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Case No: CO/3534/2020
AC-2020-LON-002769

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/04/2024

Before:

Mr Justice Lavender

- -

Between:

THE KING
on the application of
DM

Claimant

- and -

SECRETARY OF STATE FOR THE
THE HOME DEPARTMENT

Defendant

UNITED NATIONS HIGH COMMISSIONER
FOR REFUGEES

Intervener

- -
- -

Raza Husain KC, **Jason Pobjoy** and **Eleanor Mitchell**
(instructed by **Duncan Lewis**) for the **Claimant**
Sonali Naik KC, **Rebecca Chapman** and **Ali Bandegani**
(instructed by **Baker & McKenzie LLP**) for the **Intervener**
Lisa Giovannetti KC and **Jack Anderson** (instructed by the **Government Legal Department**)
for the **Defendant**

Hearing date: 17 January 2024

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JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. In this application for judicial review, the claimant contends that the Immigration Rules should be changed so as to provide a route to family reunion for child refugees. The effect, in summary, of the relevant Immigration Rules as they currently stand is as follows:

   (1) in the case of refugees who are adults, the Immigration Rules provide that, subject to certain conditions, their partners and minor children may obtain leave to enter the United Kingdom for the purposes of family reunion; but

   (2) in the case of refugees who are children, there is no provision in the Immigration Rules for their parents or minor siblings to obtain leave to enter the United Kingdom for the purposes of family reunion, with the result that those parents or siblings have to apply for leave to enter outside the Immigration Rules.

2. Following a hearing on 15 and 16 June 2022 ("the first hearing") and several rounds of post-hearing submissions, I gave judgment on 31 March 2023: [2023] 1 WLR 4109. In that judgment ("the principal judgment"), I dismissed the claimant's first two grounds for seeking judicial review, but adjourned my decision on ground 3, which was a challenge to the rationality of what was described in the claim form as the defendant's "ongoing decision that parents and siblings of refugee children will not be entitled to family reunion on the same basis as the spouses and children of adult refugees under the Immigration Rules".

3. I adjourned my decision on ground 3 in order to give the claimant the opportunity, if so advised in the light of the developments since the hearing and/or the contents of the principal judgment, to apply for permission to amend his grounds so as to challenge the Secretary of State's decision(s) not to and/or refusal and/or failure to give active consideration to the possibility of changing the Immigration Rules so as to provide a route to family reunion for child refugees.

4. The principal judgment sets out the relevant Immigration Rules, relevant parts of the associated Family Reunion Guidance and developments in relation to the relevant Immigration Rules since 2016. I do not propose to repeat those matters in this judgment.

5. I note that the Immigration Rules were changed pursuant to a statement of changes dated 12 April 2023. The relevant Immigration Rules were removed from the body of the rules and placed in a new Annex entitled "Family Reunion (Protection)". I am told that the only change of substance is that applications based on Article 8 ECHR, which would formerly have been made and, if successful, allowed outside the Immigration Rules, can now be made and allowed under the Immigration Rules, by virtue of paragraphs 7.1 and 8.1 of the Annex. However, the criteria for such an application remain the same as before.

(2) The Proposed Amendments

(2)(a) The Context for the Proposed Amendments

6. I addressed in the principal judgment the changes in the parties' rival cases before, during and after the hearing. This was primarily an issue in relation to ground 1, but it also had implications for ground 3.

7. Thus, I said in paragraph 89(1) of the principal judgment that:

> "Mr Husain acknowledged that the focus of the claimant's challenge is on the Immigration Rules and on the Secretary of State's decision not to amend the Immigration Rules so as to give child refugees a straightforward path to family reunion under the Rules."

8. After referring to section 3(2) of the Immigration Act 1971 and to the decision of the Supreme Court in *R (Alvi) v Secretary of State for the Home Department* [2012] 1 WLR 2208 as to what constituted a "rule" for the purposes of that section, I said in paragraph 92 of the principal judgment that:

> "Mr Husain accepted that the provisions which the claimant contends that the Secretary of State ought to introduce to provide a straightforward path to family reunion for child refugees would constitute rules as so defined and that, consequently, the Secretary of State could only lawfully introduce them by laying before Parliament a statement of changes to the Immigration Rules."

9. By ground 1, the claimant contended that the Secretary of State had failed to comply with his duty ("the section 55 duty") under section 55 of the Borders, Citizenship and Immigration Act 2009 ("the 2009 Act"). Since that duty applies in relation to the discharge by the Secretary of State of any function of his in relation to immigration, asylum or nationality, it was necessary for the purposes of ground 1 to consider what, if any, such function the Secretary of State had discharged in relation to the relevant Immigration Rules since 2 November 2009, when the 2009 Act came into force.

10. In the event, I decided that the Secretary of State had not discharged any such function during that period, essentially because I accepted the evidence filed by the Secretary of State after the hearing to the effect that the relevant decision-makers, i.e. the Secretary of State and Home Office ministers, had not given active consideration since 2 November 2009 to the policy option of changing the Immigration Rules so as to create a route to family reunion for refugee children: see paragraphs 138 to 141 of the principal judgment.

11. In that context, I said as follows in paragraph 137 of the principal judgment:

> "… the claimant's primary case was that he wanted to challenge what he called an "ongoing decision" on the part of the Secretary of State that the parents and siblings of refugee children will not be entitled to family reunion under the Immigration Rules on the same basis as the spouses and children of adult refugees. However, I do not accept that analysis of the situation. A decision is an act or event, not an ongoing state of affairs. A decision may be reconsidered and re-taken, but that too is an act or event."

12. On the other hand, the evidence filed by the Secretary of State after the hearing clearly indicated that successive Secretaries of State have from time to time made decisions in relation to the relevant Immigration Rules. The Secretary of State relied on a witness statement by Jason Büültjens, who has been since 2019 the Head of Domestic Asylum Policy within the Asylum, Protection and Enforcement Directorate in the Home Office. Mr Büültjens confirmed that the position as set out in paragraphs 9 to 11 of the Secretary of State's further written submissions was correct. Those paragraphs stated as follows:

> "9. The Secretary of State is not aware of any occasion since s.55 came into force (2 November 2009), when the relevant decision makers (namely Home Office Ministers or the Secretary of State) decided to review the Immigration Rules in order to consider providing a route to family reunion for child refugees (i.e. introducing criteria within the Rules governing decisions whether or not to grant leave to enter to the parents and siblings of refugee children).
>
> 10. Records since 2015 indicate that the consistent position of the relevant decision makers, as communicated to officials, has been that they are not prepared to change the existing and long-standing policy of considering applications for leave to enter by immediate family members of child refugees on a case-by-case basis outside the Immigration Rules. Thus, for example, Ministers were clear that changing that policy was not one of the options to be included in 2021 consultation on the New Plan for Immigration (which fulfilled the statutory obligation to review legal routes to the UK from the European Union (EU) for protection claimants, set out in the Immigration and Social Security Co-Ordination (EU Withdrawal) Act 2020).
>
> 11. As to the position before 2015, a search has been conducted, but the Secretary of State has been unable to find relevant communications from Ministers to officials dating back beyond that date. To the best of the Secretary of State's knowledge, even prior to 2015, the relevant decision makers were consistent in their position that they intended to maintain the existing policy, as summarised above. This is supported by Family Reunion Guidance from 2007 to 2011 (see Jason Büültjens' witness statement, para 7)."

13. In paragraph 7 of his witness statement, Mr Büültjens stated as follows:

> "All relevant records have been checked. Records since 2015 indicate Ministers have been consistent in their position not to change the existing and long-standing policy position regarding child refugees. A search has been conducted for Ministerial communications to officials on the subject prior to 2015 but we have not been able to find relevant records. Nonetheless, we have found that Family Reunion guidance from 2007 to 2011 makes clear that minors were not eligible sponsors under the Immigration Rules."

14. The effect of this evidence is that successive Secretaries of State have consistently decided from time to time, since at least 2015, and probably much earlier, not to review the Immigration Rules in order to consider providing a route to family reunion

for child refugees. This evidence was part of the reason why I adjourned consideration of ground 3. It has since been supplemented by a statement made by Dr Meirav Elimelech, the deputy director of the Home Office's Asylum and Protection unit, in which she states, inter alia:

> "Home Office ministers have been consistently clear with officials that they do not wish to amend the policy position with regards to children sponsoring parents or other family members under the family reunion policy."

15. Against that background, I said as follows in paragraphs 170-2 of the principal judgment:

> "170. In addressing the claim that the relevant Immigration Rules are irrational insofar as they do not provide a route to family reunion for child refugees, I note, in particular, that:
>
> (1) The United Kingdom is under no treaty obligation to provide such a route.
>
> (2) Nor was the Secretary of State under a statutory obligation to do so.
>
> (3) As the present case illustrates, the Immigration Rules do not totally preclude family reunion for child refugees. Rather, they do not make it as straightforward as it might be.
>
> (4) It is not alleged that the matters relied on as justifying this feature of the Immigration Rules were either irrelevant or incapable in principle of justifying this feature of the Immigration Rules.
>
> (5) Rather, the claimant's contention is that the relevant evidence is so overwhelming that no rational Secretary of State could reach any different conclusion than that contended for by the claimant on the substantive issue, which concerns what the Immigration Rules should provide as to who should be granted leave to enter or remain in the United Kingdom.
>
> (6) Before considering such a contention, the court would normally expect to receive evidence as to the Secretary of State's assessment of the relevant evidence. It is not for the court to decide the substantive issue. The court's function is limited to reviewing the lawfulness of decisions made by the Secretary of State. As to that:
>
> (a) Neither party engaged with the decision taken in 2000 to change the Immigration Rules so as to include the rules which are impugned in this case. It would not be open to me to conclude that that decision was irrational.
>
> (b) Nor was it suggested that any relevant decision was taken between 2000 and 2 November 2009.
>
> (c) As for the period since 2 November 2009, I have found that the Secretary of State did not give active consideration in that period to the possibility of

changing the Immigration Rules so as to provide a route to family reunion for child refugees.

171. In his written submissions after the hearing, the claimant submitted, inter alia, that it was not open to the Secretary of State to insulate herself from, or to circumvent, her duty under section 55 of the 2009 Act by simply refusing to amend the relevant Immigration Rules. However, I have not heard submissions from both parties on this issue, which would arguably require the claimant to apply for permission to amend his grounds so as to challenge the Secretary of State's decision(s) not to, and/or refusal and/or failure to, give active consideration to the possibility of changing the Immigration Rules so as to provide a route to family reunion for child refugees.

172. In those circumstances, and bearing in mind the way in which both parties' cases developed during and after the hearing, and in particular the fact that the Secretary of State's evidence was only produced some time after the hearing, I have concluded that the appropriate course to take is to adjourn a decision on ground 3 in order to give the claimant the opportunity, if so advised in the light of the developments since the hearing and/or the contents of this judgment, to seek to pursue a challenge of the kind identified in the preceding paragraph. Naturally, I express no opinion on the merits of any such challenge."

16. In the light of the submissions made at the hearing on 17 January 2024 ("the second hearing"), I need to add three qualifications to what I said in paragraph 170 of the principal judgment:

(1) In sub-paragraph 170(1) I was merely reflecting the fact that it had not been contended at the first hearing that the United Kingdom was under a treaty obligation to provide such a route. Mr Husain explained at the second hearing that it is the claimant's position that the failure to provide such a route is a breach of article 10(1) of the United Nations Convention on the Rights of the Child. However, that convention is not part of English law and therefore I need say no more about it.

(2) The statement in sub-paragraph 170(5) that "The court's function is limited to reviewing the lawfulness of decisions made by the Secretary of State" may well be too wide if taken as a statement about the law of judicial review generally. However, I remained concerned at the second hearing about the question whether an irrationality challenge could be made without identifying the particular decision which was alleged to have been irrational.

(3) The decision taken in 2000, to which I referred in sub-paragraph 170(6)(a), incorporated into the Immigration Rules what had previously been a concession set out in policy guidance. This appears from Dr Elimelech's statement, in which she said that:

> "The provisions for refugee family reunion were originally a concession set out in policy guidance in 1998. Due to limited information that is available from 1998, it is difficult to determine exactly what the family reunion concession was in response to.

> However, it is highly likely that it was introduced in light of the passing of the Human Rights Act 1998, which incorporated the rights and freedoms guaranteed under the European Convention on Human Rights, most notably Article 8 in this context."

17. In the light of the second of these points, at the second hearing I directed that the parties should file and serve after the hearing any authorities (with explanatory submissions if necessary) in relation to challenges to longstanding measures by reference to irrationality as a ground of review. The last of these submissions was filed on 1 March 2024.

(2)(b) The Proposed Amendments

18. The claimant's proposed reamendment to section 3 of the claim form is as follows:

> "The Claimant challenges the Secretary of State's ongoing decision that parents and siblings of refugee children will not be entitled to family reunion on the same basis as the spouses and children of adult refugees under the Immigration Rules as applied to the Claimant on or about 23 September 2020; the Secretary of State's decision(s) not to, and/or failure and/or refusal to give active consideration to the possibility of changing the Immigration Rules so as to entitle refugee children to sponsor their parents and minor siblings on the same basis that adult refugees are entitled to sponsor their spouses and children; …"

19. The claimant's proposed re-amendments to the summary of ground 3 in paragraph 7(3) of the statement of facts and grounds are as follows:

> "the Secretary of State's ~~ongoing~~ failure to afford refugee children the opportunity to access reunion with their parents and siblings on the same basis as adult refugees are able to access reunion with their spouses and children is, and has since its inception been, irrational; further or in the alternative, her failure or refusal to give active consideration to amending the Immigration Rules to afford refugee children this opportunity is irrational."

20. The claimant proposes adding the following paragraphs to the statement of facts and grounds:

> 113AA. For the avoidance of doubt, the Court is not only entitled but required to consider the rationality of the Secretary of State's position, as primarily embodied in the relevant Immigration Rules, notwithstanding that these Rules were adopted some years ago. It is well established that a person to whom a policy or statutory instrument has been applied can challenge its lawfulness by way of appeal or judicial review, even if it was adopted at a much earlier point, provided that the person has standing and that their claim is in time. That is the position here.
>
> 113AB. In considering this issue, it does not ultimately matter whether the Court focuses on the rationality of the relevant Rules per se or on the rationality of the decision to adopt them in or around 2000. The answer is the same. In summary this is because:

(1) The harm the Secretary of State's chosen position would cause to refugee children, as summarised at §§53-70B above, was self-evident. The importance of family reunion, particularly to children, was already reflected in the international instruments identified at §§35-38, 42-43 and 45. There can have been no doubt that failing to allow refugee children to sponsor their parents and siblings under the Rules would render the path to reunion substantially more difficult for all, and impossible for many.

(2) The Secretary of State was or ought to have been aware then, as she is now, that the concerns on which her position was based had no proper evidential foundation. As the sources identified at §§74-85 above reflect, this is not an issue in respect of which there was good evidence which is now outdated; rather, no such evidence has ever been identified.

(3) There is no procedural barrier to the Court considering the rationality of the position in 2000 if it considers this to be the proper course. As noted above, this approach is wholly orthodox. Any concerns about the parties not having addressed this point in time expressly (see §170(6)(f) of the judgment of 31 March 2023) can be resolved before the issue is finally determined.

113AC. Further or in the alternative, the Secretary of State's failure or refusal – in all the years since the relevant Rules were first adopted – to consider changing her position is also irrational. This is (in summary) because:

(1) The Secretary of State has had access to increasingly comprehensive and compelling evidence of the serious harm her current position causes to vulnerable children: see §§34-above.

(2) She has been unable to identify any or any cogent evidence to support her sole justification for continuing to inflict this harm: see §§71-87C above.

(3) She has been repeatedly called on to alter her position, has gathered evidence for the express ostensible purpose of reviewing it, and has given the clear public impression that she has done so (despite knowing this was not the case): see §§139-141 of the Court's judgment of 31 March 2023.

(4) She has been, or should have been, aware that her failure or refusal to reconsider frustrates the statutory purpose of s 55 of the 2009 Act by insulating her from a duty intended to govern matters of precisely this kind.

113AD In these circumstances, no rational Secretary of State could have failed or refused to reconsider her position, in particular by giving active consideration to amending the Rules so as to allow refugee children to sponsor their parents and minor siblings."

21. The Secretary of State opposes the proposed amendments insofar as the claimant seeks to challenge the decision to make the relevant Immigration Rules in 2000, but otherwise consents to the proposed amendments. I grant permission to make the proposed amendments insofar as the Secretary of State consents to them.

22. The remedy sought in respect of ground 3 remains unchanged. It is a declaration that:

> "in establishing and maintaining a position under the Immigration Rules and relevant published policy whereby (i) parents and siblings of refugee children are not entitled to family reunion under the Immigration Rules, (ii) on the same basis as the spouses and children of adult refugees under the Immigration Rules, the Secretary of State has … (c) acted irrationally."

(3) The Matters under Review

23. In the light of the proposed amendments and the arguments advanced at and after the second hearing, there are three matters which are potentially the subject of the irrationality challenge contained in ground 3, namely:

(1) The Secretary of State's decision in 2000 to include in the Immigration Rules a route to family reunion for adult refugees, but not child refugees.

(2) The decisions made by successive Secretaries of State from time to time, since at least 2015, and probably much earlier, not to review the Immigration Rules in order to consider providing a route to family reunion for child refugees.

(3) The Immigration Rules themselves.

24. I will address each of these in turn. At this stage, I am not dealing with the merits of the irrationality challenge, merely the question whether the challenge can be brought.

(3)(a) The Decision to Change the Immigration Rules in 2000

25. I accept that the Secretary of State's decision in 2000 to change the Immigration Rules so as to provide a route to family reunion for adult refugees involved a decision not to change the Immigration Rules so as to provide a route to family reunion for child refugees and that that decision is a potential subject of an application for judicial review.

26. That decision was taken 24 years ago. I note in this context the Court of Appeal's decision in *R (AK) v The Entry Clearance Office (Islamabad)* [2021] EWCA Civ 1038, which concerned a challenge to paragraph 309A of the Immigration Rules, which was introduced by changes made on 31 March 2003. The claim in that case was made out of time and the Court of Appeal dismissed the claimant's appeal against the judge's decision not to extend time. However, Lewis LJ, with whom Males and Moylan LJJ agreed, said in paragraphs 56 and 63 of his judgment that he could see that there was a strong case that aspects of paragraph 309A were unlawful on irrationality grounds and Males LJ said in paragraph 68 of his judgment that "The lawfulness of Rule 309A, assuming it remains in its current terms, will therefore have to be tested definitively in another case." Males LJ therefore envisaged that an Immigration Rule could be challenged on irrationality grounds more than 18 years after it was made.

27. Moreover, as I noted in paragraphs 118 and 119 of the principal judgment, both parties agreed that the question of when the grounds to make the claim first arose fell to be determined in accordance with the Court of Appeal's decision in *R (Badmus) v Secretary of State for the Home Department* [2020] 1 WLR 4609 (*"Badmus"*) and both parties agreed that the present case falls within the person-specific category referred to in *Badmus*, with the result that the ground to bring the claim first arose when the claimant was affected by the relevant Immigration Rules. It follows that the claim as originally formulated was not out of time.

28. Moreover, although the decision taken in 2000 was not specifically referred to in section 3 of the claim form, the relief sought in section 7 of the claim form was a declaration that the Secretary of State acted unlawfully in "establishing and maintaining" the relevant position under the Immigration Rules. As I pointed out in paragraph 103(2) of the principal judgment, it only emerged during the course of the first hearing that the "establishment" of the relevant "position" under the Immigration Rules took place in 2000.

29. It appears, therefore, that the claim form as originally formulated included a claim that the Secretary of State acted unlawfully in deciding to change the Immigration Rules as he did in 2000. Insofar as they relate to that decision, the proposed amendments clarify, in the light of the first hearing, subsequent developments and the principal judgment, what has always been part of the claimant's case. In those circumstances, I grant permission for those amendments.

(3)(b) The Decisions not to Consider Changing the Immigration Rules

30. I consider that the Secretary of State's decisions not to consider changing the Immigration Rules so as to make the change contended for by the claimant are capable of being subject to judicial review. *R (Johnson) v Secretary of State for Work and Pensions* [2020] PTSR 1872; [2020] EWCA Civ 778 (*"Johnson"*) is an example of a case in which the Court of Appeal declined to hold that it was irrational for the Secretary of State to make a rule (i.e. regulation 54 of the Universal Credit Regulations 2013), but held that it was irrational for the Secretary of State to refuse to put in place a solution to a very specific problem created by the rule. However, *Johnson* has to be read in the light of paragraph 90 of the judgment of Underhill LJ in *R (Pantellerisco) v Secretary of State for Work and Pensions* [2021] PTSR 1922; [2021] EWCA Civ 1454 and paragraphs 115ff of the judgment of Andrews LJ in *R (Salvato) v Secretary if State for Work and Pensions* [2022] PTSR 366; [2021] EWCA Civ 1482 (*"Salvato"*).

(3)(c) The Immigration Rules Themselves

31. The parties were agreed that I could consider the rationality of the Immigration Rules themselves, as opposed to the rationality of the decision to make them or of a decision not to consider changing them. For my part, however, I remain doubtful whether a rationality challenge can be made to a rule, rather than to a decision to make, or not to change, a rule. The authorities cited by the claimant on this point (*R (Imam) v Secretary of State for the Home Department* [2019] EWCA Civ 1760 and *R (Britcits) v Secretary of State for the Home Department* [2017] 1 WLR 3345) are both cases in which the court considered the process by which the Secretary of State decided to make the rule in question.

32. Other cases to which I was referred speak of the rationality of the justification given for "maintaining" a rule or other provision: see paragraph 115 of Andrews LJ's judgment in *Salvato* and paragraph 31 of the judgment of Nicholas Paines QC in *R (Brown) v Secretary of State for the Home Department* [2012] EWHC 1660 (whose decision on the merits was reversed on appeal: see [2014] 1 WLR 836, CA and [2015] 1 WLR 1060, SC).

33. It may be said that the distinction between the rationality of a rule and the rationality of a decision to make or maintain a rule is a semantic one and is a distinction without a difference. In the present case, however, there is a practical issue. The Secretary of State could not make the proposed changes to the Immigration Rules without first complying with his section 55 duty, which he has not done. Yet the declaration which the claimant seeks is that it is unlawful for the Secretary of State not to make the proposed changes to the Immigration Rules. I question whether it would be appropriate for the court to make such a declaration in circumstances where the Secretary of State has not complied with his section 55 duty.

(4) Post-Hearing Evidence

34. In his post-hearing submissions filed on 21 February 2024, the Secretary of State made reference to the well-publicised case of the drowning in the Channel of a 14-year-old boy called Obada. News reports about that case suggested that his parents had encouraged, or perhaps even pressured, him to travel to the United Kingdom so that they could join him here. Understandably, the claimant objected to what he portrayed as an attempt to introduce evidence after the hearing.

35. I heard a report about this case on the Today programme on Radio 4. I decided then that I should put it out of my mind when considering this case. That is what I have done.

36. On the other hand, I am well aware of the increasing phenomenon of unaccompanied children entering the United Kingdom and applying for asylum. I referred to some figures in paragraph 8 of the principal judgment. Nor do I pretend to be ignorant of the risks associated with various means of entering the United Kingdom clandestinely.

(5) Irrationality: The Intensity of Review

37. The parties referred me to a number of familiar authorities on the irrationality test, starting, of course, with *Associated Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223. I need not rehearse them all. The major issue between the parties concerned the intensity of the court's review, with the claimant submitting that an exacting standard was appropriate and the Secretary of State submitting that this is a case in which the court should be very slow to intervene.

38. In support of his contention that an exacting standard was appropriate, the claimant relied on the following matters:

(1) He submitted that the stakes were extremely high, given the profound and ongoing impact of the current position on the lives and fundamental rights of a particularly vulnerable group of children. As Laws LJ said in *R v Secretary of*

State for Education and Employment, ex parte Begbie [2000] 1 WLR 1115, CA, at 1130C:

> "It is now well established that the Wednesbury principle itself constitutes a sliding scale of review, more or less intrusive according to the nature and gravity of what is at stake."

(2) He submitted that the Secretary of State has never taken account of the evidence on which the claimant relies. The extent to which the matters in issue were specifically considered by the defendant is relevant to the intensity of the court's review.

(3) He submitted that the court is competent to assess whether the Secretary of State's position is reasonably justified. He acknowledged that a degree of deference is appropriate in the light of the Secretary of State's statutory power to make Immigration Rules and the fact that they are subject to the negative resolution procedure, but:

(a) he relied on what Lord Hope said about that procedure in the passage quoted in paragraph 95 of the principal judgment from his speech in *R (Stellato) v Secretary of State for the Home Department* [2007] 2 AC 70; and

(b) he submitted that:

(i) this case does not concern quintessential matters of socio-economic policy;

(ii) nor does it involve "the exercise of regulatory judgment in technical and specialised areas including; educated predictions for the future; specialist judgments and the application of specialised scientific and technical knowledge or expertise" (see paragraph 45 of Thornton J's judgment in *R (Lasham Gliding Society) v Civil Aviation Authority* [2019] EWHC 2118 (Admin);

(iii) the Secretary of State's sole justification was capable of being tested by evidence; and

(iv) the court had before it more evidence than the Secretary of State had ever considered.

39. In response, the Secretary of State submitted as follows:

(1) The stakes are not high. The issue is not whether refugee children should have the opportunity to achieve family reunion, but how they should be able to seek family reunion. Where Article 8 ECHR requires family reunion, it will be granted. It is not even suggested that the existing arrangements are contrary to Article 8 ECHR.

(2) "It is idle to pretend that the Defendant is unaware of a matter that has been considered in Parliament." Moreover, the Secretary of State is entitled to

consider that he need not expend resources on a review of a policy position which meets the United Kingdom's international obligations (insofar as they have been given effect in domestic law) and avoids creating perverse incentives.

(3) The court is not the competent body to determine whether a rule-based or case-based approach should be taken to a species of decision-making. Moreover, the Secretary of State's concern that the change to the Immigration Rules contended for by the claimant would create a perverse incentive is a prediction about future risk, rather than an assessment of past events.

40. In my judgment, this case involves elements pointing both ways in relation to the intensity of the court's review:

(1) On the one hand, the claimant seeks a decision that the Secretary of State is obliged to change the Immigration Rules so as to grant to a category of people (i.e. parents and siblings of child refugees) a right to enter the United Kingdom. The decision as to who should be permitted to enter the United Kingdom is fundamental to the Secretary of State's role as the person charged with determining immigration policy. It is for the Secretary of State to make rules in this respect, not the court. I was referred to *R (MM (Lebanon)) v Secretary of State for the Home Department* [2017] 1 WLR 771, in which Baroness Hale and Lord Carnwath said in paragraph 76 of their judgment that immigration control was an "intensely political" issue.

(2) In addition, the claimant's case is that it was irrational for the Secretary of State not to make the rules for which he contends. I will say more about that point later.

(3) Moreover, the Secretary of State's justification for not considering the proposed change to the Immigration Rules rests on a judgment as to the likely effect of the proposed change.

(4) On the other hand, as I found in the principal judgment, the Secretary of State has never given active consideration to changing the Immigration Rules in the manner contended for by the claimant. It follows that:

(a) there is no evidence as to what, if any, consideration the Secretary of State has given to the evidence relied on by the claimant in the present case; and

(b) the Secretary of State's judgment as to the likely effect of the proposed change to the Immigration Rules is not alleged to be based on any evidence (as I noted in paragraph 164 of the principal judgment) and it does not involve the application of any specialised knowledge or expertise.

41. As for the "nature and gravity of what is at stake", for individuals such as the claimant, who are able to achieve family reunion outside the Immigration Rules, I noted in paragraph 72 of the principal judgment that:

> "The principal difference between an application for family reunion pursuant to paragraph 352A and/or 352D of the Immigration Rules and an application outside the rules is that an application made outside the Rules has to satisfy the high hurdle of showing "exceptional circumstances", which is much harder for an applicant to achieve, generally requires more extensive factual and, often, expert evidence than an application made pursuant to paragraph 352A and/or 352D and is more stressful. The claimant's unchallenged evidence was that, as a result, the families of some refugee children are deterred from applying at all, those who do apply are faced with far higher rates of refusal and a greater proportion of them have to go through the appeals process. Finally, as I have already noted, the Family Reunion Guidance provides that, where an application made outside the rules is successful, the family members will receive 33 months' leave (which can be extended on application) and can have no recourse to public funds."

42. I dealt with the claimant's own experiences in paragraph 77 of the principal judgment.

43. For child refugees who are unable to achieve family reunion outside the Immigration Rules, the proposed change would enable them to achieve family reunion and to put an end to the harmful effects of being separated from their families, as documented in the evidence relied on by the claimant. On the other hand, these are individuals whose rights under Article 8 ECHR are not alleged to be being breached under the current arrangements.

(6) Irrationality: the Decision taken in 2000

44. As I have said, I approach this case on the basis that the Secretary of State, when changing the relevant Immigration Rules in 2000, made a decision not to change the Immigration Rules so as to provide a route to family reunion for child refugees. The claimant contends that that decision was irrational, on grounds which I summarised in paragraphs 162 and 163 of the principal judgment.

45. I approach this issue on the basis identified in sub-paragraphs 160(1) to (3) of the principal judgment, namely that:

> "(1) … there was no evidence before me either:
>
> (a) as to the process followed (including any evidence taken into account) by the Secretary of State when the decision was made to change the Immigration Rules in 2000; or
>
> (b) as to matters which the claimant contended should have been taken into account when that decision was made in 2000: the evidence relied on by the claimant was all much more recent.
>
> (2) Nevertheless, there was no dispute as to the reason why the Immigration Rules do not contain a route to family reunion for child refugees. As appears from some of the documents which I have cited, the justification which has consistently been offered for this feature of the Immigration Rules is as follows (quoting from paras 4.3 and 4.4 of the Home Office response to the Chief Inspector's 2020 Report):

(a) "… allowing children to sponsor parents would risk creating incentives for more children to be encouraged, or even forced, to leave their family and attempt hazardous journeys to the UK."

(b) "This would play into the hands of criminal gangs, undermining [the UK's] safeguarding responsibilities."

(c) "It is important that those who need international protection should claim asylum in the first safe country they reach - that is the fastest route to safety."

(3) Moreover, that is the only justification which has been offered. As Mr Husain stressed, the Secretary of State has not sought to justify this feature of the Immigration Rules on economic grounds."

46. Thus, although I have no evidence as to the decision-making process in 2000 (or its precursor in 1998), I assume that the reason for the decision taken in 2000 was that which has been consistently offered since then.

47. As I said in paragraph 162 of the principal judgment:

> "Mr Husain, on behalf of the claimant, did not submit that the matters relied on as justifying this feature of the Immigration Rules were either irrelevant or incapable, in principle, of justifying this feature of the Immigration Rules. Rather, he relied on the evidential position, submitting that the Immigration Rules were irrational because:
>
> (1) On the one hand, there is evidence that, in general, it is in the best interests of unaccompanied refugee children: (a) to be reunited with their families; and (b) to have a straightforward path to that result. I have already noted that these propositions were not disputed. In addition, Mr Husain relied both on the evidence of the effect on the claimant's mental health of being separated from his parents and on many reports by NGOs and others speaking of the harmful effects on unaccompanied child refugees generally of separation from their families.
>
> (2) On the other hand, Mr Husain submitted that there was no evidence that making the change which the claimant seeks would have the effects feared by the Secretary of State."

48. Both the claimant's experiences and all of the evidence relied on by the claimant post-date the decision made in 2000. However, that is not to suggest, and I do not assume, that the Secretary of State was unaware in 2000 that, in general, it was in the best interests of unaccompanied refugee children: (a) to be reunited with their families; and (b) to have a straightforward path to that result.

49. The Secretary of State weighed against that consideration the risk of harm to other children which he considered might result from making the proposed change to the Immigration Rules. The potential harm concerned is that which can result from hazardous journeys and/or criminal gangs.

50. Mr Husain did not contest the proposition that the journeys which children make to this country can be hazardous. Nor did he contest the proposition that they can involve exposure to criminal gangs. His argument is that the proposed changes to the Immigration Rules would not result in more unaccompanied children seeking to enter the United Kingdom, or, at least, would not result in sufficiently more unaccompanied children seeking to enter the United Kingdom that the adverse effects on them outweighed the adverse effects currently experienced by refugee children in the United Kingdom who wish to achieve family reunion.

51. I stressed in paragraph 8 of the principal judgment that this case is concerned with children who have been found to be refugees. It remains an important factor in this case that on one side of the balance are children who have been found to be refugees. However, on the other side of the balance, I do not understand the Secretary of State's concerns to be limited to children whose asylum claims would be allowed if they arrived in the United Kingdom. Whether or not a child's asylum application would have been allowed if he or she had arrived in the United Kingdom, the Secretary of State was concerned at, for instance, the prospect of their drowning in the course of an unsuccessful Channel crossing,

52. I do not consider that it was irrational for the Secretary of State to consider that the proposed changes to the Immigration Rules would create an incentive for children to be encouraged, or even forced, to leave their families and attempt hazardous journeys to the United Kingdom. Assuming that it was known to members of a child's family that the child, if he or she reached the United Kingdom and was given refugee status, would be able to sponsor their entry into the United Kingdom and that they would then have a straightforward route to family reunion, it was not irrational for the Secretary of State to consider that some members of some families would see this as a reason to encourage their child to make the journey to the United Kingdom.

53. The next question, in my judgment, is whether it was irrational for the Secretary of State that conclude that creating that incentive would result in a sufficiently large number of children being so encouraged, or even forced, as to create a risk of harm which outweighed the other side of the balance. There is no evidence that the Secretary of State received specialist or technical advice in making that judgment, which is an important factor for me to bear in mind. On the other hand, it is not irrational to consider that, if an incentive is created, it will have an effect. In this case, that effect is the risk of the harm to children which can result from hazardous journeys and/or criminal gangs, which includes potentially fatal harm.

54. The claimant submits that it was irrational for the Secretary of State to change the rules as he did in 2000 without any evidence to support his view as to the likelihood of harm following from the proposed change to the Immigration Rules for which the claimant contends. Indeed, he asserts that there is no such evidence: see, in particular, paragraph 34 of the principal judgment. The Secretary of State has certainly not provided any such evidence: see paragraphs 59 to 65, 164 and 165 to 169 of the principal judgment.

55. However, in assessing the nature and extent of the effect which the proposed changes to the Immigration Rules would have, the Secretary of State had to exercise judgment and I accept Miss Giovanetti's submission that it was a judgment as to the future. Moreover, it was a judgment to be made in a context where: there is a route to family

reunion for refugee children where the ECHR requires it; and no other provision of English law requires the Secretary of State to grant leave to enter the United Kingdom to members of the families of refugee children.

56. While I can see ample grounds on which other people might disagree with the judgment which the Secretary of State made in 2000, I do not consider that it was irrational to make that judgment. In all the circumstances, I do not consider that the decision taken in 2000 not to include in the Immigration Rules a route to family reunion for child refugees was irrational.

(7) Irrationality: Decisions not to Review the Relevant Immigration Rules

57. There are, no doubt, many cases in which it has been decided that it was irrational for a Secretary of State or other decision-maker to make a rule, but, with the exception of *Johnson*, I have not been referred to a case in which it was held to be irrational for a decision-maker not to make a rule. Nor, with the exception of *Johnson*, have I been referred to any case in which it was held to be irrational for a decision-maker to decide not to consider making a rule.

58. It would be a rare case in which a court could conclude that the only rational thing for a decision-maker to do was to legislate in a particular way. (My use of the word "legislate" should not be taken as an indication that I have lost sight of the particular status of the Immigration Rules, which I addressed in paragraphs 88 to 95 of the principal judgment.) Likewise, it would be a rare case in which a court could conclude that the only rational thing for a decision-maker to do was to consider legislating in a particular way. Thus, for instance, Simler LJ said as follows in paragraph 107 of her judgment in *Johnson*:

> "The threshold for establishing irrationality is very high, but it is not insuperable. This case is, in my judgment, one of the rare instances where the SSWP's refusal to put in place a solution to this very specific problem is so irrational that I have concluded that the threshold is met because no reasonable SSWP would have struck the balance in that way."

59. Moreover, in relation to *Johnson*, I note that Andrews LJ said as follows in paragraph 121 of her judgment in *Salvato*:

> "The Court of Appeal went out of its way to confine the decision in *Johnson* to its own peculiar facts. At para 107 Rose LJ described the case as: "one of the rare instances where the SSWP's refusal to put in place a solution to this very specific problem is so irrational that I have concluded that the threshold is met." Underhill LJ added, at para 116: "I regard this as a case which turns on its own very particular circumstances. It has no impact on the lawfulness of the universal credit system more generally.""

60. With the exception of *Johnson*, the claimant did not take me to any authority which bore on the question of what duties the defendant is under when he decides which policy options he will, or will not, devote resources to considering. *Johnson* is of little assistance on the facts of the present case. In *Johnson*, the Secretary of State had made a rule which was acknowledged to have an arbitrary effect. That is not the present case. Moreover, in *Johnson* there was no evidence to show that the problem

to which the rule gave rise was highlighted to the Minister and a decision taken to do nothing about it: see paragraph 91 of Simler LJ's judgment. In the present case, although I have no direct evidence of the decision-making process in 2000, I have not assumed that the Secretary of State was unaware of what was acknowledged to be, in general, in the best interests of unaccompanied minor children.

61. The claimant contends that the evidence on which he relies presents such a powerful case for making the proposed change to the Immigration Rules that it was irrational of the defendant not to consider making that change. I have considered that evidence very carefully. I do not propose to rehearse it, but I recognise that it speaks to the significant adverse consequences for many refugee children of being separated from their families and to the difficult and stressful nature of the process of applying for family reunion outside the Immigration Rules, compared to the more straightforward route to family reunion for which the claimant contends.

62. As I said in paragraphs 69 to 71 of the principal judgment, it was not seriously contested that:

(1) in general, it is in the best interests of unaccompanied refugee children to be reunited with their families; and

(2) in general, it is in the best interests of unaccompanied refugee children to have a straightforward path to that result.

63. Leaving aside those refugee children for whom family reunion would not be in their best interests, unaccompanied refugee children can be divided for present purposes into three categories, although I am not in a position to assess the size of each category:

(1) Refugee children, such as the claimant, whose family members make successful applications outside the Immigration Rules for leave to enter the United Kingdom.

(2) Refugee children whose family members would be able to satisfy the high hurdle of showing "exceptional circumstances", but who are deterred from applying for leave to enter the United Kingdom by the nature of the process for applying for such leave outside the Immigration Rules. (I referred in paragraph 72 of the principal judgment to the claimant's unchallenged evidence that the families of some refugee children are deterred by the process from applying at all. I cannot assume that these are only families whose applications would have been unsuccessful.)

(3) Refugee children whose family members cannot satisfy the "exceptional circumstances" test and either make no application or an unsuccessful application for leave to enter the United Kingdom.

64. The claimant contends, in effect, that his evidence shows that there is now a better appreciation than hitherto of the nature and amount of the significant harm suffered by refugee children. As to the three categories:

(1) Although refugee children in the first category do achieve family reunion, the process is stressful for them, for the reasons which I gave in paragraph 72 of the principal judgment. In the claimant's case, for instance, I noted in paragraph 77(3) of the principal judgment the evidence that the appeal process was a significant contributory factor in exacerbating his symptoms of PTSD.

(2) Refugee children in the second category remain separated from their families.

(3) Refugee children in the third category also remain separated from their families and have no means of achieving family reunion.

65. In relation to these three categories of refugee children, the defendant's position, as I understand it, is as follows:

(1) Refugee children in the first category are reunited with their family members.

(2) Refugee children in the second category can be reunited with their family members if their family members make an application outside the Immigration Rules.

(3) The Secretary of State has no legal obligation to grant leave to enter the United Kingdom to members of the families of refugee children in the third category.

(4) In relation to all three categories, the Secretary of State's judgment remains that making the proposed change would create an incentive for children to be encouraged, or even forced, to leave their families and attempt hazardous journeys to the United Kingdom and that would result in children being exposed to the risk of the harms associated with hazardous journeys and criminal gangs.

66. For reasons which I have already given, I consider that it is not irrational for the Secretary of State to make that judgment.

67. Against that background, while it would certainly be open to the Secretary of State to decide to reconsider the decision which was made in 2000 not to make the proposed change to the Immigration Rules, I do not consider that it was irrational of him to decide not to reconsider that decision. The Secretary of State has a discretion whether or not to initiate active consideration of policy changes in relation to all aspects of immigration policy. The evidence relied on by the claimant presents a case for deciding to give active consideration to the change to the Immigration Rules contended for by the claimant, but I do not consider that it is such that no rational Secretary of State could reach the contrary decision.

68. An alternative submission made by Mr Husain was that the section 55 duty was relevant to ground 3 in that:

(1) the Secretary of State was in breach of a duty to be implied from section 55 of the 2009 Act to consider exercising a function; and/or

(2) it was unlawful or irrational for the Secretary of State to exercise his powers so as to frustrate the purpose of the 2009 Act.

69. I do not consider that the Secretary of State has acted unlawfully as alleged:

(1) There is no basis for implying the alleged duty into section 55, which is not concerned with the question of what functions the Secretary of State should discharge, rather than the question of what he must do when he does discharge a function. Indeed, it is difficult to see how the alleged duty could even be formulated in a way which sensibly identified those functions which the Secretary of State is, or is not, under a duty to consider discharging. Moreover, the proposed implied duty appears to be inconsistent with what the Divisional Court said in those paragraphs of its judgment in *R (Adiatu) v HM Treasury* [2021] 2 All E.R. 484; [2020] EWHC 1554 (Admin) (*"Adiatu"*) which I cited in paragraphs 131 and 132 of the principal judgment. In any event, the Secretary of State has considered from time to time whether or not to give active consideration to changing the Immigration Rules in the manner proposed by the claimant and repeatedly decided not to.

(2) For much the same reasons, the Secretary of State cannot be said to have frustrated the purpose of the 2009 Act.

(8) Irrationality: The Relevant Immigration Rules

70. I remain of the view, despite the submissions of both parties, that it would not be appropriate for me to consider the rationality of the Immigration Rules in the abstract. However, were I to do so, I would conclude that the Immigration Rules are not irrational, for the reasons which I have already given:

(1) It was not irrational for the Secretary of State, when amending the Immigration Rules in 2000, to decide not to make the changes contended for by the claimant.

(2) Since 2000, it has not been irrational for the Secretary of State to decide from time to time not to consider making the proposed changes to the Immigration Rules.

(9) The Time Limited for Applying for Permission to Appeal

71. A procedural issue arose as to the time limited for applying for permission to appeal against the decisions made in the principal judgment to dismiss the claimant's first two grounds for seeking judicial review.

72. I provided copies of the principal judgment in draft to the parties' counsel in the usual way. My judgment was handed down remotely on 31 March 2023. Neither party asked me to adjourn the hearing. In particular, the claimant did not indicate that he intended to seek permission to appeal against my decision to dismiss the application for judicial review on grounds 1 and 2. Nevertheless, on 31 March 2023 I made an order in the following terms:

> "The hearing is adjourned to a date to be fixed, for consideration of any and all matters consequential on the judgment."

73. The parties then reached agreement on an order giving effect to my judgment. I made an order in the agreed terms, which was sealed on 3 July 2023. It provided for the

dismissal of grounds 1 and 2 and gave directions concerning any application by the claimant for permission to amend his claim form and grounds for judicial review. Paragraph 5 stated as follows:

> "A hearing in respect of Ground 3 and any other outstanding issues in the case be listed before Mr Justice Lavender on the first available date, subject to the availability of counsel for each of the parties, no sooner than 28 July 2023, with a time estimate of one day."

74. The order of 3 July 2023 said nothing about the adjournment of any hearing. By letter dated 28 July 2023 the claimant's solicitors proposed a variation to my order of 3 July 2023 and by an application notice dated 22 August 2023 the claimant sought an order amending my order of 3 July 2023 by inserting a paragraph in the following terms:

> "Any application to this Court for permission to appeal in respect of Grounds 1 and 2 of the claim is, pursuant to CPR 52.3(2)(a) to be made and determined following the adjourned hearing listed pursuant to para 5 below and the handing down of judgment in respect of Ground 3. Pursuant to CPR 52.12(2)(a), any application to the Court of Appeal for permission to appeal is to be made within 21 days of any refusal of permission by this Court [to the extent necessary, the time limit in CPR 52.12(2)(b) is thereby extended]."

75. CPR 52.3(2) provides as follows:

> "(2) Unless the appeal is within paragraph (1)(c), an application for permission to appeal may be made—
>
> (a) to the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing; or
>
> (b) to the appeal court in an appeal notice."

76. CPR 52.12(2) provides as follows:

> "(2) The appellant must file the appellant's notice at the appeal court within —
>
> (a) such period as may be directed by the lower court at the hearing at which the decision to be appealed was made or any adjournment of that hearing (which may be longer or shorter than the period referred to in sub-paragraph (b)); or
>
> (b) where the court makes no such direction, and subject to the specific provision about time limits in rules 52.8 to 52.11 and Practice Direction 52D, 21 days after the date of the decision of the lower court which the appellant wishes to appeal."

77. The application of an earlier version of those rules in a case where a judgment is handed down at a hearing which is not attended by counsel was considered in *McDonald v Rose* [2019] EWCA Civ 4. It was held in *Claydon Yield-O-Meter Ltd v Mzuri Ltd* [2021] EWHC 1322 (IPEC) that the position is the same when a judgment is handed down remotely. See also paragraph 52.3.7 of *Civil Procedure 2024*.

78. The effect of those rules was that I could only grant permission to appeal, and I could only grant an extension of the time limited for filing the appellant's notice, "at the hearing at which the decision to be appealed was made or any adjournment of that hearing". In paragraph 21(4) of its judgment in *McDonald v Rose* the Court of Appeal said as follows:

> "If no permission application is made at the original decision hearing, and there has been no adjournment, the lower court is no longer seized of the matter and cannot consider any retrospective application for permission to appeal: see *Lisle v Mainwaring* [2018] 1 WLR 4766."

79. My understanding of the application of those rules in the present case is as follows. However, I observe that, if the claimant wishes to appeal against my decision to dismiss his application for judicial review on grounds 1 and 2, it will be the Court of Appeal's understanding of the position that matters.

80. When I handed down judgment on 31 March 2023, I made a decision which was capable of being appealed. That was "the decision to be appealed" for the purposes of CPR 52.3(2)(a) and 52.12(2)(a).

81. The "hearing at which the decision to be appealed against was made" was the remote handing down of the principal judgment on 31 March 2023. No application was made then for permission to appeal or for an extension of time. I adjourned that hearing for a stated purpose, namely: "for consideration of any and all matters consequential on the judgment."

82. On 11 October 2023 I made an order, without a hearing, on the claimant's application for the amendment of my order of 3 July 2023. (For some reason, my order was not sealed until 6 December 2023.) On that occasion, I took the view that the purpose of adjourning the hearing on 31 March 2023 had been fulfilled when the parties agreed the order which I made on 3 July 2023, on the basis that matters which could have been dealt with at the adjourned hearing were dealt with instead by consent without a hearing. On that basis, I concluded that I no longer had power either to grant permission to appeal or to grant an extension of the time limited for filing the appellant's notice and that, in those circumstances, the proposed amendment to my order of 3 July 2023 would serve no purpose.

83. The claimant renewed his application for an amendment to my order of 3 July 2023 at the hearing on 17 January 2024, when Mr Husain submitted, inter alia, that my order of 3 July 2023 did not deal with all of the matters which were consequential on the principal judgment, since it did not deal with the costs of the claimant's first two grounds for seeking judicial review. I acknowledged that there may be force in this submission and invited post-hearing submissions on this issue from the defendant, who subsequently accepted that Mr Husain's submission was correct.

84. I also directed at the hearing on 17 January 2024 that, if that hearing was an adjournment of the hearing on 31 March 2023, then it was, in that respect, further adjourned.

85. In those circumstances, I consider, although this will ultimately be a matter for the Court of Appeal to decide, that it remains open to the claimant to apply to me for

permission to appeal against my decision to dismiss his first two grounds for seeking judicial review.

86. However, when it comes to the claimant's application, I do not consider that it is either necessary or appropriate to for me amend my order of 3 July 2023. The claimant's application seeks an order which is either unnecessary or unlawful:

(1) If, as I am now persuaded was the case, the hearing on 17 January 2024 was an adjournment of the hearing on 31 March 2023, the proposed amendment to my order of 3 July 2023 is unnecessary.

(2) If, on the other hand, the hearing on 17 January 2024 was not an adjournment of the hearing on 31 March 2024, then I no longer have any jurisdiction either to grant permission to appeal or to extend the time limited for applying for permission to appeal. I certainly could not extend time retrospectively.

87. It follows that I should dismiss the claimant's application, since it seeks relief which is either unnecessary or unlawful. Having said that, the issue raised by that application was whether or not the claimant could apply to me for permission to appeal against the decisions made in the principal judgment and I have decided that issue in the claimant's favour. On handing down this judgment remotely, I will adjourn both the already adjourned hearing in respect of the principal judgment and the hearing in respect of this judgment to a date to be fixed.

(9) Summary

88. I grant permission to the claimant to make the proposed amendments, but I dismiss the application for judicial review on ground 3.

89. As before, I express my gratitude to all solicitors and counsel involved in this case for their considerable assistance.