requirements for fair process in issuing Section 12 Removal Notices and the consequences if such fair procedures were not observed.
203. Ms Demetriou KC said in her in oral submissions that the answer to the Claimants’ challenges on fair procedure was an appeal carried out by the Defendant pursuant to Section 10 of the Immigration Order 2004. Moreover, Ms Demetriou expressly said in this case it was an “appeal *de novo*”<sup>1</sup> and since there was an appeal, any unfairness in the procedures was cured.
204. It is clear in certain circumstances an appeal may cure unfairness. In *R v SSHD, ex parte Sesay* [1995] Imm AR 521, 522 it was said a full immigration appeal can mean justice overall. However, in *Calvin v Carr* [1980] AC 574, at 592C Lord Wilberforce said:

“..their Lordships recognise and indeed assert that no clear and absolute rule can be laid down on the question whether defects in natural justice appearing at an original hearing, whether administrative or quasi-judicial, can be 'cured' through appeal proceedings. The situations in which this issue arises are too diverse, and the rules by which they are governed so various, that this must be so. There are, however, a number of typical situations as to which some general principle can be stated. First there are cases where the rules provide for a rehearing by the original body, or some fuller or enlarged form of it. This situation may be found in relation to social clubs. It is not difficult in such cases to reach the conclusion that the first hearing is superseded by the second, ... At the other extreme are cases, where, after examination of the whole hearing structure, in the context of the particular activity to which it relates (trade union membership, planning, employment, etc.) the conclusion is reached that a complainant has the right to nothing less than a fair hearing both at the original and at the appeal stage.

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<sup>1</sup> The transcript reads:

“The Court: “your position is that fairness is simply dealt with because there was an appeal, is that an appeal *de novo*? Is it an appeal *de novo*?”

MD: “it is, it is an appeal *de novo*. ...

...

MD: “certainly in this case it was the immigration officer who made the decision [at first instance] and so there was a *de novo* appeal.”

.....

MD: “what happened in this case was that the appeal was considered *de novo* by the commissioner who had not been involved in the first decision.”

205. However, an appeal *de novo* is a legal term of art for a complete re-hearing. The appeal body considers the entire matter afresh and is not constrained by errors of law or where the decision maker went wrong. You simply start again. A good example is an appeal from the Magistrates' Court to the Crown Court under section 108 of the Magistrates Court Act 1980 which is unquestionably an appeal *de novo*. Section 108 of that Act simply states "*A person convicted by a magistrates' court may appeal to the Crown Court*". It is an appeal as of right and does not require permission to appeal. Similarly, Section 10 of the Immigration Order 2004 says "*10. – A person aggrieved by any decision of an immigration officer may appeal to the Commissioner, whose decision shall be final and conclusive.*" And likewise it is an appeal as of right and does not require permission to appeal.
206. As indicated there do not appear to be any rules or regulations concerning appeals under section 10 of the Immigration Order 2004 relevant to this case, therefore I take at face value what Ms Demetriou has said on behalf of the Defendant, namely it was an appeal *de novo*. On that basis it is clear that the Defendant was wrong to take the position he did as set out in paragraph [8] of his reasons set out at paragraph [195] above. While that approach arguably may be the case in an ordinary appeal it is not the proper approach in an appeal *de novo* which requires a complete rehearing.
207. The position set out in paragraph [9] of his reasons set out at paragraph [195] above does not save the position. He purports to have considered the position afresh, but bases that on saying he has considered the witness statement of the PIO and that he, the Acting PIO exercised his discretion correctly for the reasons he gave in his statement. That is not the correct approach on an appeal *de novo*. The Commissioner should have considered all the material afresh, and it is accepted by the time he made his decision on the 25 February 2026 he had before him the 23 page "APPLICATION FOR URGENT INTERIM RELIEF" which contained all the grounds the Claimants' relied upon and were clearly relevant to the appeal. Directions as to process on the appeal should have been issued by the Commissioner and any unfairness thus avoided.
208. The Commissioner on an appeal *de novo* should have made some efforts to understand what were the issues and materials to be taken into account and given adequate reasons rather than simply saying the Acting PIO exercised his discretion correctly, particularly in the knowledge that the Acting PIO did not take into account the 23 page

“APPLICATION FOR URGENT INTERIM RELIEF”. The Acting PIO expressly stated what he had taken into account, saying:

“At the time of issuing the s.12 Notices [11:58 on 18 February 2026], the BIOT Administration (including myself) were unaware of the recent correspondence from the Claimants / Potential Claimants representatives. We had not seen the correspondence sent to the Foreign, Commonwealth and Development Office (FCDO) on 16, 18 and 19 February 2026 at the time the s.12 Notices were issued.”

209. No reasons for the Section 12 Removal Notices were given at the time they were served or in the Notices themselves other than that the presence of the Claimants in the Territory was illegal. The Claimants submit that the additional reasons given in the witness statement of the PIO amount to an *ex post facto* rationalisation of the reasons.

210. In *Inclusion Housing Community Interest Company v Reg of Social Housing* [2020] EWHC 346 Admin, at [78], Chamberlain J. said:

“So far as *ex post facto* reasons are concerned, the authorities draw a distinction between evidence elucidating those originally given and evidence contradicting the reasons originally given or providing wholly new reasons... Evidence of the former kind may be admissible; evidence of the latter kind is generally not. Furthermore, reasons proffered after the commencement of proceedings must be treated especially carefully, because there is a natural tendency to seek to defend and bolster a challenge that is under challenge.”

211. There were no reasons in the Removal Notice other than the Claimants were there illegally. The reasons given by Mr Goddard, the Acting PIO in his witness statement were new reasons and were given after commencement of proceedings. It follows I approach them with caution.

212. The Claimants say that they have not been supplied with any record of the decision as was ordered by this Court. The Court made a direction that “*The Defendant shall disclose to the Claimants the record of and reasons for the s.12 notice by 4pm 24th February 2026.*” No contemporaneous notes or records have been disclosed of the decision making process. Fordham J. explained (by reference to several authorities) in *R (Police Superintendents' Association) v The Police Remuneration Review Body & Home Secretary* [2024] 1 WLR 166 (at [15(7)] and [17]-[18]) that both the “best evidence” rule and good practice mean that documents should be produced, since the document is the best evidence of what it says; and what a court or a claimant makes of it is frequently different to that a witness honestly makes of it. At [18] his Lordship explained:

“The principled ‘good practice’ identified in *Tweed* provides the answer. If documents matter, they should be provided. If they matter prior to or at the permission stage, that is when they should be provided. Not gists. Nor summaries. Not descriptions of contents or

features of the document. Not selected quotations. Instead, the documents themselves. This is proper candid disclosure”.

213. That no records have been disclosed does add some concern to whether there has been *ex post facto* rationalisation.

214. The Section 12 Removal Notices were issued without any opportunity for the Claimants to explain their position to the Acting PIO. The Section 12 Removal Notices had been prepared in advance. Mr Goddard the Acting PIO, who had only been in post some 9 days previously, did not visit Ile du Coin nor speak to the Claimants. He says:

“On 18 February 2026, at 0300 (UK time), following a call with the Administrator, SFPO and General Counsel, I prepared the s.12 Notices, believing they might be necessary. Following a further call at 0700, I instructed Daniel Teixeira to serve the s.12(1) Notices to the Claimants.”

215. Daniel Teixeira, the Senior Fisheries Protection Officer who went to the Ile du Coin says:

“17. A call took place at approximately 13.00 [BIOT is 6 hours ahead of GMT] with the PIO and various BIOT Administration officials. I was instructed to serve the removal orders (s.12 Notices) on those on the Vessel and the Group on Ile du Coin.”

216. Daniel Teixeira did not go ashore to speak to the Claimants on the Ile du Coin until after 1400. When there he said:

“I read out the following:

“I am a duly appointed Official of the British Indian Ocean Territory. As you will be aware the British Indian Ocean Territory is part of His Britannic Majesty’s Realm, and I am charged with the lawful enforcement of the Territory’s laws.

According to the British Indian Ocean Territory (Immigration) Order 2004, you are all unlawfully present in that Territory.

The BIOT (Immigration) Order 2004 empowers the Principal Immigration Officer to issue an Order requiring you to leave and the Acting Principal Immigration Officer has made such an Order.”

217. It follows that the Claimants were not given any opportunity to make any representations as to the issue of the Section 12 Removal Notices.

218. Further no consideration appears to have been given to allow the Claimants any form of limited heritage visit. The Second Claimant was born on the Ile du Coin and there were graves of the Claimants’ ancestors on the island. While it is true the Claimants have said they want to establish a permanent camp, there were other reasons as can be seen from paragraph [59] above:

13. I came here because:

- a. I wanted to see my homeland again, I have been home sick for nearly 60 years.
- b. I wanted to show my son our islands.

c. I wanted to find and visit the graves of my ancestors, something I have partially achieved this week with my son.

219. A heritage visit is not a term of art. The Commissioner said in relation to Heritage Visits (HV):

“HVs are arranged by the FCDO. That includes paying for travel and accommodation. Given capacity and resource constraints (e.g. accommodation on Diego Garcia and passenger limits on the BIOT Patrol Vessel (“BPV”)), there is a limit on numbers for any HV....

10. Once an HV is agreed, including who will attend, the BIOT Administration facilitates this through the issuing of permits to allow participants lawfully to travel to BIOT. However, permits are issued only after the decision to arrange an HV has been taken by the FCDO. Where an HV has been arranged by the FCDO, it is right to say that immigration consent will be no more than an additional formality for those who are confirmed participants of the HV.”

220. The words of Lord Hoffman in *Bancoult No.2* are apposite:

“It is true that the Chagossians will now require immigration consent even to visit the islands. But the Government have made it clear that such visits, to tend graves and so forth, will be allowed, and since in practice they are funded by the BIOT administration, **immigration consent will be no more than an additional formality**. Furthermore, there is no reason why, if at some time in the future, circumstances should change, the controls should not be lifted” [Emphasis added]

221. The situation where a person who wants a heritage visit and has already travelled to the outer islands does not seem to be contemplated by the Acting PIO or the Commissioner. It is clear Chagossians should be treated in a more favourable category than tourists and visiting yachtsmen.

222. Had there been an appeal *de novo* with consideration of the representations that the Claimants had made in the 23 page “APPLICATION FOR URGENT INTERIM RELIEF” that might have satisfied the minimum requirements of fairness. But I find that in the instant case the overall procedure did not meet the required standard of fairness and accordingly the issuance of the Section 12 Removal Notices should be reconsidered with the Claimants being able to make representations which the Acting PIO should consider.

### C. **Illegality and/or abuse of power.**

223. The Claimants submit removal would be the commission of a serious crime; and/or discrimination. Essentially this is based on offences under the UK International Criminal

Court Act 2001. That Act makes it a crime against humanity to deport an entire population.

224. This ground is unarguable. It is quite hopeless to suggest that the officers of BIOT have committed such an offence, or were acting in a discriminatory manner, when carrying out their duties in respect of these Claimants. Further, it is trite law that unincorporated treaties are not the law of the land. In *R v Lyons* [2003] 1 AC 976 Lord Hoffman at [27] said:

“In other words, the Convention is an international treaty and the ECHR is an international court with jurisdiction under international law to interpret and apply it. But the question of whether the appellants' convictions were unsafe is a matter of English law. And it is firmly established that international treaties do not form part of English law and that English courts have no jurisdiction to interpret or apply them: *J H Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418 (the International Tin Council case). Parliament may pass a law which mirrors the terms of the treaty and in that sense incorporates the treaty into English law. But even then, the metaphor of incorporation may be misleading. It is not the treaty but the statute which forms part of English law.”

225. It follows that the International treaties are not binding on the Defendant. In *R v Jones and Milling* [2006] 2 WLR 772. The head note reads:

“(3) That although a crime recognised under customary international law had been and might be assimilated into domestic criminal law, assimilation was not automatic; that the court no longer had power to create new criminal offences; that as a matter of democratic principle it was for Parliament and not for the executive or judges to determine whether conduct not previously regarded as criminal should be treated as attracting criminal penalties, and, therefore, statute was the sole source of new offences; that since a charge of aggression against an individual presupposed the culpability of the state, which would call for the review of its exercise of prerogative powers in the conduct of foreign affairs and the deployment of the armed forces, and since the courts would not, save exceptionally, inquire into such areas, it would be incongruous for them without specific statutory authority to treat the crime of aggression as a domestic crime; that it would also be anomalous to do so where the 2001 Act had deliberately excluded that crime when giving domestic effect to other crimes recognised under international law; and that, accordingly, the crime of aggression was not a crime or an offence in domestic law within meaning of section 3 of the 1967 Act and section 68(2) of the 1994 Act (post, paras 23, 28 -31, 36, 60 -69, 95 -99, 101 -105 ).

226. It also follows that the crime relied upon by Mr Rule KC under the Treaty of Rome (deporting an entire population), or under the UK ICC Act, is not a crime in the BIOT. It is not arguable, even if it were a crime in the UK which I do not believe it is, that would prevent the Defendant from carrying out the laws of the BIOT.

## **IX. CONCLUSIONS**

227. I quash and will declare that Section 9 of the Constitutional Order 2004 is unlawful and/or Wednesbury unreasonable, especially in light of the current circumstances.
228. The Claimants entered into the Territory illegally without a permit and are staying on the Ile du Coin illegally as they do not have a permit. Section 5 of the Immigration Order 2004 remains valid. Nothing in this decision creates a right for the Claimants to set up a permanent camp on the Ile du Coin without the necessary permits. This judgment deals with constitutional and public law rights and is without prejudice to private land rights.
229. The Section 12 Removal Notices are quashed and need to be redetermined in the light of a fair procedure which includes the Claimants' representations.
230. The application for a permit made on the 18 February 2026 remains extant as it was not decided and cannot now be said to be subsumed in the quashed Section 12 Removal Notices.
231. Any future decisions of the Defendant in relation to the grant of permits need to take into account all the circumstances including heritage rights and the right of abode of any Chagossian entitled to them.

BY ORDER OF THE COURT