

JERSEY / JUDGMENT

JT v JCRA [2017] JRC 091 (15 June 2017)

[2017] JRC 091

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judgment

the COMMISSIONER: 1. On 7 th September, 2016, the respondent ("JCRA") made a decision under the Telecommunications (Jersey) Law 2002 ("the Law") in respect of the appellant ("JT") against which JT subsequently appealed. The decision of the JCRA was expressed to take effect on 1 st January, 2017. 2. In February 2017 JT decided not to continue with its appeal. The parties are in dispute as to whether the decision of the JCRA should still take effect from 1 st January, 2017, or whether (as JT submits) it should take effect from seven days after the date upon which JT communicated its decision not to proceed with its appeal to the JCRA. 3. With the agreement of the parties, I sat alone to resolve this matter on 21 st April, following which I communicated my decision to accede to JT's submission on 4 th May. What follows constitutes my reasons for reaching that conclusion.

Background

4. On 6 th September, 2016, pursuant to the powers conferred on it, inter alia , by Article 16 of the Law, the JCRA issued a decision ("the Decision") requiring JT to reduce the prices it charges for various retail fixed line services over a three year period. The actual terms of the Decision were:- "That by reference to the monitoring and enforcement framework in Annex 2 of this Final Notice the charges levied by JT shall be capped by RPI -6.5% for year 1, RPI -6.5% for year 2 and RPI -0% for the third and final year of this price control. The decision will take effect on 1 st January 2017 [and] will remain in place for the three year period unless replaced or removed following a review." (emphasis added) 5. The issuing of the Decision is a 'specified regulatory function' as defined in the Law and Article 12(1) gives a regulated entity, such as JT, a right of appeal to this Court. Article 12(5) and (6) provide as follows:- "(5) When it determines an appeal under this Article, the Court may:- (a) confirm the exercise (or proposal) appealed against; (b) refer the matter of the exercise back to the Authority for its determination, or other action, in accordance with the law; or (c) exercise a specified regulatory function (and do any incidental thing) in the same way as the Authority could have done.
- (6) The Court may make such orders as it thinks appropriate, including ancillary orders and orders as to costs." 6. Article 13 of the Law deals with a granting of a delay in implementation pending appeal. It is in the following terms:- "13 Delay in implementation (1) A person who

lodges notice of an appeal in accordance with this Part against the exercise of a specified regulatory function may, if the exercise has not taken effect before the notice is lodged, include in that notice application for an order for a delay in the exercise. (2) If a notice of appeal includes such an application, the exercise shall not take effect earlier than the seventh day after the Court determines the application. (3) The Court shall consider the application as a matter of urgency. (4) The Court may grant the application if it considers that there are, prima facie, reasonable grounds for the appeal and that the balance of convenience in the case lies in favour of ordering the delay. (5) The Court may order that the delay shall cease to have effect at a time after the date of its order and specified (whether by reference to the date when the Court determines the appeal or to any other date, event or formula) in its order. (6) If the Court's determination is to refuse the application, the exercise shall take effect on the later of the following days:-

- (a) the seventh day after the determination;
 - (b) the date on which the exercise was to have taken effect according to the notices given by the Authority about the exercise, unless the Court decides to allow the appeal against the exercise before the later of those days."
7. JT duly appealed against the Decision. The notice of appeal contained an application for delay in implementation in accordance with Article 13(1) of the Law. That application asserted that there were prima facie reasonable grounds for the appeal and that the balance of convenience lay in favour of ordering a delay because:- "(1) if the exercise is not delayed, the appeal may be rendered nugatory; and (2) the Price Cap is not, in any event, due to come into force until 1 January 2017. If the exercise is delayed and the Appellant fails, then (on any likely timetable for this litigation) there will have been a delay of no more than two months in the context of a market review exercise that has been on-going since 2014." 8. A date fix appointment for the hearing of the application for delay was scheduled but was not necessary because the parties reached agreement on a delay. 9. That agreement was reflected in an Act dated 7 th October, 2016, whereby the Bailiff, by consent of the parties, ordered that the appeal be listed for two days on 20 th and 21 st April, 2017, and that there be a stay of the appeal for 21 days for the purposes of alternative dispute resolution. Importantly for present purposes, paragraph 3 of the Act ordered a delay in implementation of the Decision in the following terms:- "3 pursuant to Article 13 of the Telecommunications (Jersey) Law 2002, there shall be a delay in the exercise of the implementation of the Final Notice dated September 2016 by which the Respondent purportedly imposed a three year period of price control on the Appellant's exchange line, fixed line, public pay phone and ISDN services until seven days after: (a) determination of the appeal (whether by the Court or agreement between the parties); or (b) further order of the Court." I shall refer to this as 'the interim order'. 10. In accordance with the agreed timetable the JCRA filed its affidavit under Royal Court Rules 2004 ("RCR") 15/3(1) on 6 th January, 2017. The time fixed for JT to file its affidavit in response under RCR 15/3(2) was 17 th February. 11. On 16 th February Mr McDermott, a director of JT, contacted Mr Byrne of the JCRA by telephone to indicate that JT was not going to be filing evidence or pursuing the appeal further. This was followed by delivery of a letter the same day ("the

Withdrawal Letter") in which JT indicated that it was "withdrawing" and "discontinuing" the appeal for the reasons set out in the letter. It ended by saying that:- "Our lawyers will liaise with yours to attend to the practicalities of discontinuing the appeal." 12. Advocate Cadin sent an email the next day (17 th February) to Advocate Sanders confirming that JT had decided to withdraw its appeal and enclosing a draft consent order to that effect. That draft consent order provided that the appeal should be discontinued and that JT should pay the JCRA's costs on the standard basis. These two aspects were not contentious. However it also provided that the three year period of price control should commence on 24 th February, 2017, (being seven days after the date of the email). 13. The JCRA does not agree with that latter provision. It contends that, the appeal having failed, the Decision should stand as issued and should take effect from 1 st January, 2017. The parties having failed to reach agreement on this point, the JCRA issued a summons on 3 rd April, 2017, seeking an order that the appeal be dismissed pursuant to RCR 15/5(1), that the interim order be set aside, that the Decision should take effect in accordance with its terms from 1 st January, 2017, and that JT should pay the JCRA's costs on the standard basis. 14. JT agrees that the appeal should be dismissed and that it should be ordered to pay the costs until 17 th February but contends that, in accordance with the interim order, the decision should take effect on 24 th February, being 7 days after 17 th February. 15. Following its decision to withdraw the appeal, JT immediately took steps to reduce prices in accordance with the Decision with effect from 31 st March, 2017, (being the earliest date upon which a price reduction could take effect given the regulatory and contractual requirements for notice). Contentions 16. I would summarise Advocate Sanders' submissions in support of the summons under the following three headings:- (i) On its true construction, the interim order does not delay the commencement date of the Decision. (ii) There has been no 'determination' of the appeal, whether by the Court or by agreement. (iii) Alternatively, the Court should vary the interim order so as to retain 1 st January, 2017, as the commencement date of the Decision. I shall consider each of these in turn.

- (i) Construction of the interim order - implementation 17. Advocate Sanders submitted that the reference in paragraph 3 of the interim order to a delay in the exercise of the implementation of the Decision is not a reference to the commencement date of 1 st January, 2017, specified in the Decision. To so interpret the interim order would, he submitted, mean that, even if the appeal was unsuccessful, the substance of the Decision would have been changed because the commencement date was part of the substance. If the JCRA (or the Court) changed the commencement date, it would amount to a fresh decision and the JCRA (or the Court) would have to go through the entire consultation process etc. laid down in Article 11 the Law for making a decision. A delay in implementation simply meant that JT was not under any obligation to comply with the Decision pending the determination of the appeal, but in the event of the appeal being unsuccessful, the obligation to obey the Decision would be resuscitated and the Decision would remain in its original form. The effect would merely be that JT would have less time to achieve the price control to which it was subject with effect from 1 st January, 2017. 18. I cannot accept that as

being the meaning of the interim order for the following reasons:- (i) The interim order was made pursuant to Article 13 of the Law. Article 13(1) confers power on the Court to delay the exercise of a specified regulatory function if the exercise has not 'taken effect' before the notice applying for a delay is lodged. (ii) An exercise of a specified regulatory function cannot possibly 'take effect' on the date of the issuing of the decision itself as otherwise it would be impossible for anyone ever to satisfy the timetable in Article 13(1) because the exercise would 'take effect' contemporaneously with the issuing of the decision. The reference to the exercise 'taking effect' must therefore be to a later date. In the circumstances that can only be a reference to the commencement date specified in the decision. In the present case that would be 1 st January, 2017. (iii) That is abundantly clear in the present case from the terms of the Decision itself. As stated at para 4 above, it specifically states that the Decision will 'take effect' on 1 st January, 2017. (iv) In my judgment, Advocate Sanders' submission is inconsistent with Article 13(6) of the Law. This deals with the position where there has been an application for a delay in the exercise but the Court has refused that application. Article 13(6) provides that the exercise shall 'take effect' on the later of the seventh day after the refusal or 'the date on which the exercise was to have taken effect according to the notices given by the Authority about the exercise'. Again, that can only be a reference in the present case to 1 st January, 2017. It follows that, if the Court were to have refused a delay in the present case more than seven days prior to 1 st January, 2017, the exercise would have taken effect on 1 st January, 2017. However, if the application for a delay had not been heard until (say) 1 st February, 2017, the effect of Article 13(6) must be that the exercise would not have taken effect until 8 th February, 2017 i.e. the date of 1 st January, 2017, in the Decision would be changed to 8 th February, 2017. Any other interpretation would, in my judgment, render Article 13(6) meaningless. This negates the submission that a change in commencement date is a change of substance which cannot be made by the Court. In my judgment, it is the inevitable consequence of Article 13(6) that in some cases the commencement date i.e. the date upon which the decision takes effect, will be postponed even where the appeal is unsuccessful. (v) The present Decision only requires JT to take action over a period i.e. to reduce prices as an average during 2017 and thereafter. However, other decisions of the JCRA might well require an operator to take action by a specified date e.g. to introduce a new service by that date. Article 13 would be incapable of having any effect if the Court could not delay that date so that the operator did not have to introduce the new service pending the appeal. If the appeal were unsuccessful, the date would have to be changed by the Court to some date shortly after its decision because otherwise it would be impossible for the operator to comply with the decision of the JCRA because the date would have passed. The clear intention of Article 13, which accords with common sense, is that, if satisfied that there are reasonable grounds for the appeal and that the balance of convenience lies in favour of ordering a delay, the Court may make such order as is necessary to ensure that the appeal is not rendered nugatory and that accordingly the date upon which the decision of the JCRA will take effect is postponed until the outcome of the appeal is known. (vi) As Advocate Sanders conceded during the course of the hearing, his interpretation of the interim order means that it did not achieve anything and was a

pointless exercise. If it had not been made, JT would still have been in exactly the same position. It would not have been in breach of the Decision by retaining its current prices prior to the hearing of the appeal (because the Decision only required reduction over a one year period); and if it lost its appeal, it would simply have to reduce prices by rather more than if it had reduced them with effect from 1 st January, 2017. On his interpretation, that is exactly the effect of the interim order. If his interpretation is correct, it is not clear why JT and the JCRA thought it necessary to enter into the interim order. (vii) Furthermore, on his construction, if the appeal had not been heard until, say, November 2017 and had then been lost, JT would have had to have achieve a full year's price reduction in the space of one month, thereby requiring drastic reductions in prices for that period. Indeed, if for some reason the appeal had been delayed until 2018, Advocate Sanders' construction of the interim order means that, in the event of the appeal being dismissed, JT would have been in immediate breach of the Decision despite the existence of the interim order because it would not have effected any price reduction during the course of 2017. (viii) All of this suggests that Advocate Sanders' interpretation is wrong and that the interim order achieves what one would have expected it to achieve having regard to the terms of Article 13 of the Law, namely a delay in the Decision taking effect from 1 st January, 2017, until 7 days after determination of the appeal. (ii) Has there been a determination of the appeal? 19. If its first point is unsuccessful, the JCRA next argues that there has been no '

determination

' of the appeal within the meaning of paragraph 3 of the interim order because JT has unilaterally abandoned the appeal. It submits that '

determination

' only occurs when the Court has heard full argument on all points and issues and has reached an authoritative decision. Advocate Sanders raises three points in support of that contention. 20. First, he refers to the case of Hallamshire Industrial Finance Trust Limited-v-Inland Revenue Commissioners

[1979] 1 WLR 620. In that case, the taxpayer had appealed to the Special Commissioners against various assessments to tax. The hearing took place and the Special Commissioners gave a decision on the issues raised. The form of their decision was to state the amounts of income assessable to tax and not the amounts of tax actually payable. Subsequently the IRC issued revised assessments based upon the decision of the Special Commissioners as to the amounts of income. The taxpayer nevertheless contended that the appeals had not been 'determined' since the Special Commissioners had not determined the amounts of tax payable. It was apparently the case that no tax was actually payable until such determination had been made by the Special Commissioners. 21. The matter came before Browne-Wilkinson J in the Chancery Division who held that the Special Commissioners had 'determined' the appeal. Advocate Sanders relies upon the judge's observation at 627 to

the following effect:- "Once the actual issues have become defined and the parties have had a full opportunity to argue all the points open to them on the notice of appeal, the Commissioners give their decision on the issues actually raised. Having done so in my opinion they have in any ordinary sense of the words 'determined the appeal'. It is not open to a taxpayer to come back as of right and say: "There is another point which I have thought of on which there is an issue; please decide it." Even less it is open to a taxpayer, such as the plaintiff in the present case, to come back and say: "There is another point as to which there is no issue between the parties which I require you to determine."" 22. I have to say that I do not find this case to be of much assistance. The issue in that case was whether, where the Special Commissioners had heard argument and decided all the issues before them, they had or had not 'determined' the appeal even though they had not actually fixed the amount of tax payable. I do not see that the case helps on the very different issue before me, namely whether an appeal has been determined where it has not been subject to an adjudication on the merits but has been abandoned/dismissed without trial. 23. Secondly, Advocate Sanders relies upon the well-known plain meaning rule, to the effect that the first question, when determining the meaning of any word or phrase in a statute, is to ask always what is the natural or ordinary meaning of that word or phrase in its context in the statute. Advocate Sanders refers to the Oxford Dictionary which defines '

determination

' in the context of law as ' the settlement of a dispute by the authoritative decision of a judge or arbitrator ' and ' a judicial decision or sentence ' . 24. Thirdly, he referred me to the terms of Article 13 of the Law as it was originally enacted. In its original form it provided as follows:- "13 Delay in effect of certain actions When notice of an appeal is lodged with the Court in accordance with this Part against the exercise of a specified regulatory function, the exercise, if it has not taken effect before the notice is lodged, shall not take effect (if at all) until after the date when the appeal has been finally disposed of under this Part, or such date as is specified in the relevant initial notice or final notice, whichever is the latest date. ..." He emphasises the change of language from ' finally disposed of ' to ' determines the appeal ' in the present Article 13(5) and the word '

determination

' in paragraph 3 of the interim order. He submits that the States clearly intended that delays in implementation were to be linked to the making of a decision on the appeal as lodged and therefore a decision which decided the issues arising. A withdrawal or dismissal did not involve an authoritative decision on the issues raised in the appeal and accordingly in those circumstances there was no determination, with the consequence that the interim order simply fell away following the withdrawal/dismissal of the appeal. 25. I am unable to accede to these

submissions.

The word '

determination

' has a number of meanings and its meaning in a particular statute or document must be derived from the context in which it appears. One of the meanings in the Oxford Dictionary is: ' a bringing or coming to an end; a termination' . In my judgment that is the natural meaning of the word when used in paragraph 3 of the interim order. It covers the Court dismissing the appeal without considering the merits because that has resulted in the determination (in the sense of bringing to an end) of the appeal. Furthermore, the parties themselves clearly envisaged that '

determination

' of the appeal was wider than simply a decision on the merits by the Court because they included reference to the appeal being determined as a result of agreement between the parties. In my judgment, that reference is wide enough to cover a withdrawal of an appeal which is accepted by the other party. Thus, whether one relies upon determination by the Court or determination by agreement between the parties, I am of the view that this appeal has been determined. 26. It follows from my decision on these first two arguments (as listed in para 16) that, in the absence of the Court making any new order, the interim order governs the position and the effect of paragraph 3 is to delay the commencement date of the Decision from 1 st January, 2017, until seven days after determination of the appeal or further order of the Court. Advocate Cadin accepted on behalf of JT that the appeal was determined on 17 th February when he notified Advocate Sanders that the appeal was being withdrawn. It follows that the commencement date for the Decision will be 24 th February, 2017, unless any further order is made. (iii) Discretionary further order 27. Advocate Sanders submits that, if the Court is against him on his first two arguments, with the consequence that the interim order has effect and provides that the commencement date for the Decision will now be 24 th February, 2017, the Court should make a new order revoking or varying the interim order so as to provide that the Decision will take effect in accordance with its original terms i.e. from 1 st January, 2017. 28. He made the following points in support of this submission:- (i) It would not cause practical problems of compliance for JT to maintain the commencement date of 1 st January, 2017. The formula for price reduction adopted in the Decision was to require an average reduction of the required level in a basket of products over each year. Thus, to take a mathematically simple example, suppose the required reduction for 2017 came to 5%. JT could achieve this by reducing the prices for all the relevant products by 5% from 1 st January, 2017. Alternatively, it might choose to maintain prices in some or all of the products and then reduce them by a greater amount at a later stage. Again, to take a simple example, it might maintain prices at an unaltered level for the first six months of 2017 but would then need to reduce prices by 10% for the second half of the year, so as to achieve an overall reduction of 5% over the year. Given that the appeal was withdrawn on 17 th February, it has only lost 55 days and there is therefore ample time to achieve the required price reduction

during the course of 2017. (ii) JT should not be permitted to obtain the commercial and financial benefit of the price control period commencing 55 days later than originally intended by bringing an appeal but then abandoning it after having put the JCRA to significant time and expense in preparing its response. (iii) The purpose of the Decision is to protect thousands of JT customers from paying prices which the JCRA has held are too high. The result of not maintaining the commencement date of 1 st January would be that customers are overcharged for an additional 55 days. (iv) Delaying the commencement date would encourage spurious appeals by regulated entities in that they might think it worthwhile to delay implementation of any JCRA decision which they did not like by appealing and then abandoning the appeal after having obtained the appropriate delay. (v) Conversely, the JCRA might become reluctant to agree any delays under Article 13 if the effect were to be that there would be a delay in any decision taking effect even where the appeal is abandoned or is subsequently dismissed by the Court. (vi) What had now occurred was not envisaged at the time the interim order was agreed. In the face of an initially aggressively pursued appeal, it was not contemplated by the JCRA that a situation would arise where JT would simply give up. (vii) There was no justification for JT commencing the appeal and then not pursuing it. The reasons given for the change of stance were not convincing. In particular, although the volume of material filed by the JCRA was substantial, most of it was already known to JT as it had been exhibited during the consultation process. Putting these matters together, the fair and proper outcome was that the commencement date should be maintained as 1 st January, 2017, and the Court should therefore revoke or vary the interim order as appropriate and make an order to that effect. 29. Advocate Cadin began by submitting that the Court could only set aside a consent order in very limited circumstances as set out in *Marett-v-Marett*

[2008] JLR 384 , e.g. where the order was based on an error of fact such as misrepresentation or misunderstanding as to the position or where a supervening event undermined or invalidated the basis of the order. However, *Marett* was concerned with an order in matrimonial proceedings where the parties had agreed the husband's interest in a company for the purposes of ancillary relief proceedings. The Court is concerned in this case with an interlocutory order which in effect grants a stay pending appeal. In my judgment it is clear that the Court always retains an inherent jurisdiction to revoke or vary interlocutory orders in the light of changing circumstances. Furthermore, Article 12(6) specifically provides that the Court may make such orders as it thinks appropriate in connection with appeals. I therefore reject Advocate Cadin's argument that the Court has no jurisdiction to set aside the interim order in this case and make a new order so as to allow the commencement date to revert to 1 st January, 2017. 30. It is therefore a matter of discretion as to whether in all the circumstances the Court considers it just and appropriate to revoke or vary the interim order given the withdrawal of the appeal by JT. I have carefully considered the points made on behalf of the JCRA, but I have come to the conclusion that it would not be just and appropriate to do so and I would summarise my reasons as follows:- (i) The starting point is that the parties agreed to delay the commencement date of the Decision until seven days after the appeal was determined.

The appeal was determined on 17 th February and accordingly the effect of the interim order on the facts is that the commencement date is 24 th February. (ii) I appreciate that the JCRA did not interpret the interim order in this manner but a mistake as to the meaning of an agreement by one of the parties is not a reason for setting it aside - see the observation of the Court of Appeal in *Holme Farm Developments Limited-v-Le Sueur*

[2015] (2) JLR N16; *Home Farm Developments Limited and Others-v-Le Sueur*

[2015] JCA 242 at paras 46 - 47; see also the observation in *Marett* at para 64 that a misunderstanding as to the consequences or ramifications of an agreement is not a defect of consent. (iii) Where parties have agreed that a decision under appeal will (if the appeal is dismissed) only commence from seven days after determination of the appeal, I consider that there is a heavy burden on a respondent to persuade the Court that, despite such agreement and the resulting consent order, the Court should nevertheless subsequently ignore that agreement and order that the decision take effect at some date prior to the determination of the appeal i.e. retrospectively. Having agreed the position and the Court having endorsed that agreement, parties are entitled to plan accordingly in the expectation that, in the event the appeal is dismissed, the position will be as stated in the consent order. (iv) The JCRA has not persuaded me that it be right to take the unusual course of varying or revoking the interim order in this case so as to order that the Decision should come into effect at a date earlier than that provided for in the interim order. I appreciate the points concerning the public interest and the extra 55 days of higher charges and the fact that following determination of the appeal much of 2017 still remained in which the price reductions could be effected; but those are matters which the JCRA could have had regard to when deciding whether to agree to the interim order. It would not be right for the Court to rely on those matters so as now to change retrospectively what had been agreed between the parties and endorsed by the Court. (v) I also appreciate the points made by the JCRA concerning the danger of encouraging spurious appeals in the hope of achieving delay in the implementation of a decision of the JCRA and the possible reluctance of the JCRA to agree delays in future. However, it seems to me that Article 13 provides adequate protection in that, before it may grant a delay, the Court must consider that there are *prima facie* reasonable grounds for the appeal and that the balance of convenience lies in favour of ordering the delay. In this particular case, it would have been open to the JCRA to argue on the Article 13 application that an order should be made in the terms of what it understood the interim order to mean i.e. that although the legal obligation on JT to implement price reductions was suspended pending determination of the appeal, the commencement date would remain at 1 st January, 2017, in the event of the appeal being dismissed. The Court could then have decided whether to make an order in those terms or in the terms actually made in this case. Furthermore, much will depend upon the nature of the decision. As indicated earlier, a decision requiring an operator to introduce a new service is likely to have to be delayed (assuming *prima facie* reasonable grounds for the appeal) as otherwise the appeal would be rendered nugatory. Conversely, other decisions could perhaps still take effect from the original

commencement date in the event of the appeal being dismissed. It would all depend upon the facts. Where the case for a delay is obvious, I would expect the JCRA to continue to agree to it and it would run the risk of an adverse order for costs if it opposed a delay unreasonably; conversely it would always be open to the JCRA to oppose a delay or to ask for a delay in qualified terms if it felt that this was the right course. (vi) I have considered the point made that JT has chosen to abandon the appeal and should not be permitted to gain extra time by bringing in an appeal and then abandoning it. I am not in a position to assess the merits of the appeal but I have read the Withdrawal Letter in which JT explains its decision and have considered the counter submissions put forward on behalf of the JCRA by Advocate Sanders and in Mr Byrne's second affidavit. Suffice it to say that I do not find that JT acted in bad faith and I do not consider that the points made by the JCRA are sufficient to allow it to go back on what it agreed in the interim order. 31. In summary, on the true construction of the interim order, the parties agreed and the Court ordered that the commencement date for the Decision would be seven days after the determination of the appeal, which was on 17 th February, 2017. I am not persuaded that there are proper grounds to allow the JCRA now to seek to go back on that agreed order or that it would be fair and just to do so. As Advocate Cadin pointed out, JT moved promptly to bring a price reduction into effect once it decided to withdraw the appeal. Under the procedures in force, it has to give one month's notice and it has brought price reductions into effect from 31 st March, 2017. I have not been given any details of the figures or calculations but it is clear from Mr McDermott's affidavit that at the time JT anticipated a 3 year period from the determination of the appeal (or rather seven days thereafter). 32. It follows that the position is governed by the interim order. The appeal was determined on 17 th February and the three year period for compliance with the price reduction as required by the JCRA therefore runs from 24 th February, 2017, rather than from 1 st January 2017. Disposal 33. Somewhat surprisingly, there is no provision in RCR 15 (Appeals from Administrative Decisions) for an appellant to withdraw or abandon an appeal - compare for example Rule 10A of the Court of Appeal (Civil) Rules 1964 . I think it likely that there is an inherent ability for an appellant to do so, but it would be preferable to have a specific rule to that effect. I invite the relevant authorities to consider whether an amendment to Rule 15 would be appropriate. 34. The only relevant provision is RCR 15/5(1) which provides as follows:- "15/5 Dismissal of appeal for non-prosecution (1) Without prejudice to Rule 15/2(4), if the appellant or the respondent fails to comply with any requirement of this Part or with an order of the Court made in connection with the appeal, the Court may, on the application of either party to the appeal, make such order as it thinks fit, including an order as to costs and, in the case of an application by the respondent, an order that the appeal be dismissed." 35. Both parties agreed that JT as appellant had failed to comply with the timetable for provision of its evidence because it had decided to withdraw the appeal. The parties agreed therefore that, as a matter of formality, the Court should dismiss the appeal pursuant to RCR 15/5(1) and that order was made on 4 th May. 36. There might in those circumstances have been an argument as to whether the appeal was not 'determined' until that date but JT very sensibly accepted that there was in effect a determination on th

February when Advocate Cadin wrote on its behalf to say that it was withdrawing the appeal and attaching a draft consent order to that effect. 37. In its Act of 4 th May, the Court also ordered that JT should pay the JCRA's costs on the standard basis up to and including 17 th February but that the costs thereafter should, if not agreed, be determined after delivery of these reasons. Postscript 38. It was suggested by Mr Byrne in his affidavit and Advocate Sanders in his submissions that, if the Court on appeal decided to vary in any way the substance of a decision by the JCRA, the Court would have to undertake the consultation process set out in Article 11 of the Law. 39. In case it is of assistance in any future case, I would express the firm view that this is incorrect. Although it is quoted earlier in this judgment, I would for convenience repeat the terms of Article 12(5):- "When it determines an appeal under this Article, the Court may:- (a) confirm the exercise (or proposal) appealed against; (b) refer the matter of the exercise back to the Authority for its determination, or other action, in accordance with the law; or (c) exercise a specified regulatory function (and do any incidental thing) in the same way as the Authority could have done." As I understand it, the argument is that because sub-paragraph (c) refers to the Court exercising a specified regulatory function '... in the same way ...' as the Authority could have done, this by implication incorporates the provisions for initial notices, final notices etc. required by Article 11 and the Court would therefore have to follow the same process before it could actually make an order following a successful appeal. 40. I am unable to accept that submission. It would be a dramatic innovation and would require the Court to undertake procedural steps which would be quite inappropriate and also unprecedented. There are many statutory rights of appeal and the Court is frequently given the power to make any order that the body being appealed against could have made. In my judgment there would have to be very clear wording to require the Court to consult with interested parties and issue initial notices etc. before making an order when allowing an appeal. There is no such wording. On the contrary Article 11 refers throughout to the Authority when talking of initial and final notices etc; there is no reference to the Court. 41. In my judgment, the reference in sub-paragraph

- (c) to 'in the same way as the Authority could have done' is simply a shorthand way of saying that the Court may make any decision that the Authority could have made i.e. it cannot go further and issue some decision which would be beyond that which the Authority could have done. 42. Clearly, where the Court decides to exercise the power under sub-paragraph (c), it will be cautious. If what it proposes to do is very different from the decision made by the Authority and might have unforeseen or widespread implications, the Court would be well advised not to exercise the power under sub-paragraph (c) but to refer the matter back to the Authority under sub-paragraph (b) so that the Authority can consult as appropriate. Nevertheless that is a matter of discretion for the Court. The actual terms of sub-paragraph (c) allow the Court to do anything that the Authority could have done and the wording does not require the Court to go through the whole process set out in Article 11. Authorities Telecommunications (Jersey) Law 2002. Royal Court Rules 2004. Hallamshire Industrial Finance Trust Limited v Inland Revenue Commissioners [1979] 1 WLR 620. Marett v Marett

[2008] JLR 384 . Holme Farm Developments Limited v Le Sueur

[2015] (2) JLR N16. Home Farm Developments Limited and Others v Le Sueur

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