THE HIGH COURT

2016 No. 706 JR

IN THE MATTER OF SECTION 5 OF THE ILLEGAL

IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED)

Between

I.X.

Applicant

– and –

THE INTERNATIONAL PROTECTION OFFICE and

THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

2016 No. 709 JR

IN THE MATTER OF SECTION 5 OF THE ILLEGAL

IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED)

Between

X.X. (SUING BY HER MOTHER AND NEXT FRIEND I.X.)

Applicant

– and –

THE INTERNATIONAL PROTECTION OFFICE and

THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

2016 No. 710 JR

IN THE MATTER OF SECTION 5 OF THE ILLEGAL

IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED)

Between

F.X. (SUING BY HER MOTHER AND NEXT FRIEND I.X.)

Applicant

– and –

THE INTERNATIONAL PROTECTION OFFICE and

THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

2018 No. 454 JR

N.Y.

Applicant

– and –

CHIEF INTERNATIONAL PROTECTION OFFICER and

MINISTER FOR JUSTICE AND EQUALITY

Respondents

– and –

INTERNATIONAL PROTECTION APPEALS TRIBUNAL

Notice Party

2018 No. 577 JR

IN THE MATTER OF SECTION 5 OF THE ILLEGAL

IMMIGRANTS (TRAFFICKING) ACT 2000 (AS AMENDED)

Between

J.Z.

Applicant

– and –

CHIEF INTERNATIONAL PROTECTION OFFICER and

MINISTER FOR JUSTICE AND EQUALITY

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 14th January, 2019.

A. THE X APPLICATIONS

1. Legal Background. The X applications are primarily concerned with ss. 11 and 13 of the Refugee Act, 1996, as amended. Section 11(1) provides, *inter alia: "Where an application is received by the* [Refugee Applications] *Commissioner…and…is not withdrawn or deemed…withdrawn…it shall be the function of the Commissioner to investigate the application…".* Section 13(1) provides, *inter alia: "Where the Commissioner carries out an investigation under section 11 he or she shall…prepare a report in writing of the results of the investigation and such report shall [inter alia]… set out the findings of the Commissioner together with his or her recommendation whether the applicant…should or…should not be declared…a refugee*." The First Schedule, para.9 of the 1996 Act provides that "*The Commissioner may delegate to any members of the staff of the Commissioner any of his or her functions under this Act save those conferred by section 7."* (Section 7 is not relevant to the applications at hand).

2. The Panel. The respondents acknowledge that assistance was given to the Commissioner by outside contractors (a panel of barristers/solicitors) for the purposes of investigation. They maintain, however, that what panel members did does not amount to investigation; it was merely assistance to the staff of the Commissioner in their conduct of an investigation. The applicants maintain that the investigation was in reality conducted by a panel member.

3. Ms I.X.'s Application. The personnel hierarchy in the process under consideration, in ascending order of importance is: (1) panel member (an external contractor), (2) caseworker (a civil servant), and a Higher Executive Officer (also a civil servant). In the I.X. case, Ms N.O'N., a caseworker, has averred, *inter alia*, as follows:

> *"4. At the time the Applicant made an application for asylum in the State in December 2015, all such applications were first considered by the then Refugee Applications Commissioner (the 'Commissioner') who was responsible therefor under the Refugee Act 1996 (as amended) ('the 1996 Act')….In respect of the determination of any refugee application by the Commissioner there were usually 3 people involved as a team, a Caseworker, a HEO who has overall control/responsibility and who makes the recommendation under s. 13 of the Act and a Panel Member who works with me. In respect of this application the ORAC team comprised the HEO…a Panel Member* [Ms B.V.]*…and myself. I know that* [Ms B.V.*]… is designated as an Authorised Officer under the 1996 Act.*
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> *5. I was the Caseworker assigned to the investigation of the Applicant's application for refugee status. I was responsible for the carrying out of its investigation and making findings thereon. As the designated Caseworker, I had control over the investigation and I was at all times conscious of that fact but I received considerable assistance from the Panel Member when carrying it out. I have worked many times with* [Ms B.V.]*…who is very competent and experienced and we collaborate very well together.*
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> *6. I have undergone substantial training with ORAC in relation to the processing and determining of applications under the 1996 Act and in particular the respective roles of the personnel involved. In on the job interactions with HEOs and other EOs, particular emphasis was laid on the principle that, under the 1996 Act in respect of refugee status determinations, it is the ORAC Caseworker who has responsibility for its investigation and makes the ultimate findings thereon not a Panel Member, who is assisting in any such applications. In addition to this training, as a Caseworker I am familiar with the ORAC Guidance Notes dealing with the investigation of an application for refugee status by caseworkers including on credibility…001/2014; the s.13 report template…003/2015 and the process for determining refugee applications when Panel Members were introduced to the system…005/2015 but do not recall reading the Guidance Note on the Act of 1996 for HEOs…006/2015 which does not apply to me as an EO.* [In fact it does apply in certain circumstances to 'EOs'].
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> *7. As is set out in paras 2-4 of the Affidavit of the Applicant sworn on the 7th September 2016, the Applicant underwent a s.8 interview. The Applicant completed a Questionnaire and attended for her s.11 interview. A Recommendation to the Minister was made by the HEO…that the Applicant should not be declared a refugee by way of a s.13 report dated the 22nd July 2016 (the Applicant was informed of this recommendation by letter dated 16th August 2016), which recommendation is now the subject of an appeal. I say that a s.13 report dated 22nd July 2016, signed by myself and the HEO…was enclosed with the said letter, together with a draft such report dated 29th June 2016, as exhibited in the said Affidavit of the Applicant.*
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> 8. *Separate applications for asylum (premised upon the same claim) were lodged by the Applicant on behalf of her children* [Ms F.X. and Ms X.X.]*…which were individually examined but similarly refused by the Commissioner and are also awaiting appeal. In the case of* [Ms X.X.]*…her s. 11 interview took place on the 11th June 2016 with a draft s.13 Report dated 29th June 2016 and s.13 Report, signed by me, dated 3rd August 2016. In the case of* [Ms F.X.]*…her s. 11 interview also took place on the 10th June 2016 with a draft s.13 Report dated 29 June 2016 and s. 13 Report, signed by me, dated 3rd August 2016. The same ORAC team processed all 3 applications for asylum. Separate Judicial Review proceedings…on behalf of each have also been filed with the relevant documentation exhibited. The grounds in respect of all 3 cases are identical.*
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> 9. *The Applicant's application was assigned to the Panel Member* [Ms B.V.]*…in or around 1 June 2016. I was always aware that Panel Members had been designated as Authorised Officers under the Act of 1996 and were therefore empowered to carry out an interview under s.11(2) of the Act. In that capacity,* [Ms B.V.]*…conducted the interview of the Applicant which took place on 10 June 2016. Records show that the interviews of each of the Applicant's two children were then conducted individually upon completion of the Applicant's interview. The same authorised officer*, [Ms B.V.] *…carried out the interviews of the Applicant's two children.*
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> *10. As is evident therefrom, the s.11 report was prepared during the interview, read back by the Panel Member to the Applicant with the assistance of an interpreter and when the content of each page was agreed by the Applicant, was*

signed by her on 10 June 2016. The Panel Member signed the closing sheet of the section 11 report on 10 June 2016. This is in accordance with normal practice for conducting an interview under s.11(2) of the 1996 Act by an Authorised Officer.

11. A Panel Member, as an Authorised Officer, independently conducts and completes the s.11 interview and reports thereon (subject to any guidance as may be required from an ORAC caseworker from time to time) after which his/her function as an Authorised Officer comes to an end. Thereafter however, they continue to assist me (or any other ORAC personnel as may be required) with the investigation itself. Invariably, but not always, the Panel Member who conducted the s. 11 interview would continue to assist in the post interview phase, albeit occasionally it maybe a different Panel Member. The introduction of Panel Members as Authorised Officers to conduct interviews and thereafter to assist in the s.13 phase of the process has saved considerable amount of ORAC time and freed me up as a caseworker to work on more cases and deal with the considerable backlog which had been building up. While I control any investigation, the fact that highly skilled and proficient assistance is available to me greatly enhances the nature and efficiency of the decision making process.

12. As a Caseworker, the level of interaction I have with a Panel Member who is assisting me on an investigation of and the compilation of a draft report on a refugee application will vary according to the needs of each individual application or the skill and experience of the particular Panel Member. The Panel Member does not work independently during this process. Interactions may commence before the Panel Member submits an initial draft report or after. For example, I may liaise with a Panel Member prior to any interview they conduct as Authorised Officer as the Panel Member may require assistance with the interview (e.g. preparation, strategy, country guidance or topics and/or questions they should cover). Also, a Panel Member may require my advice or guidance during the course of the interview itself if an issue arises, in which case the Panel Member will step out of the interview for a short period of time and I will answer their query or instruct them as to what to do. If a Panel Member is experienced then little or no liaison may be necessary prior to the compilation of an initial draft report. In particular if I have worked with a Panel Member before, they will be familiar with the assistance I need for any investigation I am assigned.

13. I am aware that Panel Members also undergo extensive training in the refugee status determination process so are always aware what is necessary for conducting an investigation thereof. For consistency and efficiency, the work prepared in any investigation is gathered into a prescribed, standardised template for a s.13 report designed by the ORAC. This sets out the parameters of any investigation and ensures that all required elements are covered no matter who may work on an application. Panel Members are almost always qualified banisters or solicitors and are well accomplished to conduct the preliminaries of any such investigation. Their assistance is of huge benefit to me.

14. A Panel Member is aware that draft reports submitted will undergo change and development as I engage with and direct an investigation. A number of versions of draft reports usually end up being furnished before finalisation. Interactions may commence before the Panel Member submits their initial draft report or after. Follow up action may be required to verify information provided by an applicant at interview. This work may be carried out by me or by the Panel Member on my authorisation. Additional updates can arise as a result of further COI research or other necessary requests I might make such as from the Language Analysis Service, which assesses linguistic traits to assist in identifying the geographic origin of an applicant's speech. If either I or my HEO considers that a second interview of an applicant was required (to elicit any further information or clarify any queries), it is we who make that decision and direct the Panel Member to carry out any such additional interview. This is entirely at our discretion and not the Panel Member. The level of ongoing interaction between the Panel Member and myself during the compilation of a draft report will therefore depend on a multiplicity of varying factors, including the ability and expertise of the Panel Member and the complexity or novelty of the application at issue. As the Panel Member is aware that they are compiling a draft report that will be subject to change it is not unusual for interaction to begin between the Panel Member and myself at this stage.

15. The assessment of credibility in an application for refugee status focuses on analysing the material facts of an applicant's claim in order to ascertain which facts were to be accepted for the purpose of determining whether an applicant was entitled to refugee status and not on demeanour and presentation. Key indicators in that assessment are internal consistency of oral and written information provided by an applicant and external consistency of the applicant's account with the known information about an applicant's country of origin. The credibility assessment is made on the documentation, including country of origin information and records on the file. If any issue arose requiring further interview then a Panel Member would be directed (most usually by me after consultation with my HEO) to re interview an applicant. A Panel Member carries out a draft analysis of credibility however I examine the file, including the s.11 interview and review the draft report before approving or adopting any of the suggested draft findings proposed. I will not make such concluded findings unless I am happy that the credibility of an applicant is properly assessed.

16. On receipt of an initial draft report I will examine (or re examine as the case may be) the applicant's file and consider the initial draft report furnished. If I agree with the contents thereof, in light of all the information gathered (including during the interview) but there are minor changes to be made I will discuss the changes with the Panel Member and do them myself. If I do not agree with the contents of the initial draft report (e.g. if further research is required or information/clarification needed or I disagree with any suggested analysis or proposed draft findings) and therefore changes to be made are more significant then I will discuss those changes with the Panel Member to agree to such changes and then direct him/her to make these changes on the draft report (this is a resources issue as it saves my time if the physical changes are made by the Panel Member). I always ask the Panel Member to agree any changes, insignificant or not as a courtesy but also as I am aware it is the policy of the IPO to operate a consensus approach to decision making. If a Panel Member and I could not agree on matters in an investigation then I discussed the assessment with my HEO who could direct further investigations and clarification (including for example, calling an applicant for re-interview or carrying out additional research on various matters). Ultimately however, I at all times knew that as responsibility for the investigation and the final decision thereon was mine I did not need the consent of the Panel Member to make any changes to what would become the s.13 report. I took the role of making findings on an investigation very seriously.

17. I personally have never had a case where there was not agreement across the team in relation to the content of a final draft report and/or the proposed draft findings suggested, which thereafter I was happy to adopt as my findings. This latter step is usually very straightforward due to my overall involvement with the Panel Member in the drafting stage. I always work collaboratively with the different Panel Members in a team approach, however each of us are aware of our respective roles and that importantly, I have the final say on any findings arising in an investigation and

whether or not we enter into consultation with the HEO. I would not proceed with adopting the contents of a final draft report unless I was satisfied, on having examined the applicant's file, with the assessment evident and proposed draft findings therein. Therefore, when I forward my s.13 report to the HEO for recommendation, the investigation of an applicant's application for refugee status and the findings set out thereon under s.13 of the 1996 Act are mine, as happened in the within application.

18. In this application, the Panel Member, with whom I am well familiar, submitted a hard copy of her proposed draft report dated 29th June 2016. I reviewed the Applicant's file and made some changes to what was proposed in the draft report, in particular the credibility section in order to address more accurately what I believed was the particular credibility issue. I also made some typographical corrections. I discussed my proposed changes with the Panel Member. I cannot recall if I spoke to the Panel Member face to face or on the telephone. Normally interactions between a Caseworker will take place face to face as the Panel Member works onsite however it is not uncommon for interactions to take place by telephone.

19. The Panel Member had not sent me a soft copy version of this draft and asked her to email me a copy so that I could also make the same changes thereto. This email was received by me on 22nd July 2016….I uploaded the first version of the draft report onto the ORAC database on 22nd July 2016 and made the various amendments. I did not change the date on the draft report. The amendments I made to the developing draft report are apparent when a comparison was made between the version emailed to me and the version I amended. I beg to refer the draft report which I uploaded onto the ORAC database on 22nd July 2016….

20. I was satisfied this version of the draft report and suggested draft findings reflected my views of the investigation and findings to be made (so that this became the final version of the draft report and, ultimately, was adopted by me) and that the Panel Member had completed all steps correctly such that I then made my own copy of the draft report by copying Parts 1 7 of the draft report and removed all references to the word 'draft' from the report itself and the Findings section. I inserted the following text under the Findings section 'I have considered the file and all the documentation contained within and I agree with and adopt the draft findings of the Panel Member.' *I added a Recommendation section to the new report and indicated that I agreed with and adopted/approved the draft findings of the Panel Member. I signed the report and forwarded the file to the HEO…for a full consideration and completion of the Recommendation. I confirm that I would not have signed the s.13 report unless I had examined the Applicant's file and agreed with and adopted the suggested draft findings of the Panel Member as I state therein. In these circumstances there are no substantial differences between the final version of the Panel Member's draft report and the Section 13 report. I beg to refer to true copies of the final draft report dated 29th June 2016 of the Panel Member and my Section 13 report as exhibited by the Applicant in her affidavit."*

4. Mr D.C., a former HEO in the ORAC, in his affidavit evidence, avers, *inter alia*, as follows:

"5. I was the HEO having overall control and responsibility for the ORAC determination of the Applicant's application for refugee status once it came into the Case Processing Unit of ORAC. There are different sections within ORAC and various elements of the investigation of an asylum application are carried out by different ORAC sections/personnel. In accordance with the overall process operated by ORAC, the first steps in such an investigation commences when an applicant first presents to the ORAC to make an application and involved the receipt of the application, the preliminary interview under s.8 of the 1996 Act, the obtaining and ordering of information provided by the applicant, including his/her fingerprints and investigation as to whether the application has been properly made. In addition, other enquiries such as authenticity checks of documentation, investigations with other Dublin Regulation States generally including liaising with such States through the Eurodac and Dublinet systems in relation to the fingerprinting of persons with previous international protection history, detected irregular border crossings and other relevant immigration history are carried out by ORAC personnel. The interviewing of an applicant under s.11(2) of the 1996 Act and the ultimate determination of/recommendation on an application was carried out by the Case Processing Unit of ORAC. All administrative steps necessary were carried out by ORAC staff and all information gathered is collated into one file. Systems were in place to ensure full understanding of the process and the roles and responsibilities of each section/all personnel contributing to it were well defined. This provided for consistency as far as possible across the huge number of asylum applications that fell to be considered by the ORAC. I worked with ORAC for many years and have been involved in hundreds of asylum determinations.

6. Having regard to the fact that the ORAC determination of the applicant's application for Refugee status function was part of my role as HEO (and so empowered to do by virtue of Para 9 of Schedule 1 of the 1996 Act), I made the recommendation of the Commissioner on the Applicant's application, having read the entire file of the Applicant including the s.13 report of the Caseworker and the findings made therein. In this Applicant's investigation, I was also involved before findings were made as the Caseworker sought my advices during the investigation.

7.In the determination of any refugee status application under the 1996 Act, there were usually 3 persons involved: a HEO, the Caseworker and a Panel Member who assisted and worked with the Caseworker in a collaborative manner. Panel Members, who were independent contractors and were in the main qualified solicitors and barristers, had been engaged by the Minister to support the Commissioner to assist ORAC personnel with refugee status determinations. In respect of this application and those of the Applicant's children *[Ms F.X. and Ms X.X.]…*the ORAC team comprised myself*; [Ms N.O'N.] …*the Caseworker and *[Ms B.V.]…*the Panel Member*. [Ms B.V.]…*is an Authorised Officer under the 1996 Act….As an Authorised Officer under the Act of 1996*, [Ms B.V.]…*is lawfully empowered to conduct an interview under s.11 of that Act, together with compiling the report thereof and she can carry out that function independently of ORAC personnel. However, in providing assistance to ORAC personnel thereafter, she could not act independently but was at all times under the control and direction of the Caseworker*, [Ms N.O'N.]…*as necessary.

8. I have always understood my function to be that I was in overall control of the team such that the Caseworker, or the Panel Member through the Caseworker (or occasionally directly), could seek my advice or direction in relation to the application at any time. In respect of any application in which I was due to make a recommendation as the Commissioner, I would almost always be in liaison with the Caseworker in advance of such recommendation. The level of interaction would depend on the needs of the specific application. I knew that as my function was to make a recommendation on each application I had to be satisfied with the findings of the Caseworker and that those findings must be derived from the content of the Section 13 report. If I thought the individual findings were not correct I would not put my name to the report as the findings of the Caseworker clearly inform any recommendation to be made. In addition to the actual findings, I had to be equally satisfied in the way the findings were arrived at even when I agreed with the findings. I would always ensure that I agreed with the analysis and credibility elements of the claim too. If there

were any major areas I felt were not analysed, were insufficiently analysed, incorrectly analysed or major credibility points missed, I would make the issues known to the Caseworker and have the report rectified to reflect this. I always knew that I had to review the file, which I would do for each application before making a recommendation. I was at all times aware of the fact that it is the Caseworker on the team who has the primary responsibility for an investigation and making findings on any refugee status determination under the 1996 Act. To the best of my knowledge and belief I was not unique in this regard and my HEO colleagues shared a similar understanding of their role and function.

9. In the context of the day to day investigation of refugee status determinations I was always available and was usually contacted if specific queries/issues arose (most usually by the Caseworker), for example where a Caseworker and Panel Member had differing views on a particular matter. This is not to imply a conflict necessarily, it may well be a differing perspective or a borderline case or as a result of insufficient information. As HEO, I would if necessary instruct that a second interview of the Applicant be carried out to ascertain further clarification or information to lead to a more definitive view and/or allow for new information that may have come to light to be put to the applicant. For completeness, I would also routinely check to ensure that information was not overlooked or that information was not received before the report was finalised.

10. All ORAC personnel (including me) underwent training in respect of refugee status determinations. Panel Members underwent similar training so that we are all fully aware of how a refugee status application is to be processed and determined. This ensures consistency across all members of a team contributing to the processing of such application.

11. The policy of the ORAC has always been to try and achieve consensus across the team working on any particular application as this increased the likelihood of a fair, resilient outcome however as HEO I was always satisfied that ultimately the decision was that of the ORAC staff, not the Panel Member and the findings of the Caseworker were paramount.

12. Where the assistance of a Panel Member as produced in a draft s.13 report, including draft findings proposed, is not ultimately found useful or agreeable by the Caseworker in the investigation or by the HEO having overall responsibility for the determination, such assistance is not followed through. Because of the extensive interactions between the Panel Member and the Caseworker which can arise during the investigation itself and the consensus approach favoured across the team, such circumstances are rare. Where it does arise, the assistance in the form of the draft s. 13 report is set aside and the post interview phase leading to the s. 13 report is carried out afresh by the ORAC personnel themselves most usually but not always the Caseworker, as and from the interview stage (which a Panel Member conducted as an Authorised Officer). This is what occurs in practice.

13. The investigation, including findings thereon, leading to a recommendation on any refugee status determination is always that of the ORAC personnel, not of a Panel Member. This reflected the custom and practice in ORAC as a whole as understood by me, and it reflected the context in which I dealt with the application the subject of these proceedings. A Panel Member does not have any authority to make findings on a refugee status determination and his/her proposals thereof are not in any way binding on either the Caseworker or the HEO. It has always been made clear that ORAC carry the responsibility for determining a refugee application and not a Panel Member. While I am aware of the various Guidance Notes prepared by ORAC in respect of the refugee applications process, nothing in Notes circulated purely as guidance (and no more) led me to believe otherwise. The custom and practice in ORAC in respect of the relationship between the Panel Member and the Caseworker/HEO is as I have outlined above and I have always understood that Guidance Notes must be read in light of and follow the law and it was very clear to me that the 1996 Act set out that it was our function to conduct the investigation, make findings and ultimately the recommendation to the Minister. I am not familiar with any Guidance Notes relevant for subsidiary protection applications as they are processed by different Units of the ORAC and I was only involved with refugee status determinations.

14. In the instant case, I first became involved in this Applicant's application when the Caseworker…came to me with her file. She indicated that the daughters' files were not then yet ready to discuss. I spoke with her on 22nd July 2016 and considered the file, which included the draft report of the Panel Member, dated 29th June 2016. This draft report was in the form of the s.13 template utilised by all persons working on an asylum application. It was originally designed with the assistance of the UNHCR and is useful for the presentation of the information gathered, charting the narrative of the application, preliminary assessment of pertinent matters and proposing suggested findings which facilitated clarity, uniformity, consistency, efficiency and ensured that all required elements necessary were included. Presenting work in such a format was of considerable assistance to the ORAC Caseworker in conducting the investigation when s/he revisited the material gathered into the file and made conclusive findings and to me when I came to review the application in full. Having reviewed the file in its entirety, I was happy with the Caseworker's s.13 report for the Applicant, which was finalised between myself and the Caseworker. I was satisfied with the analysis and level of detail evident and agreed with the arguments made and with [Ms N.O'N.'s] findings. After considering the application, I decided to recommend refusing the Applicant's application for refugee status and signed the s.13 report dated 22nd July 2016.

15. I say that the applicant was informed of this by way of letter dated 16th August 2016. The said letter enclosed a copy of the s. 13 report dated 22nd July 2016 which was signed by me and a copy of the draft report dated 29th June 2016, as exhibited in the affidavit of the Applicant….

17. Panel Members are well trained and highly qualified and capable of providing a very high degree of assistance to the ORAC in refugee application determinations, including providing meaningful suggested assessments and draft findings. Panel Members could distil documentation and records (including lengthy COI), collate and reduce to narrative form all information, carry out preliminary assessments of credibility and analysis of the information gathered into a submission containing suggested draft findings arising from their efforts thereon. They were closely involved in the process and their valued views would be of considerable assistance to the Caseworker and to me. Such capability however ought not be confused with independence or any decision making power. In any application for refugee status under the Act of 1996, a Panel Member could not act independently outside the ongoing direction, supervision and control of ORAC staff (and in particular the designated Caseworker) in the s. 13 process nor, crucially, make any decided findings on any investigation carried out."

5. What shines through the above-quoted affidavit evidence is that the caseworker is central at all times to the investigation of a particular application, with the HEO having overall control and responsibility. The panel member is a team member, working under the immediate direction of the caseworker. The panel member assists the civil servants, she may even assist them greatly, but she does not supplant the civil servants. The investigation is that of the caseworker, with the HEO taking overall responsibility for the end-

result. That all this is so effectively ends the case brought by the X's. They have contended, by reference to certain intra-departmental guidance, that it is the panel member who undertakes an investigation. But that guidance is just guidance, no more; there is just no getting around the evidence of Ms N.O'N. and Mr D.C. as to what occurred *in fact* in the X's cases. Nor is there any reason to believe that what occurred was not an investigation within the meaning of the Act, an investigation in this context being the gathering and analysis of information and the drawing of conclusions so as to bring Ms I.X.'s application through to the point of decision. There is no breach of the Act of 1996 presenting in the foregoing, and there is no need to turn to case-law for guidance in this regard: the Act is clear, the facts are clear, and Ms I.X's application must fail.

6. Ms F.X.'s and Ms X.X.'s Applications. Ms F.X. and Ms X.X. are Ms I.X.'s daughters. While there are separate pleadings in each of their cases, each set of pleadings largely replicates what is pleaded in respect of Ms I.X. Each statement of grounds is largely the same, the background to each set of litigation is largely the same, the grounding affidavits are largely the same and the affidavit evidence furnished by the respondents is largely the same. The court sees nothing in the pleadings or evidence presenting in either application that would lead it to different conclusions from those reached in the preceding paragraph regarding Ms I.X.'s application. Thus the applications of Ms F.X. and Ms X.X. must fail.

B. THE Y APPLICATION

7. Mr N.Y.'s Application. The main differentiating factor between the X and Y proceedings is the application of the International Protection Act 2015 to the latter. The detail of the applicable provisions and examination process applied are well captured in the evidence of Ms R.M., an Assistant Principal Officer in the International Protection Office and an officer of the Minister for Justice and Equality (quoted hereafter). Over the course of her affidavits Ms R.M. gives, in effect, a legal and factual overview of the examination process. Mr D.K., who was the caseworker on Mr N.Y.'s application, separately avers to what happened in fact as regards the particular examination in issue.

8. Ms R.M. avers, *inter alia*, as follows:

> *"1….I was an authorised officer under the Refugee Act 1996. At the commencement of the International Protection Act 2015 (the 2015 Act) I was appointed an International Protection Officer….I have been involved in the planning, development, implementation and supervision of the processes outlined in this affidavit….*
>
> 3. *By way of background, the* [2015 Act*]… came into operation on 31st December 2016. The 2015 Act replaced the former process whereby applications for international protection were made by way of sequential applications firstly for asylum and then for subsidiary protection as set out in the Refugee Act 1996 as amended and the European Union (Subsidiary Protection) Regulations 2013 with a single application procedure bringing Ireland into line with international protection processing arrangements in other EU Member States. The single procedure introduced by the 2015 Act also entails an applicant for international protection setting forth any grounds for permission to remain at the same time as the application for international protection rather than at the conclusion thereof.*
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> *4. Under the 2015 Act, the Office of the Refugee Applications Commissioner (ORAC) was abolished and responsibility for the investigation and determination of applications for international protection (and permission to remain) was transferred to a new International Protection Office which is a dedicated office within the Irish Naturalisation and Immigration Service in the Department of Justice and Equality. The head of the International Protection Office is the Chief International Protection Officer, who was appointed by the Minster pursuant to Section 75 of the Act to lead a team of International Protection Officers appointed under the Act….*
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> *5. Under the single procedure, now in place under the 2015 Act, an applicant makes only one application, and has all grounds for seeking international protection (refugee status and subsidiary protection) as well as permission to remain examined and determined in one process. In effect, the civil servants in the International Protection Office of the Irish Naturalisation and Immigration Service in the Department of Justice and Equality have two separate roles under the 2015 Act. They are International Protection Officers for the purposes of dealing with applications for international protection (refugee status and subsidiary protection) having all been so appointed by the Chief International Protection Officer and they are also officers of the Minister for Justice and Equality for the purposes of the Minister's functions under the Act. Thus, in the present case the relevant civil servant Mr* [D.K.]*…acted in his capacity as an IPO when dealing with the issue of subsidiary protection and in his capacity as an officer of the Minister when dealing with the issue of permission to remain.*
>
> *6. Under the single procedure, two separate statutory reports are required namely*
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> > *(i) A report under section 39 of the 2015 Act containing two parts, where consideration is given to eligibility for refugee status, and failing recommendation of that, consideration is then given to whether or not an applicant is to be recommended for subsidiary protection.*
> >
> > *(ii) A report under section 49 of the 2015 Act considers whether or not a person should be given Permission to Remain having been refused refugee status and subsidiary protection.*
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> *7. In normal course under the 2015 Act each application is investigated by the International Protection Office (IPO) on the basis of three questions*
>
> > *(i) Is the applicant a refugee or, if not;*
> >
> > *(ii) Is the applicant eligible for subsidiary protection or if not*
> >
> > *(iii) Are there grounds under section 49 of the 2015 Act to grant a person permission to remain in the State?*
>
> *8. In general terms, a person who is at the frontiers of the State or who is in the State and indicates that he or she wishes to make an application for international protection (that is refugee status or subsidiary protection) is interviewed by an officer of the Minister or by an immigration officer in accordance with section 13 of the 2015 Act. The purpose of*

this interview is to ascertain the reasons why the person is seeking protection, basic information about the person, information about how the person travelled to the State, his or her reasons for coming to the State, whether or not the person entered legally and whether or not an application by the person is inadmissible.

9. If the application is admissible then the applicant is provided with the Information Booklet for Applicants for International Protection and the Application for International Protection Questionnaire (IPO2) and the applicant makes the application for international protection pursuant to section 15 of the 2015 Act.

10. Because of the volume of applications for international protection and to ensure that the functions of the International Protection Office and the Minister are carried out to optimum effect, it was decided that the Independent Contractor Panel system that had been used under the Refugee Act 1996 as amended to assist the Refugee Applications Commissioner should be used to assist International Protection Officers (IPOs) and Officers of the Minister in processing applications and with the preparatory work for carrying out their functions. Panel members are legally qualified independent contractors who are trained in the principles and policies relating to international protection applications and permission to remain in the State. They provide assistance to the Civil Servant assigned to the individual cases, however, it is the Civil Servant so assigned who must and does make the recommendation in relation to International Protection or the decision in relation to Permission to Remain in the State.

11. Persons working within the International Protection Office are divided into teams with each team having approximately nine Civil Servants (six Executive Officers and three Higher Executive Officers) all of whom are International Protection Officers and Officers of the Minister. At the time the Applicant's application was determined there were four teams with approximately 55 members of the Independent Contractor Panel divided between them. Each Panel Member is assigned a team to which he or she can turn for general advice and assistance.

12. As part of the examination of an application for International Protection pursuant to Section 34 of the 2015 Act, an International Protection Officer is required to cause an applicant to be interviewed in accordance with section 35 of the Act. Applicants are thus invited to attend for the international protection interview. The purpose of the personal interview is to establish the full details of the applicant's claim for international protection. Interviews are usually conducted by Panel Members although they may on occasion be conducted by the caseworker. The caseworker supervises the Panel Member in respect of the case and there is on-going liaison between the two.

13. Prior to the interview the Panel Member conducting it will have read the applicant's application and all related documentation, and researched relevant information pertaining to the applicant's country of origin. The Panel Member will liaise with the Caseworker, if required, in respect of any particular issues which arise.

14. At interview, an applicant is asked for information in relation to inter alia his or her name, date of birth, country of birth, nationality or country of habitual residence and his or her address in the country of origin, the names, dates of birth and current whereabouts of his or her spouse/partner, children under 18 and parents, the reasons why he or she is claiming international protection, and any other reasons why the applicant and his or her children cannot return to his or her country of origin or country of former habitual residence. The interviewer keeps a typed written record of the relevant and potentially relevant aspects of the applicant's claim. The record is read back to the applicant during the course of the interview and this is his/her opportunity to correct any details that he/she considers has not been recorded accurately. The applicant is then asked to sign each page to confirm that it is an accurate account of the interview. The focus of the interview is on the application for international protection. The applicant is not asked questions directly on matters pertaining to permission to remain. However, if such matters arise, they are recorded in writing by the interviewer. The applicant, the UNHCR or any other person concerned may make representations in writing to the Minster before or during the interview or after the interview and prior to the preparation of the report under section 39(1) in relation to the application.

15. Following the conclusion of an examination of an application for international protection, the Panel Member prepares a draft report. This report refers to matters relevant to the application which are raised by the applicant in his or her application, preliminary interview or personal interview or at any time before the conclusion of the examination. Before the draft report is finalised and signed by the Panel Member, the Panel Member will have liaised with and discussed the draft report and the draft findings with the caseworker assigned to the case who will be both an International Protection Officer and either an Executive Officer or a Higher Executive Officer in the Department. The final draft is approved by the caseworker and, in some cases where appropriate, where the caseworker is an Executive Officer, by a Higher Executive Officer in the International Protection Office.

16. The draft Report being prepared by the Panel Member is on the International Protection Office database and as it is being reviewed and discussed it is overwritten by new drafts as they are created. The International Protection Officer can request the Panel Member to schedule a further interview if it is deemed necessary or to explore an inconsistency in the information provided. Thus, the International Protection Officer is involved in the process even before the draft Report is signed off by the Panel Member. The entire file is considered by the International Protection Officer before adopting/approving the findings and conclusions. In the circumstances it would be unusual for there to be material differences between the draft report as submitted by the Panel Member and the finalised report of the Caseworker as there will have been on-going liaison between the two as the draft report was being prepared and the Caseworker will have supervised the Panel Member throughout. However, in cases where there is not consensus between the Panel Member and the Caseworker, it is the responsibility of the Caseworker to take control of the report, to finalise it and sign it off if necessary referring to a HEO.

17. The same procedure applies in relation to the consideration of permission to remain in the State except the caseworker is acting in his or her capacity as an officer of the Minister. Therefore where a recommendation is made pursuant to section 39(3)(c) that the Applicant should be given neither a refugee declaration nor a subsidiary protection declaration - the Officer of the Minister on his behalf considers whether to give the applicant permission to remain in the State in accordance with Section 49 of the Act.

18. However, it is important to stress that while the Panel Member has a supporting role assisting in the processing of the case and carrying out the interview, it is the civil servant within the International Protection Office in his capacity as an International Protection Officer and also as an Officer of the Minister who is responsible for the work of the Panel Member, must liaise with him/her until his/her draft reports are finalised and who must consider the entire file and all of the information and documentation therein before adopting/approving the draft reports and draft findings, signing off on

his/her own reports and making the final recommendation or decision on the case as appropriate.

19. In the present case, the Applicant had applied prior to the coming into operation of the 2015 Act under the Refugee Act 1996 as amended for a declaration that he was a refugee. In April 2016 the Office of the Refugee Applications Commissioner recommended that he should not be declared a refugee and he appealed that decision to the Refugee Appeals Tribunal. On the coming into operation of the 2015 Act, the transitional provisions thereof as set out in section 70 took effect. Section 70(2) provides that where a person appealed a recommendation of the Refugee Applications Commissioner under the Act of 1996 and the appeal has not been decided by the commencement date of the 2015 Act, the person is deemed to have made an application under section 15 of the 2015 Act and the application is deemed to be an application for subsidiary protection only. Thus since on the date of commencement of the 2015 Act the Applicant had appealed the recommendation that he not be declared a refugee to the Refugee Appeals Tribunal he was deemed to have made an application for subsidiary protection under section 15 of the 2015 Act and his file went back to the International Protection Office for consideration of whether he was entitled to a subsidiary protection declaration and if necessary permission to remain.

20. The Applicant was provided with the Information Booklet for Applicants for International Protection and the Application for International Protection Questionnaire….

21. *In the present case, the civil servant who was assigned to the Applicant's application as the case worker was* [Mr D.K.]….*He is an International Protection Officer and also an Officer of the Minister. The Panel Member who conducted the interview and assisted in processing the application and drafted the draft section 39 Report and draft section 49 examination report was Ms* [A.P.]. *She is legally qualified and entered into a Contract for Services with the Minister in February 2018 and thereafter was trained in the principles and policies of International Protection….*

22. *The Applicant's case was dealt with in the exact same manner as all other such cases with Ms* [A.P.] *liaising with the caseworker* [Mr D.K.]…*in his capacity as both an International Protection Officer and officer of the Minister for the purposes of preparing her draft reports. Once these reports were finalised then* [Mr D.K.] *was required to examine the entire file and all of the documentation and to review the matter again before adopting and approving Ms* [A.P.'s] *draft findings and conclusion and signing off on his section 39 report and making the recommendation which he did and before signing off on his section 49 examination report and making the decision which he did."*

9. Mr D.K. is an Executive Officer in the IPO and an officer of the Minister for Justice and Equality. He avers, inter alia, as follows:

"2. I underwent the relevant training for Executive Officers and Higher Executive Officers in relation to the International Protection Act 2015 and the processing of international protection applications and making recommendations. As an officer of the Minister I also received training in relation to permission to remain considerations. In addition to the formal training I received, in relation to international protection applications and in relation to permission to remain considerations, I also received on the job training from the Higher Executive Officers within the team I was assigned to, who mentor new caseworkers. It was always made clear in training that it is the case worker acting in his/her capacity as an International Protection Officer and as an Officer of the Minister who has responsibility for making recommendations and decisions.

3. I was the case worker assigned to the Applicant's file, which was returned to the International Protection Office for consideration of whether he was entitled to a subsidiary protection declaration and, if necessary, permission to remain. I say that Ms [A.P.]…*was the Panel Member assigned to conduct the interview with the Applicant, assist in the processing of the application, and draft the draft section 39 Report and the draft section 49 report. However, I made the decision, in my capacity as an International Protection Officer, to make the recommendation that the Applicant should be refused a subsidiary protection declaration. I also made the decision, in my capacity as an Officer of the Minister, that the Applicant be refused permission to remain. I made these decisions having considered the Applicant's entire file, and having liaised with the Panel Member, Ms [A.P.]…in relation to her drafting of the said draft reports.*

4. My first interaction with Ms [A.P.]…*in relation to the Applicant's file was following the section 35 interview she had conducted with the Applicant when she consulted me and sought my advice and direction. This was because, I had been assigned as mentor to Ms* [A.P.]…*even before the Applicant's file was assigned to me, and she approached me seeking my advice and direction before she began working on the draft reports.*

5. Ms [A.P.]…*is a Panel Member on the Case Processing Team 3…and I am one of the caseworkers on that team. Therefore, cases where she is assigned as the Panel Member will have an Executive Officer from that team assigned as the caseworker. In this ease, it just happened that I was assigned as the caseworker and following my assignment we had a series of conversations about the file during the reviewing process up to when the final draft section 39 and section 49 reports were finalised by Ms* [A.P.]….

6. In relation to the drafting of the draft section 39 Report and the draft section 49 Report, Ms [A.P.]…*prepared a draft version of the reports on the IPO live database system, which incorporates the relevant templates and guidance in relation to the drafting of draft section 39 and draft section 49 reports. Her first draft of the draft section 39 report and draft section 49 report were submitted on the IPO live database system on 18th April 2018.*

7. After the Applicant's file was assigned to me I began my review of the file on 23 April 2018. This process continued until 25th April 2018. While I was already familiar with the file having already spoken with Ms [A.P.]…*about it, I began by reading through the entire file carefully noting key elements and discrepancies as I went. Having completed that task, I opened the draft section 39 and section 49 reports prepared by Ms* [A.P.]…*on the database system and went through the same.*

8. In relation to the draft section 39 report I made some changes to the draft and put in some comments where I felt things were either incomplete or should be changed. Often a caseworker will e mail a Panel Member to let them know about changes or recommendations they are making or proposing to the draft so that the Panel Member knows that the draft report is available for them to work on. However, at that time, I was sitting next to Ms [A.P.]…*in the office and I was able to discuss my changes, comments and recommendations as I reviewed the draft Report and these conversations took place over the course of the 3 days of my review. Over that time Ms* [A.P.]…*made changes and updates to the draft report following on from our discussions and my comments. It was not until the 25th April 2018 that Ms* [A.P.]…*signed the final draft report. While the date beneath her signature remained April 2018 being the date*

her first draft of the draft Report was submitted, the final draft section 39 report…was signed by her on 25th April 2018. I say that it was only at that point, having already conducted a thorough review of the file and having liaised with Ms [A.P.]*…on the various drafts of the draft Report that I adopted her findings and signed the section 39 report having satisfied myself that I should recommend that the Applicant should be refused a subsidiary protection declaration.*

9. It should be borne in mind that work on the draft report was an on going exercise for both Ms [A.P.] *and myself and that a separate draft was not necessarily saved every time a change was made or accepted. Normally all of the amending and redrafting of the reports is done on the International Protection Office database system and once tracked changes are accepted the original draft is overwritten and therefore it would not be normal to have a copy of any of the earlier drafts of a draft section 39 report. However, when I was conducting my review in April 2018 there was a glitch in the system whereby the database kept crashing so unusually I saved drafts of the section 39 report on the H drive of the secure office system, as did Ms* [A.P.]*….Thus, there are four earlier drafts of the draft section 39 report available* [which are exhibited]….

10. In relation to the mistaken reference in my section 39 Report to the Applicant not having established a well founded fear of persecution, this was simply an error that occurred when I was doing up my final report. When the draft report was completed, and I was happy to adopt its findings and contents, I then copied and pasted the contents into the section 39 Report template on the IPO live database system. However, instead of adjusting the concluding paragraph of the section 39 Report to note in accordance with section 70(2)(b) of the Act that the Applicant is deemed to be a person who should not be given a refugee declaration, I in error retained a paragraph in the section 39 report template which states that the Applicant has not 'established a well founded fear of persecution', which one would use if an application for a refugee declaration was being refused. I did not notice this typographical error at the time I signed my report. However, for the avoidance of any doubt I was at all times aware that the issue I had to address was whether the Applicant was entitled to a subsidiary protection declaration and the decision I made, having considered all of the information, was that I should recommend that the Applicant be refused a subsidiary protection declaration.

11. In relation to the section 49 Report, I read through the draft report, checked the available databases to make sure that all the available relevant information about the Applicant's time in the State was referenced and included and made changes to the draft. It was then submitted by me to the section 49 Quality Check Team, which was led by a Higher Executive Officer (who had extensive experience in relation to leave to remain prior to the coming into operation of the 2015 Act) and was assisted by another Higher Executive Officer and an Executive Officer. The section 49 Quality Check Team was put in place for a number of months after the coming into operation of the 2015 Act to ensure the quality of the draft section 49 reports. After the draft report was reviewed by the Quality Check Team, I made some further changes. Thereafter I discussed the changes I had made with Ms [A.P.]*…. It was then that Ms* [A.P.]*…signed her draft Report. This occurred on 25th April 2018. Once again while the date beneath her signature remained 18th April 2018 being the date her first draft of the draft Report was* submitted*, the final draft section 49 report…was signed by her on 25th April 2018. I say that it was only at that point, having already conducted a thorough review of the file and having liaised with Ms*. [A.P.] *in relation to her draft Report and having made changes to the same that I adopted her findings and signed my section 49 report having decided myself that the Applicant should be refused permission to remain.*

12. For the sake of completeness, while it is unusual to have an earlier draft of a draft section 49 Report (because reports are overwritten on the database once changes are accepted) because of the glitch in the database that was occurring at the time as outlined above, there is a draft of the draft report as sent by me to the Quality Check Team in existence and in this regard [which is exhibited*]…. In addition to this I beg to refer to a true copy of the draft section 49 report which was submitted to the Quality Check Team which also shows some of their comments and suggested revisions to the draft section 49 report [also exhibited]….13. In relation to the claim that I did not access the country of origin information, that is not the case, I did access and consider this information. The country of origin information was put on the Applicant's file by Ms* [A.P.]*…which file I considered thoroughly. It was also available to me on line. The Applicant seems to think that I did not read this information because the access date included with the country of origin information citation on the final section 39 and 49 Reports refers to the date as 18th April 2018. However, this date refers to the date that the Panel Member first accessed the relevant COI. That date is the date cited to highlight when this information was available online on that date, in case the information at the cited link becomes unavailable, for example, or if the information is updated and the link changed.*

14. For the avoidance of any doubt I reject the suggestion that the Panel Member Ms [A.P.]*… carried out any of my statutory functions under the International Protection Act 2015, whilst she was assisting with the Applicant's file she did not. It was I, as an International Protection Officer, who made the decision to recommend that a subsidiary protection declaration be refused, having considered all of the information, and it was I, as an Officer of the Minister for Justice and Equality, who made the decision that the Applicant herein should be refused permission to remain."*

10. What shines through the above-quoted affidavit evidence is that the caseworker is central at all times to the examination of a particular application. The panel member is a team member working under the immediate direction of the caseworker. The panel member assists the caseworker, she may even assist him greatly, but she does not supplant the caseworker. The examination is that of the caseworker, who as IPO/officer of the Minister takes the end-decisions. That all this is so largely ends the case brought by Mr N.Y. He has contended by reference to certain intra-departmental guidance that it is the panel member who undertakes the examination. But that guidance is just guidance, no more: there is no getting around the evidence of Ms R.M. and Mr D.K., with Ms R.M. giving a robust overview of the applicable law and process, and Mr D.K. averring to what occurred *in fact* with regard to Mr N.Y.'s case. Nor is there any reason to believe that what occurred is not an examination within the meaning of the Act, an examination in this context being the gathering and analysis of information and the drawing of conclusions so as to bring Mr N.Y.'s application through to the point of decision. There is no breach of the 2015 Act presenting in the foregoing, and there is no need to turn to case-law for guidance: the Act is clear, the facts are clear, and Mr N.Y.'s application must fail in this respect. (In passing, the court notes that the panel member at no point went beyond the role of mere assistance, so the contention made by Mr N.Y. as to whether there was due authorisation under s.76(2) of the 2015 Act falls away as irrelevant).

11. The Section 35 Problem. There is, however, a separate difficulty that presents under the Act of 2015. It relates to s.35 of that Act ("*Personal interview*"). Section 35(1) provides that "*As part of the examination referred to in section 34* ["*Examination of Application*"]*, the international protection officer shall cause the applicant to be interviewed, at such time and place that the international protection officer may fix, in relation to the matters referred to in that section*." Various provisions about the conduct of the interview follow. Thus s.35(12) states that "Following the conclusion of a personal interview, the interviewer shall prepare a report in writing of the interview." Section 35(13) then provides as follows:

"The report prepared under subsection (12) shall comprise two parts—

(a) one of which shall include anything that is, in the opinion of the international protection officer, relevant to the application [for either asylum status or subsidiary protection], and

(b) the other of which shall include anything that would, in the opinion of the international protection officer, be relevant to the Minister's decision under section 48 or 49, in the event that the section concerned were to apply to the applicant."

12. Complaint is made by Mr N.Y. that in his case the report made pursuant to s.35 of the Act of 2015 does not feature the second part contemplated by s.35(13) whereas it should have referred to the fact of Mr N.Y.'s engagement. No issue appears to be taken by the State-parties as to whether the international protection officer was possessed of the requisite opinion referred to in s.35(13)(b). Rather they contend, *inter alia*, that although s. 35(13) uses the verb "*shall*" ("*The report…shall comprise two parts*") it is a directory and not a mandatory provision, referring, *inter alia*, to *Gillen v. Commissioner of An Garda Síochána* [2012] 1 IR 574 in this regard. The court respectfully does not agree with this reading of s.35(13). First, construing s.35(13) literally, there is nothing in the 2015 Act to suggest that the word "*shall*", in s.35(13), is intended to be used by the Oireachtas in anything other than a mandatory sense. Second, by requiring the inclusion in a separate part of a s.35 report of (per s.35(13)(b)) "*anything that would, in the opinion of the international protection officer, be relevant to the Minister's decision under section 48 or 49* ", the Oireachtas clearly intended to confer a protection on applicants in the form of (a) specific consideration by the IPO of whether there is anything relevant, and (b) reduction to writing of any such thing in a separate part of the report (effectively highlighting that 'thing' for future reference). The inclusion of the relevant information elsewhere in the s.35 report neither (i) meets the express requirements of s.35(13) nor (ii) yields the protection which the Oireachtas appears to have been desirous to confer on applicants. Borrowing from the judgment of Lord Steyn in *R. v. Soneji* [2005] UKHL 49, 23 (as relied upon by O'Donnell J. in Gillen at 599) and "[p]*osing the question whether Parliament can fairly be taken to have intended total invalidity* [in the event of non-compliance]", it seems to the court that the Oireachtas, having elected to confer the protection just described, could fairly be taken to have intended that an ensuing s.48/s.49 process would be viewed as fundamentally flawed where it was preceded by a deprivation of that protection. (This also deals with the 'it is a *de minimis* breach' point made by the respondents). Given the foregoing, the court will (a) grant an order of *certiorari* quashing the decision of the second-named respondent made pursuant to s.49(4)(b) of the International Protection Act 2015 to refuse Mr Y permission to remain in the State, which said decision was notified to Mr N.Y. by letter dated 14th May, 2018, and (b) remit the 'permission to remain' aspect of Mr N.Y.'s case for fresh consideration. (In passing, the court does not accept that s.35(13)(b) creates an implied duty on the respondents, at the international protection interview, to actively question an applicant regarding permission to remain; the duty arising under s.35(13)(b) relates to the record of the interview, not to the conduct of the interview).

C. THE Z APPLICATION

13. Mr J.Z.'s Application. Mr J.Z.'s application is also concerned with the 2015 Act, it being alleged, *inter alia*, that: no lawful examination of his application for subsidiary protection was carried out within the meaning of ss. 34 and 35 of the 2015 Act; the panel member conducted the purported examination under s. 34 without lawful authority; the ensuing recommendation is not therefore in compliance with the requirements of s. 39; no substantive examination of Mr J.Z.'s application for refugee status or subsidiary protection has been conducted; and there was no due authorisation of the panel member under s.76(2) of the 2015 Act. Helpful affidavit evidence has been provided by, *inter alia*, (a) Ms R.M. (encountered previously above), (b) Ms O.M., an Executive Officer in the International Protection Office and an officer of the Minister for Justice and Equality, and (c) Mr S.F., a Higher Executive Officer in the International Protection Office and an officer of the Minister.

14. Ms R.M.'s affidavit evidence is largely along the lines of the evidence in the N.Y. proceedings. However, the following averments, which point to some differences when it comes to Mr J.Z.'s application are of note:

"22. In the present case, the draft report was reviewed by both an Executive Officer [Ms O.M.]*…and a Higher Executive Officer* [Mr S.F.]*…before the draft was finalised by the Panel Member. The International Protection Office receive relatively few applications from…*[Country B (Mr J.Z's country of origin)]. *As such, caseworkers may not be as familiar with claim types and country of origin information as they are for other countries. Therefore, when dealing with applications from…*[Country B] *the International Protection Office does not allow for a single sign off as described… above. Both Civil Servants are International Protection Officers. The Panel Member who conducted the interview and assisted in processing the application and drafted the draft section 39 Report was* [Mr McC]. *He is a qualified Barrister who was selected for the legal panel following a competitive selection process….He entered into a Contract for Services with the Minister on 14th February, 2017 and thereafter was trained in the principles and policies of International Protection….*

23. The Applicant's case was dealt with in the exact same manner as all such other cases where both an Executive Officer and Higher Executive Officer are assigned to the application…".

15. Ms O.M. avers, *inter alia*, as follows:

"5. I was the caseworker assigned to the Applicant's file on 16/04/2018. I say that Mr McC…was the Panel Member assigned to conduct the interview with the Applicant, assist in the processing of the application and draft the draft section 39 Report. However, I made the decision, in my capacity as International Protection Officer in relation to the findings that the Applicant has not established a well-founded fear of persecution as required by section 2 of the 2015 Act for the purposes of being eligible for a refugee declaration and in relation to the findings that he was not a person eligible for subsidiary protection because there were not substantial grounds shown for believing that he would face a real risk of suffering serious harm if returned to…[Country B] *as required by section 2 of the 2015 Act. I made the decision having considered the Applicant's entire file, and having liaised with the Panel member, Mr McC… in relation to his drafting of the draft section 39 report. Prior to making my decision I had liaised with Mr* [S.F.], *one of the Higher executive Officer's on my team, and he too having reviewed the Applicant's file and having discussed the matter with me was of the same view in relation to the decision and also concluded that the Applicant had not established a well-founded fear of persecution and was not a person eligible for subsidiary protection and he recommended that the Applicant be given neither a refugee declaration not a subsidiary protection declaration.*

6. My first interaction with Mr McC…in relation to the Applicant's file was following the section 35 interview he had conducted with the Applicant when he completed his first draft of the draft section 39 Report on the IPO live database system, which incorporates the relevant templates and guidance in relation to the drafting of the draft section 39 report. His first draft of the draft section 39 report was completed on the IPO live database system on 4th May 2018. There were at least 3 drafts of the draft section 39 report done before the final draft report was signed off by the Panel

Member and I communicated with him both verbally and by way of e-mail in relation to the report and suggesting changes. The amending and re-drafting of the report is done on the International Protection Office database system and once tracked changes are accepted the original draft is overwritten and therefore there are no copies of the earlier drafts available. In relation to the e mails as sent to the Panel Member these were sent on the 23rd and the 30th May just before the final draft report was completed and signed off by the Panel Member. I suggested one final change to the draft report which was accepted by the Panel Member….

7. I say that before making any decisions on the file, I read through the entire file carefully noting key elements and discrepancies as I went. For avoidance of any doubt, the Country of Origin information referenced in the draft report, together with the US Department of State Human Rights Report was also read and considered by me. I was not overly familiar with the situation in…[Country B] *and therefore decided that it was important that before I made any decision of finding or fact I would familiarise myself with the situation in…* [Country B] *in terms of human rights and freedoms. Therefore, in addition to considering the Country of Origin information cited by the Panel Member, I decided to read and consider the US Department of State Human Rights Practices Report 2017. Having completed that task, I opened the draft section 39 report prepared by Mr McC…on the database system and went through the same. Any changes deemed necessary were inserted as tracked changes. The final draft of the draft report was then reviewed by Mr* [S.F.]*…the Higher Executive Officer, who confirmed that he was happy with the report and that no further changes other than those I had suggested, were necessary. The Panel Member Mr McC…signed off on his Report on 30th May 2018. While the date beneath his signature remained 4th May 2018 - being the date of his first draft of the draft Report was completed, the final draft section 39 report…was signed by him on 30th May 2018*. [Court Note: This suffices to explain the discrepancy arising.]

8. At that point, having already conducted a thorough review of the file and having liaised with Mr McC…in relation to drafts of the draft Report, I adopted his findings, signed the 39 report, having satisfied myself of all the relevant facts. Mr [S.F.]*…the Higher Executive Officer and his team agreed with me and decided that we should recommend the applicant be refused both a refugee declaration and a subsidiary protection declaration.*

9. *In relation to the claim that I did not access country of origin information that is not the case. I did access and consider this information. The country of origin information was referenced in the draft report by Mr McC…and he also included the date on which he accessed it. I accessed this country of original information on line and considered it thoroughly. The applicant suggests that it was 'evident' that I had not 'accessed' the country of origin information, presumably because the access date included the country of origin information citation on the final section 39 report refers to the date as 4th May 2018. However, this date refers to the date that the Panel Member accessed the relevant COI. This date is cited to highlight when this information was available on line in case the information of the cited link becomes unavailable at a later stage, for example, or if the information is updated or the link changed. Country of origin information in paper form is not usually supplied with the recommendation to the applicants or their legal advisors as the necessary link to the information in digital form is provided instead. No inference can or should be drawn that the country of origin information was not further accessed or examined after the cited date. In any event, as set out above, I confirm I did access the country of origin information in this case.*

10. For the avoidance of any doubt, I reject the suggestion that the Panel Member Mr McC…carried out any of my statutory functions under the International Protection Act while he was assisting with the Applicant's file – he did not. It was I and Mr [S.F.]*…as International Protection Officers who made the decision to recommend that a refugee declaration and a subsidiary protection declaration be refused, having considered all of the information."*

16. In passing, the court notes that exhibited to Ms O.M.'s affidavit is, *inter alia*, an exchange of e-mails between Ms O.M. and Mr McC, these reading, *inter alia*, as follows:

23 May 2018, 15:24 [from Ms O.M. to Mr McC]

"…I have gone through the 39 for this file. There was one suggested change. We can't really reject his claim due to his character and conduct in Ireland, even though the bit you put in, the material facts was very well written. It's all laid out clearly in the 49 repeatedly though, so he won't be getting anything."

30 May 2018, 12:33 [from Mr McC to Ms O.M.]

"…Apologies for the delay! I have accepted all the changes, thanks."

17. Mr J.Z. contends that Mr McC's reply *("I have accepted all the changes"*), involves a form of wording which suggests that Mr McC was, or perceived himself to be, entitled to decide whether to accept or reject the proposed changes. All the court sees is a courteous exchange between fellow team members in which Ms O.M. e-mails an electronic document to the panel member who is acting under her direction and points out a tracked change that she has made. Mr McC effects the tracked change electronically and that is the end of matters. The exchange does not have the result that all of the affidavit evidence furnished by the respondents as to who does what is in some respect false or falls in any respect to be discounted. Returning to that affidavit evidence, Mr S.F. avers, inter alia, as follows:

"*5. I say that the Applicant's file was assigned to Ms* [O.M.] *and because Ms* [O.M.]*…and I are on the same team in case processing the file was then passed to me by Ms* [O.M.]*…for my consideration as this was not a single sign off type case.*

6. I say that Ms [O.M.]*… liaised with the Panel Member Mr McC in relation to his draft. When the draft section 39 report was reviewed by Ms* [O.M.] *for the final time with suggested tracked changes, I reviewed that draft. Before I did so, I read through the entire file carefully, including Country of Origin information referenced in the draft report, having done so I was in agreement with Ms* [O.M.]*…and was satisfied that no further changes were required to the draft report and I told Ms* [O.M.]*…this*.

7. Having considered the entire file and the information contained therein, I was satisfied that the Applicant had not established a well-founded fear of persecution if returned to [Country B] *and substantial grounds had not been shown for believing that he would face a real risk of suffering serious harm if returned to* [Country B] *and therefore I recommended that he be given neither a refugee declaration nor a subsidiary protection declaration and I signed the section 39 Report on 31st May 2018.*

8. For the avoidance of doubt I reject the suggestion that the Panel Member Mr McC…carried out any of my statutory functions under the International Protection Act 2015, whilst he was assisting with the Applicant's file – he did not. I decided having reviewed the entire file and having liaised with Ms [O.M.]*…that the recommendation of the Minister should be that the Applicant be refused both a refugee declaration and a subsidiary protection declaration."*

18. What shines through the above-quoted affidavit evidence is that the civil servants are central at all times to the examination of a particular application. The panel member is a team member working under the immediate direction of Ms O.M. He assisted Ms O.M., he may even have assisted her greatly, but he did not supplant her or Mr S.F. The examination is that of the civil servants, with Mr S.F. taking the end-decisions. That all this is so effectively ends the case brought by Mr J.Z. He has contended by reference to certain intra-departmental guidance that it is the panel member who undertakes the examination. But that guidance is just guidance, no more; there is no getting around the evidence of Ms R.M., Ms O.M. and Mr S.F. as to what occurred *in fact* in Mr J.Z.'s case. Nor is there any reason to believe that what occurred is not an examination within the meaning of the Act, an examination in this context being the gathering and analysis of information and the drawing of conclusions so as to bring Mr J.Z.'s application through to the point of decision. There is no breach of the Act of 2015 presenting in the foregoing, and there is no need to turn to case-law for guidance in this regard: the Act is clear, the facts are clear, and Mr J.Z.'s application must fail. (In passing, the court notes that the panel member at no point went beyond the role of mere assistance, so the contentions made by Mr J.Z. as to whether there was due authorisation under s.76(2) of the Act of 2015 fall away as irrelevant).

D. THE DUTY OF CANDOUR

19. Duty of Candour. The law on the duty of candour has recently been summarised in *Murtagh v. Judge Kevin Kilrane* [2017] IEHC 384, 8-20. The court does not consider any breach of that duty to present in any of the applications now before it. The respondents in the various applications have, in truth, been entirely frank with the court as to how they understand matters to stand. There was suggestion that affidavit evidence from the panel members might usefully have been furnished. That suggestion, it seems to the court, is misplaced: the key factual issue in each of the applications is whether the impugned decisions were made as claimed, not what the attitude of the relevant panel members was.

20. In Mr J.Z.'s application, objection was taken to para.12 of the statement of opposition, which states as follows:

12. It is denied that it was necessary to authorise…Panel Members to perform statutory functions pursuant to section 76(2) of the Act in circumstances where their role is merely to assist the International Protection Officers who are the persons carrying out the statutory function. Without prejudice to the foregoing, insofar as an authorisation pursuant to section 76(2) was required (which is denied) the contract for services entered into by the Minister with the Panel Members amounted to an authorisation pursuant to Section 76(2)."

21. Counsel for Mr J.Z. contended that the above involves a manifest breach of the duty of candour, submitting, inter alia, at hearing that "[T]*here is an onus on a State body to specify the facts upon which it is defending an application and it is not sufficient to say, 'Well, maybe we were acting under 76(1) but if the Court doesn't accept that, well then we are going to plead in the alternative, we're acting under 76(2).'*" The court respectfully does not accept this contention. The applicable factual matrix, as understood by the State-parties, is stated; the law, as understood by the State-parties, is referenced; the State parties advance two bases on which they consider that their behaviour has accorded with the law as they understand it; and (although this strays beyond the reach of the duty of candour) the State parties have properly left adjudication on Mr J.Z.'s within application to an independent court of law. The foregoing is precisely how matters are supposed to operate: no breach of the duty of candour presents.

E. CONCLUSION

22. The principal reliefs sought by the various applicants are:

(i) in the case of Ms I.X., an order of *certiorari* quashing the recommendation of the first-named respondent that Ms I.X. should not be declared to be a refugee and which was notified to Ms I.X. on 16th August, 2016,

(ii) in the case of Ms F.X., an order of *certiorari* quashing the recommendation of the first-named respondent that Ms F.X. should not be declared to be a refugee and which was notified to Ms F.X. on 16th August, 2016,

(iii) in the case of Ms X.X., an order of *certiorari* quashing the recommendation of the first-named respondent that Ms X.X. should not be declared to be a refugee and which was notified to Ms X.X. on 16th August, 2016,

(iv) in the case of Mr N.Y., (a) an order of *certiorari* quashing the recommendation of the first-named respondent made pursuant to s.39(3)(c) of the International Protection Act 2015 in conjunction with the transitional provisions in s.70(2) that Mr N.Y. should be given neither a refugee declaration nor a subsidiary protection declaration, which was notified to Mr N.Y. by letter dated 14th May 2018; and (b) an order of *certiorari* quashing the decision of the second-named respondent made pursuant to s.49(4)(b) of the International Protection Act 2015 to refuse Mr N.Y. permission to remain in the State, which was notified to Mr N.Y. by letter dated 14th May, 2018, and

(v) in the case of Mr J.Z., an order of *certiorari* quashing the recommendation of the first-named respondent made pursuant to s.39(3) of the International Protection Act 2015 that Mr J.Z. should be given neither a refugee application nor a subsidiary protection declaration, which was notified to Mr J.Z. by letter dated 19th June 2018.

23. For the reasons stated above:

(I) the court will, as indicated previously above, (a) grant an order of *certiorari* quashing the decision of the second-named respondent made pursuant to s.49(4)(b) of the International Protection Act 2015 to refuse Mr N.Y. permission to remain in the State, which decision was notified to Mr N.Y. by letter dated 14th May, 2018, and (b) remit the 'permission to remain' aspect of Mr N.Y.'s case for fresh consideration;

(II) except as referred to at (I), the above-mentioned and all other reliefs sought by the various applicants are respectfully refused.