Neutral Citation Number: [2026] EWHC 1123 (Admin)

Case No: AC-2025-LON-001967

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2026

Before :

LADY JUSTICE WHIPPLE
and
MR JUSTICE FORDHAM

- -

Between :

THE KING (on the application of) **(1) GEORGE MARTIN** **(2) THOMAS MARTIN** **(3) FARMERS AND BUSINESSES FOR FAIR TAX RELIEF**	**Claimants**
- and -	
(1) THE CHANCELLOR OF THE EXCHEQUER **(2) THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**	**Defendants**
- and-	
THE SPEAKER OF THE HOUSE OF COMMONS	**Interested Party**

- -
- -

Aparna Nathan KC (instructed by **Collyer Bristow LLP**) for the **Claimants**
Mark Fell KC and **Arthur Wong** (instructed by **HMRC Legal Group**) for the **Defendants**
David Manknell KC and **Rajkiran Arhestey** (instructed by the **Office of Speaker's Counsel**) for the **Interested Party**

Hearing dates: 17 and 18 March 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on [12/05/2026] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LADY JUSTICE WHIPPLE

Lady Justice Whipple:

Introduction

1. On 30 October 2024, the Chancellor of the Exchequer, the First Defendant, announced changes to two types of relief from inheritance tax ("IHT") as part of the Budget statement. Up to that point, agricultural property relief ("APR") and business property relief ("BPR") had been available without cap at 100% of the value of the relevant agricultural or business property. The changes meant that APR and BPR would be available at 100% only up to £1 million and thereafter would reduce to 50%. On the same date, HM Treasury published a policy paper which stated that these reforms would come into effect on 6 April 2026 and that the government would publish a technical consultation in early 2025 which would "focus on the detailed application of the allowance to lifetime transfers into trusts and charges on trust property".

2. On 27 February 2025, the Commissioners for HM Revenue and Customs, (HMRC, the Second Defendants), published the foreshadowed technical consultation which sought "views on aspects of the application of the £1 million allowance for property settled into trust qualifying for 100% agricultural property relief or business property relief". It was to run for 8 weeks to 23 April 2025. This is the "Technical Consultation".

3. On 21 July 2025, HMRC published a response to the Technical Consultation on behalf of the government. Draft legislation, an explanatory note and a tax information and impact note were published at the same time. The legislation was to apply where a lifetime gift was made at any time after the announcement of the changes on 30 October 2024.

4. On 1 December 2025 the first reading of the Finance (No 2) Bill 2025-6, containing provisions to implement the changes to APR and BPR, took place in the House of Commons. By the time this matter came before the Court on 17 and 18 March 2026, the Bill had progressed through the various Parliamentary stages and was due to receive the Royal Assent imminently. Since that hearing, the legislation has come into effect (section 65 and Schedule 12 to the Finance Act 2026 with effect from 6 April 2026). The legislation, in the form in which it was finally implemented, raised the cap on 100% relief from the originally announced £1 million to £2.5 million, thereafter reducing to 50% (nothing in this judgment turns on that increase in the capped amount).

5. The Claimants challenge the Technical Consultation. They say that it was too limited, being focussed on the impact of these changes to property settled into trusts, whereas it should have permitted the Claimants, and others affected by the proposed changes to APR and BPR, to be heard on the substance of those proposed changes. The mainstay of the Claimants' complaint is that the government made a promise that it would consult on reforms to tax legislation, including this reform, and that it has failed to do so, or to do so adequately.

6. The First and Second Defendants resist this claim, arguing that the Claimants' various grounds for suggesting the Technical Consultation was unlawful lack merit. But in addition, they raise three threshold objections: first that the claim is not justiciable;

secondly that the claim has been brought too late; and thirdly that the Third Claimant lacks standing to bring this judicial review.

7. The Speaker of the House of Commons is an interested party (the "Speaker"). The Speaker also argues that the claim is not justiciable, finding common ground with the Defendants. In addition, the Speaker argues that the claim is academic and that the Claimants' reliance on certain documents as part of its case before the Court is impermissible as it breaches Parliamentary privilege.

8. The matter came before this Court as a "rolled up" hearing. We repeat our thanks to all parties for their collaborative approach to the hearing: we received excellent and detailed skeleton arguments, well-ordered bundles of documents, an agreed list of issues and an agreed timetable for the hearing (which was adhered to precisely). We further thank counsel for their clear and focussed oral submissions which have greatly assisted the Court.

9. It is important to emphasise that the matters discussed in Court and addressed in this judgment relate only to matters of law. The Court does not get involved in questions of politics which are for Parliament and the government.

Conclusion

10. For reasons I shall set out, I have come to the view that there are at least three significant obstacles standing in the way of this claim proceeding: (i) the claim lacks substantive merit because there never was any legitimate expectation to a consultation of the sort claimed by the Claimants; (ii) the claim was brought out of time; and (iii) the claim is not justiciable. Permission for judicial review must therefore be refused.

11. What follows are my reasons for so concluding. I shall start with the background documents, then consider the decision under challenge, set out a summary of the evidence filed in this claim and look at the parties' pleaded cases. I shall then take the key and determinative issues in the order outlined in the previous paragraph. Finally, I shall address the Third Claimant's standing, in case it matters, before identifying the remaining issues which do not need to be determined.

Background Documents

12. The Claimants' arguments are built on what they say were promises repeatedly made that formal, public consultation exercises, including with affected taxpayers, would be conducted in relation to significant tax changes. Those promises are said to come from three key documents.

The 2010 Policy Paper

13. The first is a document published jointly by HM Treasury and HMRC in June 2010 entitled "Tax policy making: a new approach" (the "June 2010 policy paper"). In a foreword to that document, David Gauke MP, then Exchequer Secretary to the Treasury, wrote that "Consultation on policy design and scrutiny of draft legislative

proposals should be the cornerstone of this [new] approach". The new approach was described as follows:

> "1.5 Building on those recommendations, the Government is committed to a new approach to tax policy making, designed to support its ambition for a more predictable, stable and simple tax system:
>
> - **to increase predictability,** the Government will provide taxpayers with clarity on its approach and certainty on the future direction of the tax system;
>
> - **to increase stability,** the Government will slow down the rate of change to the tax code, focusing on fewer and better developed proposals supported by improved processes for changing tax law; and
>
> - **to increase simplicity,** the Government has confirmed its intention to create an independent Office of Tax Simplification.
>
> 1.6 It is also important that the Government is held to account in the development of tax policy:
>
> - when the Government makes changes to the tax code, it will ensure there is sufficient opportunity for policy and legislation to be properly **scrutinised**;
>
> - to support good scrutiny, the Government will be more **transparent** about the rationale and impact of tax policy changes; and
>
> - to maintain integrity of the tax code, the Government will **evaluate** the impact of significant changes after implementation."

14. The June 2010 policy paper stated that the government would publish a statement on its approach to tax consultation later that year (paragraph 2.6), noting an "identified improvement" of "consulting at each identifiable stage for all tax changes, where proportionate and practical to do so, and where revenue is not put at risk" (paragraph 2.8). The document described a "strong commitment to consultation" (paragraph 2.12).

15. The June 2010 paper stated that the government would establish a forum of tax professionals ("TPF") who would meet with Treasury Ministers regularly.

The 2011 Framework Document

16. Next in sequence is a document published by HM Treasury and HMRC dated March 2011, entitled "Tax Consultation Framework" (the "2011 Framework document"). It

emphasised the importance of engaging fully with individuals and others in the development of tax policy. It said this at paragraph 3:

> "3. Where possible the government will[1] :
>
> - engage interested parties on changes to tax policy and legislation at each key stage of developing and implementing the policy;
>
> - make clear at what stage (or stages) the engagement is taking place so that its scope is clear;
>
> - carry out at least one formal, written, public consultation in areas of significant reform;
>
> - set out, as the policy develops, its strategy for stakeholder engagement including planned formal consultation periods, informal discussions, working groups and workshops;
>
> - consult, where it can, on the policy design, draft legislation and implementation of anti-avoidance and other revenue protection measures, provided this does not present additional risk to the Exchequer;
>
> - minimise the occasions on which it consults only on a confidential basis. Where confidential consultation has been necessary the Government will be as transparent as possible about its outcome and consult openly if pursuing the policy change further[2]; and
>
> - provide feedback which sets out the Government's response to the views received and makes clear what changes, if any, have been made to the planned approach as a result of those views.
>
> [1] Subject to the exceptions set out at 8 and 9.
>
> [2] Subject to the exceptions set out at 8 and 9."

17. It said this at paragraph 4:

> "At each stage of consultation, the Government will set out clearly:
>
> - the policy objectives and any relevant broader policy context;

- the scope of the consultation, in particular what is already decided and where there is still scope to influence the outcome;

- its current assessment of the impacts of the proposed change and seek to engage with interested parties on this analysis. A final assessment of impacts will be published once the final policy design has been confirmed; and

- which department and official is leading on the consultation (or specific elements for joint HMT and HMRC consultations)."

18. Exceptions were set out at paragraphs 8 and 9:

> "Exceptions
>
> 8. The Government will generally not consult on straightforward rates, allowances and threshold changes, or other minor measures; recognising, however, that even in these cases some level of consultation can often be informative. It may also adopt a different approach for revenue protection or anti-avoidance measures where following this Framework could present a risk to the Exchequer. In other circumstances where the Government decides not to consult during tax policy development it will explain the reasons for that decision.
>
> 9. There will be times when it will be necessary to deviate from this Framework. In these circumstances the Government will be as open as possible about the reasons for such deviations."

19. Paragraph 10 provided for the TPF (Tax Professionals Forum, see paragraph 15 above) to consider the government's performance against the Framework and to report on this in regular meetings with Ministers.

The 2017 Policy Paper

20. The third document was published on 6 December 2017 by HM Treasury. It was a policy paper entitled "The new Budget timetable and the tax policy making process" (the "2017 policy paper"). It was noted that the Chancellor had announced in the Autumn Statement 2016 that the government would move to a single fiscal event each year (paragraph 1.2); the annual timetable was set out (paragraph 1.4). The 2017 policy paper recorded that "The government remains committed to the principles set out in 2010 to create a more predictable, stable and simple tax system with more effective scrutiny of the proposed changes" (paragraph 2.2). The consultation process was discussed at paragraph 3, noting the importance of engaging fully and openly with individuals, that the new tax policy making cycle provided "an opportunity to consult more frequently from an earlier stage of policy development", and that calls for evidence and early-stage consultations were "particularly valuable and appropriate

where a large-scale reform is under consideration, where options are not readily defined, or where existing information is limited". It said this at paragraph 3.1:

> "The opportunity for early consultation will always need to be proportionate and balanced against the government's responsibility to manage the public finances - including the risk of forestalling. But for major or longer-term tax policy changes, the government aims to consult, where possible, at an earlier stage. These early stage consultations could be launched at the Spring Statement, as well as at the Budget."

21. The policy consultation cycle was discussed at paragraph 3.2. A flow chart set out a possible timetable based on the opportunity for initial consultation at the spring statement in March of year 1 in advance of the Autumn Budget in the autumn of year 1, with further consultation taking place over the winter and spring in the lead up to the publication of draft legislation in the July of year 2 with final decisions whether to legislate taken at the Autumn Budget in year 2, a total timetable of approximately 16 months. It was stated that the nature of the consultation would vary according to where a policy is in the policy development cycle; later in the process or for simpler policies, consultation would tend to focus on the detailed policy design and the legislation needed to enact it. This was also stated:

> "In all our tax consultations, the government will seek to engage, explore and reflect the views of wider groups affected by the tax system …"

22. Exceptions and announcements outside of fiscal events were discussed at paragraph 3.4. Reference was made to the 2011 Framework document. It was noted that there would be some exceptions to the policy of prior consultation which would include measures needed to address clear avoidance or evasion. It went on:

> "The government will generally not consult on straightforward rates, allowances and threshold changes. Other minor and technical changes may also not need or merit consultation. In these circumstances, policies may be announced at the Budget to take effect four months later. However, even for measures in these categories, the government recognises that consultation may sometimes be beneficial and will, as ever, carefully balance the need to act more quickly to manage the public finances against the impact on those affected."

Subsequent Developments

23. These, then, were the three key documents which are relevant to the decision under challenge in this case. Since that decision was made, the government has updated its approach by publishing a new set of principles on 12 June 2025 in "Tax Policy Making Principles". At the same time as those principles were published, the TPF was disbanded.

The Decision: Announcement of the Technical Consultation

24. On 30 October 2024, the Chancellor of the Exchequer delivered the Autumn Budget to the House of Commons. The accompanying "Red Book" (the name used for the government's financial statement and budget report customarily released on the day of the Budget) said this at paragraph 2.51:

> "The government will reform agricultural property relief and business property relief from April 2026. In addition to existing nil-rate bands and exemptions, the 100% rate of relief will continue for the first £1 million of combined agricultural and business assets to help protect family farms and businesses and will be 50% thereafter."

25. On the same date, 30 October 2024, HM Treasury published a policy paper entitled "Summary of reforms to agricultural property relief and business property relief" setting out the details of reforms announced by the Chancellor in the Autumn Budget (the "30 October policy paper"). It stated that:

> "The government has … announced it will reform agricultural property relief and business property relief from 6 April 2026."

It went on to say that:

> "A more detailed summary of the reforms from 6 April 2026 is below. The government will publish a technical consultation in early 2025. This will focus on the detailed application of the allowance to lifetime transfers into trusts and charges on trust property. This will inform the legislation to be included in a future Finance Bill."

26. The Technical Consultation was published on 27 February 2025, in these terms:

> "This technical consultation seeks views on aspects of the application of the £1 million allowance for property settled into trust qualifying for 100% agricultural property relief or business property relief."

27. The Technical Consultation posed a number of questions which focussed on the effect of the changes on trust property. There were no questions seeking views on the policy of introducing a cap on APR and BPR.

The Claim Form and the Grounds

28. The Claimants sent a pre-action protocol letter to the Defendants on 12 May 2025. The Defendants responded on 23 May 2025 disputing the claims.

29. On 27 May 2025, the Claimants lodged their Claim Form with the Administrative Court (formally issued on 17 June 2025). They challenged the Technical Consultation. By way of remedy, the Claimants sought a declaration. The Claim Form sought expedition,

it was stated, in order for the Claimants to have "an effective remedy, including to avoid the Court intruding on 'proceedings in Parliament'".

30. The Statement of Facts and Grounds accompanying the Claim Form explained that the First and Second Claimants were farmers of many years' standing who were affected by the challenged decision. The Third Claimant was an unincorporated association founded on 12 May 2025, the purpose of which was "the advancement of agriculture and farming by the promotion of good government practices and tax policy in relation to farmers and family-owned businesses".

31. The Claimants stated that they were not challenging the substantive changes announced by the Chancellor of the Exchequer, but they were challenging the decision to restrict the consultation, by the Technical Consultation, to the impact of the changes on trust property.

32. The Claimants advanced four grounds of challenge:

    i) Breach of legitimate expectation, by reference to the statements made in the 2010 policy paper, the 2011 Framework document, and the 2017 policy paper (relevant extracts set out above).

    ii) Failure to follow policy, by reference to the same documents and on the basis that the Defendants had failed to comply with their own published policy of consultation.

    iii) Breach of duty to consult, because the limited consultation breached the principles set out in *R v Brent London Borough Council ex parte Gunning and Others* [1985] 84 LGR 168.

    iv) Breach of the principle of legality, because the Defendants had not acted fairly.

33. In response to points made in the Defendants' pre-action protocol response letter, the Claimants asserted that they had standing to bring the claim, that the claim was in time and did not infringe Parliamentary privilege.

34. As well as their own witness statements (the First Claimant by his witness statement dated 26 May 2025, the Second Claimant by his witness statement dated 26 May 2025, and the Third Claimant by the witness statement of Steven James Garcia Perez dated 26 May 2025), the Claimants relied on a witness statement from James Austen, a partner at Collyer Bristow, dated 27 May 2025, in support of expedition.

Subsequent Litigation Developments

35. The Defendants' summary grounds of defence were filed on 14 July 2025. Those summary grounds are now relied on (with the Court's permission) as the Defendants' Detailed Grounds of Resistance.

36. On 19 January 2026, Lang J ordered a rolled up hearing. Directions for the hearing were given, including expedition and permission to the Defendants to file further evidence.

37. The Defendants filed evidence in the form of two witness statements. The first was from Oliver Haydon OBE, deputy director at HM Treasury, dated 2 February 2026 exhibiting a number of relevant documents. The second was from Maureen O'Tuminu, a lawyer within HMRC's Business and Property Taxes Litigation section of HMRC legal group, dated 19 February 2026 to explain certain redactions in the documents.

38. The Speaker's submissions were filed on 2 February 2026.

39. On 10 February, the Claimants applied to file additional evidence, the admissibility of some of which is disputed by the Defendants (in representations dated 16 February 2026). That dispute narrowed following discussions between the parties in advance of this hearing, but still the admissibility of a handful of documents remained in dispute and was one of the issues for this hearing.

40. By order dated 2 March 2026, Jay J made the Speaker an interested party.

Evidence filed in the Judicial Review

Claimants' Evidence

41. The First Claimant is 45 years old. He is the son of the Second Claimant who is 74 years old. They are in partnership with each other (and with the Second Claimant's wife, the First Claimant's mother) to run their arable farm in Cambridgeshire. The 1,000-acre farm is currently owned by the Second Claimant but the First Claimant undertakes the day to day running of the farm. The family has looked after this farm for over 100 years, having started farming in the area in 1879. The land is worth in excess of £1 million. The profits from the farm are marginal and the Claimants' lifestyles are modest. Both Claimants share common values relating to the importance of soil health, regenerative farming practices and duty to the local community. They both see themselves as custodians of the land for future generations. They fear a "devastating impact" on the future of their family farm if these reforms are implemented. The Second Claimant has not engaged in any form of estate planning and has not set up a trust. He had relied on the existence of APR and BPR at 100%. If these reforms go through, he says that land would have to be sold to meet IHT on his death, which might make the farm unviable. He might not live long enough to ensure that any gift now made to the First Claimant falls outside his estate on death. The reforms were introduced without any warning or consultation. The Second and First Claimants believe that there are pragmatic and preferable alternatives available which they would have been able to put forward if they had been consulted.

42. Mr Perez's statement is made on behalf of the Third Claimant of which he is a member. The Third Claimant was founded on 12 May 2025 as a practical means of supporting farmers, businesses and business owners who wish to voice their concerns at the government's lack of engagement before enacting the proposed changes to APR and BPR. Mr Perez has a number of business interests close to his home town of Chesterfield, Derbyshire which would qualify for BPR. He believes in the area and its people and has invested in that locality. He currently employs over 400 people in his various businesses but fears for the long term viability of many of those jobs if the government does not listen. He has cancelled plans to invest in some of his local

businesses. He believes that it is unfair to impose IHT on privately owned businesses such as his. The consequence of these reforms is likely to be that he sells his businesses while still alive, which may mean that they become foreign-owned or lose the connection with the locality; alternatively, the shares may be sold when he dies to meet the IHT. If he had been given the opportunity to respond to a consultation, he would have informed the government of the "terrible and self-defeating" impact of these proposed changes on family-owned businesses.

Defendants' Evidence

43. Mr Haydon explains the sequence of events leading to the Exchequer Secretary's decision to introduce the changes without first consulting on the policy change. He identifies three main reasons for taking that course (in summary):

    i) The government wanted the Office for Budget Responsibility ("OBR") to be able to include the impact of these proposed changes as part of its Budget forecast; the OBR will only reflect policy changes in their forecast where the government has set out a clear intention to pursue the policy so that the OBR can make a reasonable estimate of the impact of that policy on the public finances; a mere intention to consider a policy would not be enough for OBR to reflect it in their forecast (paragraph 37). In this case, a policy consultation with no commitment to a particular design would have prevented the OBR from including the policy in its fiscal outlook (paragraph 84).

    ii) The announcement of a consultation on the policy would have created a significant risk of forestalling, because individuals likely to be affected by the change could have taken pre-emptive action to make lifetime gifts of agricultural or business property in order to escape the impact of future reforms; this change in behaviour would have created a "loophole" between the announcement of any consultation and the implementation of any change, which loophole could be most readily exploited by the wealthiest who could afford to give away their property during their lifetime (paragraphs 85 and 105-6).

    iii) Ministers had made a firm decision to reform APR and BPR in advance of the announcement on 30 October 2024. There was no need or requirement for a wider consultation (paragraph 98).

44. Mr Haydon noted the reports on the 2011 Framework document by the TPF and its role in policing the Framework. The government had responded publicly to the TPF's various reports.

Speaker's Evidence

45. Although the Speaker did not file a witness statement, the Speaker did file submissions on 2 February 2026, containing factual assertions which are not disputed. Specifically, those submissions noted the process which commenced with the Budget: once the budget is delivered, the Chancellor of the Exchequer moves Ways and Means Motions in the House of Commons (which when agreed become the Budget Resolutions); the Budget Resolutions form the basis of a Finance Bill presented to the House of

Commons at the end of the Budget debate; the Finance Bill proceeds to a First Reading, a Second Reading, the Committee Stage, the Report Stage and a Third Reading in the House of Commons before passing to the House of Lords and receiving Royal Assent.

46. In this case, the First Defendant had announced the proposed legislative changes in the Budget on 30 October 2024. The Technical Consultation was launched on 27 February 2025. Draft legislation to implement these proposed changes was published on 21 July 2025. The 2025 Budget debate started on 26 November 2025 immediately after the Autumn Budget of that date. On 1 December 2025 the House of Commons agreed to all the Budget Resolutions and on or around the same date the Finance (No 2) Bill 2025-6, including the legislation effecting the proposed reforms to APR and BPR, was presented to the House of Commons for its First Reading.

Issues

47. An agreed list of issues identified the following substantive and procedural issues for resolution:

    i) justiciability of the claim (advanced in two ways, first in relation to whether the claim infringed the sovereignty of Parliament and secondly in relation to whether the decision under challenge was quintessentially political);

    ii) admissibility of certain evidence;

    iii) whether the claim was in time;

    iv) whether the Third Claimant has standing to bring the claim;

    v) whether the claim is academic;

    vi) whether the Claimants have a legitimate expectation and if they do, whether the Defendants were acting unlawfully in departing from it;

    vii) whether the Defendants unlawfully departed from their own policy;

    viii) whether the Defendants unlawfully breached the principles of good administration and/or legality;

    ix) if the Claimants are successful, what relief, if any, is appropriate.

Did the Claimants have a legitimate expectation?

48. I start here because this is the key point in the Claimants' case. The Claimants assert that the government promised a consultation on the merits of the proposed changes and then unlawfully reneged on that promise. To answer that case, I will park the other issues raised and assume the various procedural objections in the Claimants' favour, at least for the moment.

Law

49. The Claimants characterise the government's promise as giving rise to a legitimate expectation of consultation. There is no dispute about the applicable law. There are two limbs to the test.

    i) The first limb requires a legitimate expectation to have come into existence.

        a) A legitimate expectation arises where there is a representation which is "*clear, unambiguous and devoid of relevant qualification"*: *R v IRC ex parte MFK Underwriting Agents Limited* [1990] 1 All ER 91 per Bingham LJ at p 109, 110. (See also *R v IRC ex parte Preston* [1985] AC 835 per Lord Templeman at p 868E; and *In the matter of an application by Geraldine Finucane for Judicial Review (Northern Ireland)* [2019] UKSC 7; [2019] 3 All ER 191 per Lord Kerr at paragraph 62.)

        b) Whether a representation can be said to be "clear, unambiguous and devoid of relevant qualification" depends on how, on a fair reading of the promise, it would have been reasonably understood by those to whom it was made (*Paponette v Attorney General of Trinidad and Tobago* [2012] 1 AC 1 at paragraph 30).

        c) A promise can be made expressly or made by way of established practice (*R (Bhatt-Murphy) v Independent Assessor* [2008] EWCA Civ 755 per Laws LJ at paragraphs 29, and 33-36).

    ii) The second limb is that it would be unfair for the legitimate expectation to be frustrated, see *R (Aozora GMAC Investment Ltd) v HMRC* [2019] EWCA Civ 1643 per Rose LJ at paragraph 49 . (See also *Finucane* at paragraph 62 and *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363 per Laws LJ at paragraph 68.)

Submissions

50. The Claimants submit that the 2010 policy paper, the 2011 Framework document and the 2017 policy paper made a clear and unambiguous promise devoid of relevant qualification that there would be consultation on tax policy changes such as to meet the first limb of the test; and that it would be manifestly unfair now to permit the government to resile from that promise in relation to the changes to APR and BPR. The Claimants accept that they cannot show that they have relied on that promise to their own detriment, but they say that reliance is not necessary in order for a legitimate expectation to come into existence.

51. The Defendants argue that the 2010 policy paper, the 2011 Framework document and the 2017 policy paper do not give rise to a statement or practice which meets the first limb because there is no clear and unambiguous promise devoid of relevant qualification in any one of those documents or to be inferred taking those documents together, nor is there any practice which has built up related to those documents which

could amount to such a representation. In any event, even if such a statement could be identified, this is precisely the sort of case where there is an overriding public interest which would defeat any expectation on the part of the Claimants, because this measure relates to tax revenues raised to support the public finances where there is a clear overriding public interest in collecting the tax, so the claim would fail on the second limb.

52. Much of the debate between the parties concentrated on paragraph 8 of the 2011 Framework document which contains an exception to the commitment to consult ("The government will generally not consult …") where the proposals relate to "straightforward rates, allowances and threshold changes, or other minor measures". Mr Fell KC, for the Defendants, submitted that the APR and BPR reforms fell within this exception. Ms Nathan KC for the Claimants disagreed, saying that this exception applied only to "minor measures" and that in any event significant changes, which these undoubtedly were, could not be described either as "straightforward" or as changes to "rates, allowances and thresholds".

First Limb: Application to these facts

53. In my judgment, it is not possible to extract from the 2010 policy paper, the 2011 Framework document or the 2017 policy paper, taken separately or together, any clear and unambiguous promise which is devoid of relevant qualification that the government will consult on the policy changes to APR and BPR. Nor is there any practice which could form the basis for such an expectation.

54. The 2010 policy paper is a discussion document only. On its face it contains no promises but simply opens the discussion about managing tax policy changes in future.

55. The 2011 Framework document is more concrete. It establishes a framework for tax consultation. But its contents fall some way short of establishing the Claimants' case on the first limb.

56. First and most obviously, paragraph 3 of the 2011 Framework document lists a number of commitments, including the commitment on which the Claimants rely, to "carry out at least one formal, written, public consultation in areas of significant reform". No particular type of consultation, of any particular breadth or focus, is specified. The government has, in fact, met that commitment by launching the Technical Consultation which relates to the proposed reforms. (Indeed I note that there was a second technical consultation at the point that the draft legislation was published on 21 July 2025.)

57. Secondly and in any event, it is not possible to extract from the 2011 Framework document a commitment to consultation which might stretch that far. The commitments to consultation, where they are stated, are heavily qualified. As examples:

    i) Paragraph 3 starts with a commitment by the government to consult "where possible" (paragraph 3). This does not, on a fair reading, refer only to the exceptions specified at paragraphs 8 and 9 of the same document (as Ms Nathan sought to argue). It is a more general qualification. The government will consult

where it is possible to do so – and whether it is possible is a question for the government to determine.

ii) Paragraph 3 goes on to note that the government will consult "where it can" on the policy design and draft legislation. A similar point falls to be made: this is a statement of intent within the bounds of what the government considers possible; it is not a clear and unambiguous promise to consult on all and every tax policy change in future.

iii) Paragraph 4 of the 2011 Framework document notes that where a consultation is launched, the government will clearly set out its scope, in particular "what is already decided" and where there is scope to influence the outcome. This demonstrates the limitations of the commitment to consult and that there will be no consultation on changes which are already decided.

58. Thirdly, these changes would in any event fall within the exceptions provided for at paragraphs 8 and 9. The reference to "straightforward rates, allowances and threshold changes" in paragraph 8 cannot sensibly be read as part of a class of "minor changes" as Ms Nathan submitted. For example, an increase in the basic rate of income tax would, in my view, plainly be a straightforward rate change, but it would also be significant (not minor) given the magnitude of its impact on the taxpaying public and the exchequer. The words "minor changes" do not qualify the words "straightforward rates, allowances and threshold changes" but stand alone. I accept Mr Fell's case that these reforms fall within the language of the stated exceptions: they do affect the effective *rate* of IHT on agricultural and business property, the *allowances* for agricultural and business property in the context of IHT, and/or the *threshold* at which IHT is payable on agricultural or business property. I agree that they can, in context, be described as "straightforward" changes because these changes impose a cap on previously unlimited reliefs, which is straightforward, at least in tax policy terms.

59. Fourth and in any event, the next parts of paragraphs 8 and 9 reinforce the qualified nature of the commitment to consultation contained in the 2011 Framework document and mean that the conclusion reached on the exceptions (scope, meaning and whether these changes fall within them) probably does not matter anyway:

i) The middle section of paragraph 8 states that the government "may also adopt a different approach for revenue protection". If, therefore, the government considers there to be a risk to the Exchequer, it may decide not to consult. One of the points made in Mr Haydon's evidence is that the government was concerned about the risk of "forestalling", which would involve taxpayers affected by the proposed changes making immediate lifetime disposals of their agricultural or business property to avoid the impact of the changes. The risk of forestalling provides a reason, within paragraph 8, not to consult, even if the particular changes were not within the excepting words at the start of the paragraph.

ii) Then there are the closing words of paragraph 8: "In other circumstances where the Government decides not to consult….". These words confirm that there are circumstances where the government will decide not to consult. This echoes

paragraphs 3 and 4 examined above, and again shows that the commitment is not a firm promise but is caveated according to what the government considers to be possible and appropriate. So, even if the exceptions do not apply, the government can still decide not to consult (although in such a case, it has committed to explaining its decision, see closing words of paragraph 8).

60. Paragraph 9 is to similar effect: "There will be times when it is necessary to deviate from this Framework". This confirms the wide discretion retained by the government to decide whether, and if so how, to consult. Ms Nathan argued that the Court had to be satisfied that non-consultation was "necessary" before paragraph 9 came into play, but I am not persuaded that the necessity or otherwise of consultation is a question for the Court. Read as part of a whole, paragraph 9 restates the sentiments of paragraphs 3, 4 and 8: the government will consult when it considers it possible and worthwhile to do so, which is for the government to determine. The real point of paragraph 9 is revealed in the next sentence, which states a commitment to being as open as possible about its reasons if the government does decide to deviate from the 2011 Framework document.

61. There were a number of other points of detail advanced by Ms Nathan based on the text of the 2011 Framework document. I have not addressed each and every one of those points because her submissions can be dealt with more summarily. On a fair reading, the 2011 Framework document falls well short of giving a clear and unambiguous promise of full consultation on all tax policy changes. Instead, it contains no representation at all about the scope of any consultation that might be offered; and the commitments to consultation which it does contain are heavily qualified.

62. The 2017 policy document reinforces the qualified nature of the government's commitments to consult. It refers to the ongoing commitment to the principles in the 2011 Framework document (paragraph 2.2); it recognises the need to manage the public finances as a balancing factor against the opportunity for early consultation (paragraph 3.1); major or longer-term tax policy changes will only be consulted on "where possible" (paragraph 3.1); and it discusses the exceptions to the policy of prior consultation, repeating much of the language in paragraph 8 of the Framework document and adding this: "the government … will … carefully balance the need to act more quickly to manage the public finances against the impact on those affected" (paragraph 3.4). The 2017 document takes the Claimants' arguments no further.

63. There is no great surprise in finding that the documents relied on by the Claimants do not contain a legally binding promise by the government to consult on the policy underpinning these or any proposed tax changes. Such a promise, if it were to be binding, would risk fettering the government's ability to govern by managing the public finances in the way it considered most appropriate from time to time. So, for example, there may be times when the government must act quickly to shore up the public finances and, for reasons of speed, cannot afford the time to consult; there may be times when the government adopts a change of policy, perhaps as an implementation of a manifesto pledge, where consultation on the merits of the policy will be pointless because the decision is already made. These are scenarios which would have been in mind at the time these documents were published. They are aspects of the government's "wide discretions" which are exercised in the public interest (see *Bhatt-Murphy* at

paragraph 40). Those discretions are comfortably accommodated by the 2010 policy paper, the 2011 Framework document and 2017 paper.

64. What, then, is the status of these commitments to consult which are contained in these documents? In my view, these commitments are essentially political, made by politicians about the way those politicians intend to govern, and enforceable in the political arena. They are not promises of such clarity and certainty that they create an expectation of a particular action, which expectation is "legitimate" in the sense of being legally binding. These statements are not enforceable as a matter of public law.

Conclusion on Legitimate Expectation

65. The Claimants fail at the first hurdle. They cannot, even arguably, establish the first limb of the test of legitimate expectation. There was no clear and unambiguous promise of a full consultation on the reforms proposed (or any reforms). There is no need to consider the second limb of the test, although I will touch on it towards the end of this judgment.

Do any of the other grounds have merit?

66. The Claimants advance three other grounds of challenge which are closely connected with the asserted breach of legitimate expectation. I have considered whether any of those grounds can survive, even arguably, in light of my conclusion that there was no legitimate expectation (the first ground). I am not persuaded that they can.

67. By their second ground the Claimants argue that the Defendants have failed to follow their own published policy, and in doing so have acted unlawfully. This ground depends on the Claimants being able to establish, as a starting point, that the Defendants had indeed adopted a policy of consulting on the merits of proposed changes of this sort. For reasons I have already given, I do not accept that the Defendants had adopted a policy in those terms. The 2010 policy paper, the 2011 Framework document and the 2017 policy paper are heavily qualified, containing high level commitments to consult on tax changes, when possible to do so, and subject to a number of exceptions, at the discretion of the government of the day. It is not possible to extract from these documents a policy of the nature and type that the Claimants suggest.

68. By their third ground the Claimants argue that the limited scope of the Technical Consultation prevents a proper consideration of the proposed changes to APR and BPR. This is said to be in breach of the first *Gunning* principle which requires consultation to be at the formative stage, see Hodgson J at p 189 setting out the *Gunning* principles:

> "First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, to which I shall return, that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."

Gunning was about the procedural adequacy of a consultation which does take place. It was not about whether there should be consultation in the first place. It was made clear in the Red Book, the 30 October policy paper and the Technical Consultation that the Defendants had already decided to make the changes to APR and BPR, and that was one of the reasons for proceeding without consultation (see Mr Haydon's evidence summarised at paragraph 43(iii) above). The *Gunning* principles have no application here.

69. By their fourth ground, the Claimants argue that the requirements of fairness make it necessary for persons likely to be affected to be consulted on these changes. I do not accept that there is any free-standing right of fairness pursuant to which the Defendants were required to consult the Claimants. This was made clear in *R (Moseley) v Haringey London Borough Council* [2014] UKSC 56 per Lord Reed at paragraph 35: "*There is … no general common law duty to consult persons who may be affected by a measure before it is adopted*".

70. The second, third and fourth grounds are different ways of making the same point as advanced in the first ground: namely that the Claimants were entitled, as a matter of law, to be consulted on the proposed changes. For reasons similar to those given for rejecting the first ground, these other grounds must also necessarily fail. The Claimants had no legal entitlement to be consulted in the way they assert. That is fatal to this claim.

Was this claim brought in time?

71. I turn to consider the Defendants' argument that the claim was brought out of time. CPR r.54.5(1) states that a claim form "must be filed – (a) promptly; and (b) in any event not later than 3 months after the grounds to make the claim first arose". A court can extend time under CPR r.3.2(2)(a), but the Claimants have not applied for an extension of time.

72. Ms Nathan submits that time did not run from the moment that the changes were announced on 30 October 2024 because at that date it remained unclear what the scope of the consultation would be; a claim brought then would have been premature. It only became clear on 27 February 2025 that the consultation was limited to trust property and it was on that date that grounds for judicial review arose. The claim was filed within three months after that.

73. Mr Fell counters that the decision under challenge is the decision of the Exchequer Secretary to adopt these changes without a full consultation; that decision was announced on 30 October 2024. That is the latest point from which time runs. (Mr Fell has an alternative argument in response to the Claimants' case that time started to run on 27 February 2025, to the effect that the Claimants have failed to act promptly given the criticality of time once the budget process is commenced – so that even then, the Claimants are out of time.)

74. I am with Mr Fell in his primary argument. The 30 October policy paper made a number of statements which showed that the decision to change the policy on APR and BPR had been made already and that the scope of the consultation which would follow would

be limited. So, for example, it said that: "The government … *will* reform agricultural property relief and business property relief from 6 April 2026", "the government *will* publish a technical consultation in early 2025", this "*will focus* on the detailed application of the allowance to lifetime transfers into trusts and charges on trust property" (emphasis added). There was no lack of clarity about the extent of the proposed consultation; it was clear that the policy decision had already been made.

75. In my view, the Claimants knew all they needed to know on 30 October 2024. The government had announced the changes with a commitment to a "technical consultation" focussing on trust property. The term "technical consultation" is not defined but it means what it suggests, and is familiar in the context of tax legislation: it means consultation on the detail of particular changes or legislation in contrast to a consultation on the merits of the policy itself.

76. The court was shown a number of letters written to the First or Second Defendants on various dates between November 2024 and January 2025 by industry groups pressing for a "full consultation" and complaining bitterly about the limited consultation which had been foreshadowed in the 30 October 2024 policy paper. These provide strong objective evidence of the general understanding at the time that the government had decided, by 30 October 2024, not to have a full consultation. That is the obvious and reasonable way to read the 30 October policy paper.

77. Time started to run for any judicial review on 30 October 2024. I reject Ms Nathan's submission that proceedings issued in response to the 30 October policy paper would have been premature. To the contrary, the Budget process leading to the drafting of legislation and the laying of a Finance Bill before Parliament was already underway from the moment the changes were announced on 30 October 2024 and time was of the essence if any challenge was to be mounted. This claim was presented in May 2025. It was long out of time.

78. There is no application for any extension of time, but in any event I cannot see any good reason on the material before me for extending time, even if an application had been made.

79. I do not need to decide whether the Claimants were entitled to take up to three months to submit their claim or whether, in the pressing circumstances of this challenge to a tax raising measure to form part of the annual Budget cycle, the claim needed to be presented earlier than that in order to meet the requirement of promptness. Nor do I need to address Mr Fell's arguments on delay on the alternative hypothesis that time ran from February 2025 when the Technical Consultation was announced, because I reject that hypothesis on the facts.

Does Parliamentary Privilege apply?

Outline

80. There were two broad arguments advanced to the effect that the claim was not justiciable. First, it was said that Parliamentary privilege applied so that this challenge was not, and never had been, amenable to review by the Court. Mr Manknell KC took

the lead on that point at the hearing (although Mr Fell had some submissions to make on that issue). Secondly, it was said that the claim touched on issues which were essentially political in nature, so that for that distinct and additional reason the claim was not justiciable by the Court. Mr Fell took the lead on that point. In this part of my judgment, I deal with the arguments presented by Mr Manknell relating to Parliamentary privilege and leave Mr Fell's alternative to one side.

Article 9

81. The starting point for much of the analysis under the heading of Parliamentary privilege was Article 9 of the Bill of Rights 1688 which provides:

> "That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament."

Submissions

82. Ms Nathan's submissions focussed on Article 9. She cited a number of cases in support of her submissions but it is necessary only to touch on the three cases which were central to her case on this point. To support her key submission that Article 9 should be narrowly drawn, and does not extend to preparatory stages by the executive in contemplation of legislation, she relied on *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684. Lord Phillips of Worth Matravers PSC said this (emphasis added):

> "47. … the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider **the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament**."

He went on say this (emphasis added, again):

> "61. **There are good reasons of policy for giving article 9 a narrow ambit** that restricts it to the important purpose for which it was enacted – freedom for Parliament to conduct its legislative and deliberative business without interference from the Crown or the Crown's judges. The protection of article 9 is absolute. It is capable of variation by primary legislation, but not capable of waiver, even by Parliamentary resolution."

83. The issue in *Chaytor* was whether false claims for repayment of expenses by MPs were justiciable in a criminal court; the Supreme Court confirmed that submitting claims for allowances and expenses did not form part of and was not incidental to the core or

essential business of Parliament and was not therefore part of "proceedings in Parliament" (paragraph 62). In his concurring judgment, Lord Rodger warned against the "dazzling" effect of the invocation of parliamentary privilege (paragraph 101); he said that the criminal prosecution for false expenses claims would not touch on the core activities of Parliament and did not relate in any way to the legislative or deliberative process of the House of Commons (paragraph 122).

84. Next Ms Nathan relied on *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] UKSC 3, [2014] 1 WLR 324 ("*HS2"*) to show that the Court can consider actions by the executive before legislation is laid before Parliament. That case involved an issue relating to the government's intention to use a hybrid Parliamentary bill procedure to progress the HS2 project in circumstances where there had been no prior strategic environmental assessment, which was said to infringe EU Law requirements. The Supreme Court considered constitutional issues (see paragraphs 78-79) but found that it was not necessary to resolve any issue of compatibility of the domestic legislative process (on grounds of Parliamentary privilege) with EU law because here no bill or draft bill existed and the Court was not expressing any view or taking any action concerning any decision to lay a bill before Parliament or Parliament's approval of any such bill (per Lord Reed at paragraph 95).

85. Ms Nathan also relied on *Warsama v Foreign and Commonwealth Office* [2020] EWCA Civ 142, [2020] QB 1076. *Warsama* concerned an inquiry established by the Foreign Office into reports of child sex abuse on St Helena. The Foreign Office took the view that the inquiry report should be published in Parliament. This was challenged by various claimants who argued that the inquiry report was materially inaccurate and defamatory. The Foreign Office applied to have their claims struck out on the grounds that the publication of the report was covered by Parliamentary privilege. The Court (Lord Burnett of Maldon CJ, Coulson and Rose LJJ) held that Parliamentary privilege extended to the publication of the report (paragraph 63); but that the conduct of the inquiry prior to publication of the report was not covered by Parliamentary privilege, even if it was always the intention that the result of the investigation would be published in Parliament (paragraph 71); privilege did not therefore extend to the decision to set up the inquiry or to decisions about how to conduct the inquiry (paragraph 72). Ms Nathan built on this authority to suggest by parity of reasoning that her challenge is to steps prior to the introduction of legislation to Parliament, and likewise is not covered by Parliamentary privilege.

86. To answer Ms Nathan's submissions on this aspect of non-justiciability, Mr Fell emphasised the primacy of Parliament in matters of revenue. He drew our attention to Article 4 of the Bill of Rights which preserves to Parliament the right to levy money for use by the Crown. He cited *Steel Ford & Co v Crown Prosecution Service* [1994] 1 AC 22 where Lord Bridge referred to the:

> "special constitutional convention which jealously safeguards the exclusive control exercised by Parliament over both the levying and the expenditure of the public revenue" (p 33E)

87. That primacy was more recently recognised by the Divisional Court in *R (ALR) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin), where the court said:

> "since the revolutionary settlement of 1689, Parliament has controlled the supply of funds to the Crown" (paragraph 68 of Annex B).

88. Mr Fell reminded the Court that the government holds executive responsibility for the management of the country's finances and only a minister (who is also a member of Parliament) has the right to initiate tax raising proposals in Parliament. Parliament provides the forum for debate and challenge of proposed tax policy reform, as Lord Reed recognised in *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223 at paragraph 169. The budgetary cycle, of which the challenged decision in this case forms part, was a process entrusted to Parliament.

89. Mr Manknell supported Mr Fell's submissions (as they are outlined above). Mr Manknell distinguished *Chaytor* as a case about the meaning of "proceedings in Parliament" for Article 9 purposes; he argued that the concept of Parliamentary privilege is much wider than Article 9. This was made clear in *SC* per Lord Reed PSC at paragraphs 164-5 (emphasis added):

> "164. Parliamentary privilege is given statutory expression in article 9 of the Bill of Rights 1688 (1 Will & Mary, sess 2, c 2): "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court of place out of Parliament." **That is not, however, a comprehensive statement of the privilege.** It was more fully explained by Lord Browne-Wilkinson in *Prebble v Television New Zealand Ltd* [1995] 1 AC 321, 332:
>
> > "In addition to article 9 itself, there is a long line of authority which supports a **wider principle, of which article 9 is merely one manifestation, viz that the courts and Parliament are both astute to recognise their respective constitutional roles**. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performances of its legislative functions and protection of its established privileges"
>
> 165. As that statement makes clear, **the law of Parliamentary privilege is not based solely on the need to avoid any risk of interference with freedom of powers, which, so far as relating to the courts and Parliament, requires each of them to abstain from interference with the functions of the other, and to treat each other's proceedings and decisions with respect.** It follows that it is no part of the function of the courts under our constitution to exercise a supervisory jurisdiction over the internal procedures of Parliament."

90. Lord Reed's words find echoes in earlier cases, such as *R v Parliamentary Commissioner for Standards, ex p Al Fayed* [1998] 1 WLR 669 per Lord Woolf MR at

pp 671-2; and *Office of Government Commerce v Information Commissioner* [2008] EWHC 774 (Admin) per Stanley Burnton J at paragraph 46.

91. To illustrate the breadth of the principle of Parliamentary privilege particularly as it applies to claims about lack of consultation in advance of legislation, Mr Manknell took us to six authorities which stand in a line starting with *Pickin v British Railways Board* [1974] AC 765. It was held in that case (per Lord Reid at p 787, in agreement with a passage from Lord Campbell in *Edinburgh v Dalkeith Railway Co v Wauchope* (1842) 8 Cl & F 710) that (emphasis added):

> "no court of justice can inquire into the manner in which [an Act] was introduced into Parliament, **what was done previously to it being introduced**, or what passed in Parliament during the various stages of its progress through both Houses of Parliament".

92. The second was *R (Wheeler) v Office of the Prime Minister* [2008] EWHC 1409 (Admin), which concerned a challenge, based on an asserted legitimate expectation, to the government's refusal to hold a referendum on its adoption of the Treaty of Lisbon in 2007. In that case, the claimant disavowed any intention to interfere with Parliamentary processes, submitting that the challenge related to the failure of the executive to hold a referendum in breach of its promise to do so (paragraph 22). The Divisional Court rejected that submission: any decision on whether to hold a referendum rested with Parliament, was part of the legislative process, and was protected by Parliamentary privilege (paragraphs 45 and 49); any relief granted would necessarily involve some indication by the court that the defendants were under a public law duty to introduce a bill into Parliament to provide for a referendum (paragraph 45) which would be an interference by the court with Parliamentary proceedings, which was a further decisive reason why the claim failed (paragraph 51).

93. Mr Manknell's third case was *R (on the application of UNISON) v Secretary of State for Health* [2010] EWHC 2655 (Admin) which involved a challenge to a decision not to consult (in that case, on changes to the NHS to be contained in primary legislation). Although the claimant disavowed any intention to delay the presentation of the bill to Parliament, Mitting J held that such a delay would be the unavoidable, or at least a highly likely consequence if the challenge succeeded (paragraph 8); to forbid a Member of Parliament from introducing a bill into Parliament would be an interference with Parliamentary proceedings (paragraph 10); the consultation was the necessary precursor to legislation and, if the application were granted, that would have an immediate and practical effect on Parliamentary decision making (paragraph 19). The claim was dismissed. (The Supreme Court has endorsed *Wheeler* and *UNISON,* both first instance decisions, in *Bank Mellat v Her Majesty's Treasury (No 2)* [2013] UKSC 38, [2014] AC 700 at paragraph 39.)

94. The fourth was *R (Adiatu) v HM Treasury* [2020] EWHC 1554 (Admin), [2020] PTSR 2198. This was not a consultation case but rather a case about the public sector equality duty (PSED). The claimants challenged decisions by the Treasury to exclude workers within certain categories from the Job Retention Scheme (by which payments were made during the pandemic to furloughed workers) and from the statutory sick pay scheme (as it was amended during the pandemic) on grounds of breach of the PSED

(amongst other things). The Divisional Court rejected that challenge saying this (per Bean LJ and Cavanagh J) (emphasis added):

> "230 … The making of primary legislation is the quintessential parliamentary function. **In our, view it would be a breach of parliamentary privilege and the constitutional separation of powers for a court to hold that the procedure that led to legislation being enacted was unlawful**. …"

95. In *R (Police Superintendents' Association v HM Treasury* [2021] EWHC 3389 (Admin), Mr Manknell's fifth case, the court addressed a challenge to the legality of consultation on public service pension schemes, and the consequent decision to close legacy public service pension schemes in favour of reformed schemes. The court found against the claimants on the merits before turning to the issue of justiciability in the context of the claimed relief. Heather Williams J held that the courts must not do anything directly or indirectly that would delay the passage of a bill through Parliament or which would directly or indirectly tell Parliament what the form or the content of the bill should be (paragraph 109). The grant of relief, whether mandatory or declaratory, would have the effect of interfering with the Parliamentary process, by seeking to influence the bill or disrupting the timetable; it would offend Parliamentary privilege (paragraphs 213-215).

96. The sixth case was *R (A and Others) v Secretary of State for the Home Department* [2022] EWHC 360 (Admin), [2022] PTSR 1535 where the court was faced with a challenge to the Secretary of State's consultation on proposed changes to the immigration and asylum system. Fordham J refused permission (granting permission to cite the permission judgment, see [49]) on the basis that the court could not hold that a process which led to legislation being enacted was unlawful; the prior decision-making procedure resulting in the substantive design of primary legislation was for Parliament to police, not the courts by applying *Gunning* legal standards, so that the matter was non-justiciable (paragraphs 24-27). In addressing arguments on relief, Fordham J said this (emphasis added):

> "26. **A declaration that an applicable legal standard was breached, in the consultation and engagement process culminating in the operative decisions as to the design of the Bill to introduce into Parliament, would, in my judgment, clearly constitute a breach of parliamentary privilege and the constitutional separation of powers**, as these are clearly described by the Divisional Court in *Adiatu* [2020] PTSR 2198. A declaration from a judicial review court, declaring that the consultation which preceded the Bill and informed its design was unlawful would – even if the court bent over backwards to make very clear that that was the scope and extent of its judgment and its declaration – clearly raise questions about whether some step out to be taken in light of that conclusion of law by the court.

97. In giving his reasons for that conclusion, Fordham J said this (still within paragraph 26):

> (ii) … Let it be assumed that the court's conclusion did not involve any "step" being taken by Government. Suppose instead that the court's judgment instead cast a legal "shadow" over the product of the consultation. That shadow would, in my judgment, itself stand—in the circumstances of the present case—as an interference in the parliamentary process. The court would, unmistakably, have concluded that the "product" of the consultation was legally "tainted". The court would have held that the product had been arrived at in breach of a relevant, material and applicable legal standard."

98. Based on this line of cases, Mr Manknell argued that the Claimants' challenge on grounds of lack of consultation was not justiciable because Parliamentary privilege applied. The Budget process was designed to enable Parliament to raise public revenues. It involved the Chancellor announcing measures in the Budget which were then drafted into legislation which was laid before Parliament in the annual Finance Bill. This was a process expressly and exclusively reserved to Parliament. The Claimants sought to interfere with that process by seeking to delay the point at which the legislation was laid before Parliament and by seeking to influence the form of that legislation. More generally, the challenge infringed Parliamentary privilege by inviting consideration of defects in the overall process such as to "cast a shadow" over the work of Parliament and the legislative product of that process.

99. Once the Bill was laid before Parliament on 1 December 2025, Mr Manknell submitted that the position became even clearer, because Article 9 brought down a guillotine on any discussion in the courts of that draft legislation. It was no answer to say that the dispute related to pre-legislative stages because the legislation was by that date before Parliament and any criticism that related to events before then became academic.

100. By way of answer to Mr Manknell, Ms Nathan suggested that *Adiatu* was decided in ignorance of *Chaytor* and in consequence had taken a wrong turn in drawing the scope of Parliamentary privilege too widely; subsequent cases in the *Adiatu* line of authority had embedded that error and should not be followed. The key issue, she submitted, was whether the decision impacted on the core or essential business of Parliament (citing *Chaytor*) which she submitted the decision not to consult on APR and BPR did not.

101. Shortly after the hearing, the parties alerted the court to a decision of the Divisional Court (Lewis LJ and Chamberlain J) in *R (Greyhound Board of Great Britain Ltd) v Welsh Ministers* [2026] EWHC 670 (Admin). None of the parties wished to make submissions on that case. That was a challenge to the Welsh Senedd's decision to ban greyhound racing without first consulting on the measure. The court dismissed the claim for a number of reasons, including this:

> "46 … The Senedd is in charge of the process. It is for the Senedd to decide, in accordance with its standing orders, what evidence will be sought and from whom and for how long and in what form the proposed legislation will be debated. It would be inconsistent with this procedural aspect of the Senedd's plenary powers, and contrary to the principle of the separation of powers, if the courts could review the initiating act of Senedd

> proceedings on the ground that some prior process of consultation should have been completed before the legislation was introduced"

Discussion

102. I draw a distinction between Article 9 which establishes the rule against interference in Parliamentary proceedings, and the broader concept of Parliamentary privilege emphasised in the case law (*SC,* for example), which encompasses the separation of powers and judicial self-restraint, of which Article 9 forms a part. The principles were helpfully summarised in *Office of Government Commerce*:

> "46 … the law of parliamentary privilege is essentially based on two principles. The first is the need to avoid any risk of interference with free speech in Parliament *[I interpose here: Article 9]*. The second is the principle of the separation of powers, which in our constitution is restricted to the judicial function of government, and requires the executive and the legislature to abstain from interference with the judicial function, and conversely requires the judiciary not to interfere with or to criticise the proceedings of the legislature."

103. Ms Nathan places considerable reliance on *Chaytor*. But that was a case about the limits of Parliamentary proceedings within Article 9. The context was a claim by Parliamentarians to be immune from criminal prosecution for false expenses claims: no wonder that the Court drew the boundaries of Article 9 immunity fairly narrowly. *Chaytor* is distant on its facts from this case. *Adiatu*, on the other hand, was a case about the scope of Parliamentary privilege in the context of alleged failures by the executive during the pre-legislative stage; that same broad point was at issue in *Police Superintendents* and *A and Others* – both of which related to alleged defects in pre-legislative consultation processes. *Adiatu* and the cases following it are closely analogous to this case.

104. I am not persuaded that *Chaytor* was relevant to the outcome in *Adiatu* or should have been cited in that case. Nor am I persuaded that the Court took a wrong turn in *Adiatu*.

105. I take the following points from the six cases cited by Mr Manknell, plus *SC, Office of Government Commerce* and *Greyhound Board*:

i) Parliamentary privilege goes wider than merely protecting proceedings once they are initiated in Parliament. It encompasses the comity between Parliament and the courts, based on mutual respect and the separation of constitutional powers.

ii) Parliamentary privilege can extend to acts by the executive which are earlier in time than the laying of a bill before Parliament. Whether it does, or not, depends in any given case on the facts, on the character of the act in question and on its proximity to the proceedings before Parliament.

iii) Where Parliamentary privilege does extend to the earlier acts of the executive, it is not possible to circumvent that privilege by claiming relief in the form of a mandatory order or a declaration limited to those earlier acts. Parliament would, by convention, take heed of any such order which would constitute an interference with Parliamentary processes, by casting a shadow over or implying some taint in the product of Parliament's consideration.

106. I agree with Mr Manknell that the Budget announcement (in the Red Book) and the 30 October policy paper are part and parcel of a Parliamentary process to raise public revenues, itself a function which is exclusive and peculiar to Parliament. Parliamentary privilege applied to that announcement and decisions incidental to it, including the decision to have a Technical Consultation limited to the form of the legislation to implement the changes so far as trust property was concerned.

107. The argument that the challenge escapes Parliamentary privilege because it relates to earlier asserted failures by the executive before the Bill came into existence fails. Similar arguments failed in *Wheeler, Unison, Police Superintendents, A* and *Greyhound Board* and this case is, if anything, even stronger than those cases on its facts because of the close connection between the decision under challenge and the subsequent steps in the budgetary process which were envisaged at the time that decision was made, including the laying of legislation before Parliament.

108. There are examples in the case law of justiciable challenges to discrete preliminary steps in a process which ends up in Parliament: for example, in *Warsama,* it was held that the challenge was permissible because it took place before the report was laid before Parliament; in *HS2,* the court was willing to consider the challenge on grounds of EU law which did not stray into areas reserved for Parliament. Those cases are very different on their facts from this case. In both cases, Parliamentary privilege was held not to extend to the pre-legislative stages. This case is different because the pre-legislative stages were part and parcel of the budgetary process which is the exclusive preserve of Parliament.

109. Therefore, the decision not to consult on the policy change to APR and BPR announced in the 2024 Budget was covered by Parliamentary privilege and was not (and is not) justiciable by the courts. It was a matter to be raised, if anywhere, in Parliament as part of the political process of which it formed part.

110. If I am wrong about that and the decision about the Technical Consultation was not subject to Parliamentary privilege when it was made, that position changed when the Bill was laid before Parliament on 1 December 2025, at which point, if not before, the matter became privileged. From that date, Article 9 applied in terms because there were, on any view, "proceedings in Parliament". The court could not allow itself to adjudicate the adequacy of the pre-legislative stage at the same time as Parliament was considering the Bill, because any defect found by the court, or any remedy granted in relation to that defect, would "cast a shadow" over the Bill.

Is the claim non-justiciable for any other reason?

111. Mr Fell submitted that the claim is non-justiciable for the further (but overlapping) reason that the decision challenged is essentially political in its character. His arguments on this species of non-justiciability substantially merge with his arguments on the second limb of the test for legitimate expectation: the point he makes is that the Court lacks the institutional competence and democratic accountability to assess the fairness of requiring the government to consult on these changes, because the court is not able to weigh the economic or political reasons for the government's decision not to consult, or the wider public interest factors which weigh in the balance on the government's side.

112. It is not necessary for me to decide this issue, given that I have already determined this application on other bases. But in any event, I conclude that it would not be appropriate for me to venture a view on this issue which would only arise if, contrary to my earlier conclusion, the Defendants had promised consultation of the sort pursued by the Claimants. If they had, then it would be important to assess the context and content of such a promise to determine its justiciability and enforceability.

113. For present purposes, I simply note that this case is very different to *Wheeler,* where the Court was prepared to say that even if a referendum had been promised (the court having found that there was no such promise), that promise would not be enforceable in law because the "subject-matter, nature and context of a promise of this kind place it in the realm of politics, not of the courts": see paragraph 41. It is an open question whether a similar analysis would apply in the context of a promise of consultation relating to a tax policy change.

Third Claimant's Standing

114. The Defendants challenge the Third Claimant's standing to bring this claim. The Third Claimant is an unincorporated association, formed on 12 May 2025. Its objects are to promote good government practices and tax policy. By reference to the Third Claimant's constitution, ordinary and founding members are required to meet the conditions of APR and/or BPR. Associate and supporting members are not required to meet those conditions. The aims of the Third Claimant are explained by Mr Perez in his witness statement. They are to support farmers, businesses and business owners who wish to voice their concerns at the government's refusal to engage properly with them before enacting the changes to APR and BPR (paragraph 4).

115. I am satisfied that the Third Claimant does have standing to bring this judicial review claim. Although no full register of members has been disclosed, Mr Perez and every other ordinary and founding member appear to be directly affected by these changes because they meet the conditions for APR and/or BPR. That gives the Third Claimant a sufficient interest.

Other Issues Not Determined

116. It is not necessary to resolve the remaining issues:

i) Admissibility of certain documents: the documents which the Defendants and the Speaker object to as inadmissible were hardly touched on in argument and are not referred to in this judgment. There is no need to reach any conclusion on the admissibility issue.

ii) Whether the claim is academic: the claim has failed for other reasons which are determinative. There is no utility in addressing the Defendants' and Speaker's alternative case that the claim is academic or the Claimants' response that even if academic, it should be determined in the public interest anyway following *R v Secretary of State for the Home Department ex p Salem* [1999] 1 AC 450 at p 456.

iii) Relief: that issue does not arise.

Summary

117. There was no arguable clear and unequivocal promise made by the Defendants to consult on the changes to APR and BPR. Further and in any event, the claim was brought out of time. Further still, the claim is non-justiciable on grounds of Parliamentary privilege. For those reasons, if My Lord agrees, this application for permission for judicial review should be refused.

118. We heard full argument on the issues summarised in the previous paragraph, all of which may have wider application beyond this case. For the avoidance of doubt, this judgment may properly be cited in future on those issues.

Mr Justice Fordham:

119. I agree.