

## Cains' Judgment Journal: Comment from Cains on Isle of Man Judgments

### Permission to Appeal

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#### Cains' Comment

This case confirms the “realistic prospects of success” test to be applied when considering permission to appeal applications pursuant to Rule 14.3B of the Rules of the High Court of Justice 2009

#### Paul Anthony Bell v His Majesty's Solicitor General, Staff of Government (Appeal Division), 15 May 2025

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Mr Bell had sought to challenge the Solicitor General's handling of International Letters of Request (ILORs) in a UK tax fraud investigation. Following Mr Bell's doleance application being dismissed by Deemster<sup>1</sup> Corlett in January 2025, Judge of Appeal Cross KC refused permission to appeal on the papers. Accordingly, Mr Bell asked the Court to reconsider its refusal of permission at an oral hearing pursuant to Rule 14.3B of the Rules of the High Court of Justice 2009 (the “Rules”).

The Court confirmed the established test for permission to appeal as set out in *R (A Child)* [2019] EWCA Civ 895: “*This court adopts that approach. The test I apply here is that there must be a realistic, as opposed to fanciful, prospect of success. There is no requirement that success should be probable, or more likely than not.*”

Furthermore, by reference to Underhill LJ in *Wasif v SSHD* [2016] EWCA Civ 82, the Court highlighted the distinction between cases falling into the category of being totally without merit and those where the applicant has identified a rational argument in support of their claim but where the judge is confident that, even taking the case at its highest, it is wrong. The right to an oral renewal hearing recognises that in the latter type of case, oral argument may on occasion persuade a Court that a claim for which permission has been refused does in fact have a realistic chance of success.

Ultimately, Judge of Appeal Cross KC concluded that Mr Bell's argument under section 21 of the Criminal Justice Act 1991 lacked a realistic prospect of success and that there was no compelling reason to grant permission and therefore, the application was refused.

The full judgment can be found here: <https://www.judgments.im/content/J3339.htm>

## Application for Costs on Indemnity Basis

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### Cains' Comment

This judgment highlights the importance of compliance with consent orders and the potential cost consequences of failing to meet agreed obligations in commercial disputes.

### Doddington Limited v IOM Orthodontics Limited, Civil – Summary Procedure, 22 May 2025

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In this judgment, delivered by Deputy High Bailiff Arrowsmith, the Court addressed the issue of indemnity costs and in particular the Court's discretion in awarding indemnity costs where a party's conduct falls "out of the norm".

The dispute arose from a settlement agreement between the two commercial entities – landlord and tenant. The agreement, reached on 23 December 2024 and formalised in a Consent Order on 3 January 2025, required the tenant to vacate the premises by 31 March 2025. However, just days before the deadline, the tenant informed the landlord that it could

not comply due to unforeseen challenges. Accordingly, the landlord applied for possession of the property.

The key issue was whether the landlord was entitled to its costs to be paid by the tenant on the indemnity basis.

Deputy High Bailiff Arrowsmith considered:

- The commercial nature of both parties.
- The fact that both had legal representation during the agreement.
- The tenant's unrealistic time estimates and failure to plan adequately for relocation.
- The breach of the Consent Order, which was deemed "out of the norm" conduct under *Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson* [2002] EWCA Civ 879.

The Court held that an indemnity costs order was appropriate, citing the tenant's conduct as sufficiently exceptional. The Deputy High Bailiff dismissed arguments about the extent of the landlord's losses or broader housing impacts as irrelevant to the costs issue. The landlord was entitled only to the costs of enforcing the agreement.

In line with Rules 11.3, 11.4, and 11.5 of the Rules, the Court opted for summary assessment of costs to avoid further litigation and expense.

The full judgment can be found at: <https://www.judgments.im/content/J3340.htm>

## Specific Disclosure

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### Cains' Comment

When considering cross-applications for specific disclosure which had arisen out of three separate claims being heard together, the Court took the opportunity to remind parties of their obligations on disclosure and the various applicable principles.

## MIR Limited & Others v Bader & Others, Civil Division – Ordinary Procedure, 29 May 2025

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This case involved cross-applications for specific disclosure arising out of three separate claims being heard together in a shareholder dispute involving MIR Limited, its founders, and its investors. The applications were part of broader proceedings concerning alleged minority shareholder oppression and counterclaims of misconduct.

The key issues in the case involved inter alia:

### 1. Specific Disclosure Applications

Both sides sought orders under Rule 7.41 of the Rules. The Court emphasised that disclosure must be “necessary, fair, and proportionate”, as was the approach in *VTV Consulting Ltd v Precision Health Corp PCC Ltd* (ORD23/0052). The Court rejected any notion of “fishing expeditions” and stressed the need for precision in identifying documents.

### 2. Co-operation

Deemster Corlett emphasised the need for co-operation between the parties to avoid pre-trial disputes that represent a “*chronic operational hazard*”.

### 3. Control and Electronic Documents

The Court explored whether certain emails and mobile data were within a party’s “control” under Rule 7.37, citing *Pipia v BGEO Group Ltd* [2020] EWHC 402 (Comm). It declined to order disclosure in native format, referencing *Veasey v MacDougall* [2022] EWHC 864 (Ch), unless metadata was clearly relevant, such as the case in *Stennett v Ernst & Young* [2018] MLR 399.

### 4. Legal Costs

On the issue of disclosure relating to legal costs (as special damages), the Court referred to *Documentary Evidence* by Hollander. While fee notes may attract privilege, the Court allowed limited disclosure of time-recording schedules to test the legitimacy of the claim.

### 5. Non-Compliance and Sanctions

Although there were breaches of a prior disclosure order, the Court declined to issue an “unless” order, finding no pattern of disobedience (*Sochin v Baranov* [2018] MLR 90). It reiterated that even a disclosure exercise yielding no new documents can still serve justice.

The Court made tailored disclosure orders but refused broader or punitive relief. It urged the parties to co-operate, end the interlocutory disputes and prepare for trial, stating that a timetable would be imposed if necessary. No order was made as to costs.

The full judgment can be found at: <https://www.judgments.im/content/J3343.htm>

***Please note that this note does not constitute legal advice but is provided as non-reliance guidance only. For more information on Isle of Man Litigation Law, please contact:*** Robert Colquitt or Tara Cubbon-Wood.

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## Reference

<sup>i</sup> The term used to refer to judges in the Isle of Man judiciary.

Tara Cubbon-Wood, Director

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