THE COURT OF APPEAL

Neutral Citation Number: [2015] IECA 118

Record No. 2014/20CA

Peart J.
Irvine J.
Hogan J.
BETWEEN/

EVELYN DANQUA

APPELLANT

- AND –

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice Gerard Hogan delivered on the 10th day of June 2015

1. In the absence of a specific requirement imposed by European Union law, the principle of national procedural autonomy permits each Member State to determine for itself the conditions by reference to which the rights and remedies thereby conferred by EU law will be enforced. It is by now well established that the principle of national procedural autonomy is subject to the twin requirements of effectiveness and equivalence.

2. It is the latter principle which is potentially engaged in the present case. The basic principle remains that articulated by the Court of Justice in Case 33/76 *Rewe-Zentralfinanz AG v. Landwirtschaftskammer für das Saarland* [1976] E.C.R. 1989:

> "Applying the principle of cooperation laid down in Article 5 of the [EC] Treaty, it is the national courts which are entrusted with ensuring the legal protection which citizens derive from the direct effect of the provisions of Community law.
>
> Accordingly, in the absence of Community rules on this subject, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of Community law, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature."

3. In the present case the applicant (whose circumstances I will shortly describe) made a very belated application for subsidiary protection in 2013, having first applied for refugee status in 2010 and having been refused asylum in February 2011. The Minister refused to entertain this belated application for subsidiary protection, contending that she had not made the application within the 15 day time period which had been prescribed in correspondence with her. It should be stated that the 15 day time period does not have a legislative basis, but is rather one which has been administratively imposed. The evidence before the Court was that the 15 day time period was frequently extended in other cases on a case by case basis.

4. The applicant maintains that the 15 day time limit infringes the principle of equivalence because no similar time limit is contained in respect of refugee applications. She also maintains that the decision to refuse to extend time to allow for an application of this kind is also unreasonable in law, specifically, because the Minister's refusal to entertain the late application was predicated on the factual assumption that the applicant had made a conscious decision not to apply for subsidiary protection at the time in February/March 2011, when this was not, in fact, the case.

5. The applicant's contentions were rejected in a reserved judgment delivered by MacEochaidh J. in the High Court on 16th October 2014: see *ED v. Minister for Justice and Equality* [2014] IEHC 456.

6. Before considering any of these questions it is first necessary to set out the relevant facts.

The circumstances in which the applicant came to make an application for asylum

7. The applicant, Ms. Danqua, is a 50 year old national of Ghana. She applied for refugee status in the State on 30th April 2010, claiming that she was a potential victim of what is known as the Trokosi system. This is a well documented practice which subsists in certain parts of Ghana whereby family members – usually female teenagers – are pledged by other family members for indentured service at a local pagan shrine in order to atone for the past deeds of the family. The pledged family members (the Trokosis) are required to help with the upkeep of these shrines and often fall prey to sexual predation at the hands of the fetish priests and local tribal chiefs.

8. Ms. Danqua's application was, however, refused on credibility grounds by a decision of the Refugee Application Tribunal by decision dated 13th January 2011. The Tribunal concluded that given her age, Ms. Danqua, did not match the profile of those who were subjected to the Trokosi practice and, for this and other reasons, the application was refused. The applicant was legally represented before the Tribunal by the Refugee Legal Service and she did not seek to challenge the decision of the Tribunal by way of judicial review proceedings.

9. The Minister subsequently issued a proposal to deport Ms. Danqua on 9th February 2011 but that letter also outlined her various options including her right to apply for a subsidiary protection and also to apply for humanitarian leave to remain. In that information leaflet she was informed "if you do not apply for subsidiary protection at the same time as you make representations under s. 3 of the Immigration Act 1999 (as amended) such an application will not be considered at a later date."

10. As it happens, no such subsidiary protection application was received for reasons that will shortly be set out. By way of background, it should be noted that the applicant herself is functionally illiterate and she spoke little English at the time of her arrival

in the State. It also appears from an attendance note made by the Refugee Legal Service ("RLS") on the date of the hearing (7th October 2010) that the Tribunal member had commented that the Tribunal had endeavoured to secure an interpreter, but that no relevant translator in respect of Ms. Danqua's mother tongue could be found in either the UK or Ireland. It is also clear from a further attendance note prepared by the relevant RLS solicitor on 17th February 2011 that while she informed Ms. Danqua of the up to date position, she was nonetheless concerned that Ms. Danqua "does not seem to understand me."

11. At all events, following the adverse decision of the Tribunal the RLS informed Ms. Danqua that it did not consider that there were any substantial grounds as would warrant a subsidiary protection application:

> "We have examined the decision carefully and, unfortunately, do not believe that there are grounds for judicial review proceedings in your case. You may, obtain a second opinion at your own cost from a private solicitor. If you wish to obtain a second opinion please do so immediately as the time limits for judicial review are very strict, fourteen days from the date you receive the decision. You do, however, have the right to make applications for subsidiary protection and leave to remain in the State on a temporary basis. You will shortly receive a letter from the Department of Justice, Equality and Law Reform giving you fifteen working days in which to make these applications.
>
> Please note we have reviewed your file including the negative decision from the Refugee Appeals Tribunal, and are of opinion that the criteria for granting a subsidiary protection application are not likely to be met on the basis of the information on your file and relevant country of origin information. As such, we will not be assisting you in preparing the application for subsidiary protection.
>
> If you still wish to make a subsidiary protection application you may:-
>
> - submit an application yourself in the form attached to your Section 3 letter;
> - instruct a private solicitor at your own expense to submit the application;
> - appeal, or seek review of, our decision not to assist you with a subsidiary protection application." (emphasis in original)

12. However, on 1st March 2011 the Refugee Legal Service did, in fact, make an application for humanitarian leave to remain. Some two and a half years later the on 23rd September 2013 Ms. Danqua was informed that a deportation order had, in fact, being signed on 17th September 2013 and that her application for leave to remain had been refused.

13. By this stage, however, Ms. Danqua had found a new set of private solicitors who were prepared to act for her. On 8th October 2013 her new solicitors sought to submit an application for subsidiary protection and to revoke the deportation order. This application was not successful and the appellant was informed of this decision by letter dated 5th November 2013. In that letter the Minister stated:

> "Even allowing for a generous interpretation of the fifteen day working period your "window of opportunity" for the management of an application for subsidiary protection would have closed in or about 7th/8th March 2011. As a result we cannot accept such an application from your client some two and a half years later.
>
> In relation to the contention that the Refugee Legal Service may have advised your client against the lodgement of an application for subsidiary protection, the position is that an asylum or protection applicant solely and singularly is responsible for the lodgement of any application and within the prescribed period of time. The role of a legal representative is to give advice or guidance, assist in drafting etc. Ultimately the decision to lodge or not to lodge a specific application rests solely and singularly with the applicant themselves, given that it is the applicant who is "instructing" the legal representative and not *vice versa*. This being the case it was there to be taken that it was your client's decision not to lodge an application for subsidiary protection at the appropriate time. As a result, and given that your client's fifteen day window of opportunity for lodgement of an application for subsidiary protection has closed since March 2011, we cannot accept, or determine, such an application for your client at this point in time."

14. This letter brings into sharp focus the question of the nature of the advice which the applicant had actually received in February 2011. The trial judge, MacEochaidh J., was clearly exercised by this because he afforded the Legal Aid Board an opportunity to be joined as a notice party to the proceedings so that it could comment on these issues and, in particular, its representation of Ms. Danqua so far as the right to apply for subsidiary protection was concerned.

15. In the light of this development, the Director of the Board wrote to the applicant's new solicitors on 21st July 2014 stating:-

> "It may suffice to set out the Board's procedures/guidelines in relation to the provision of legal services for subsidiary protection that were operative at the time that Ms. Danqua received the correspondence from the Irish Nationalisation and Immigration Service dated 9th February... it would be noted that these guidelines provided the Board ought not to submit an application for subsidiary protection on behalf of the client unless the assigned solicitor is of the view that the criteria for granting subsidiary protection are likely to be met on the basis of a client's information and relevant country of origin information.
>
> While the guidelines provide the considerations given to the "merits" of an application for subsidiary protection ... a practice is adopted and precedent letters drafted which had the effect of the solicitor making determination of the merits after the negative decision was received from the Refugee Appeals Tribunal and prior to the receipt of correspondence from the Irish Nationalisation and Immigration Service. The letter of 25th January 2011 .... was written to Ms. Danqua in that context."

16. The Director went on to state:-

> "For the sake of completeness I should draw attention to the fact that the Board guidelines in relation to subsidiary protection matters have since being revised and a copy of the current guidelines is attached... it would be noticed that there is no "merits" test applied and applications for subsidiary protection are made in all cases subject to the client's instructions."

17. It would seem from this correspondence that the practice of the RLS at the relevant time (i.e., February 2011) was that it was not prepared to act for applicants in subsidiary protection applications following an adverse asylum application unless the instructing solicitor in the RLS considered that there was a reasonable prospect of success. That practice has since changed and the RLS will now act in all such cases if the client so instructs them.

18. All of this is relevant to the second part of the applicant's claim, namely, that the subsequent decision to exclude her application for subsidiary protection was unreasonable in law, because the premise of the Minister's refusal letter – namely, that the applicant had made a conscious decision following legal advice not to apply for subsidiary protection – was not factually sustainable, not least in the light of the new information which has since come to light.

The equivalence issue

19. In essence, the contention advanced by counsel for the applicant, Mr. Power S.C., is as follows: no time limit is specified by law in respect of applications for refugee status, whereas a 15 day limit has been imposed – if not by law, at least administratively - in respect of applications for subsidiary protection. He submits that while these remedies should be regarded as equivalent for this purpose, there is nonetheless plainly a different time limit prescribed in the case of asylum applications.

20. Counsel for the Minister, Mr. Barron S.C., responds by saying that even if applications for asylum and subsidiary protection are regarded as equivalent for this purpose, there is still no breach of this principle, because asylum applications are governed either exclusively – or, the very least almost exclusively – by EU law, so that there is no question of the differing treatment of applicants relying on the EU law right (*i.e*., subsidiary protection) being disadvantaged in terms of time limits by comparison with an equivalent remedy governed by domestic law.

21. Mr. Barron S.C. further submitted that even if there were such a disadvantage, there is an objective justification for such differing treatment. In the nature of things, there cannot be a formal time limit on asylum applications. A non-EU national might, for example, have no need to apply for asylum on arrival in Ireland as, say, a student or an employee only to find some time later that an unexpected change of government or even a *coup d'etat* in his or her country of origin might trigger the necessity for an asylum application as a refugee *sur place*.

22. The position in relation to subsidiary protection is completely different, as under our bifurcated system of international protection, the applicant must first already have applied for asylum before separately applying for subsidiary protection in the event that the asylum application has been refused, even if that applicant for such protection is an applicant *sur place*. The Court of Justice has already held that this bifurcated system does not infringe the principle of effectiveness, provided that "the national procedural rule does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time": see C-604/12 *HN v. Minister for Justice, Equality and Law Reform* [2014] E.C.R. I-000, para. 57. The 15 day time limit for subsidiary protection applications serves the goal of ensuring the entire procedure for international protection is completed within a reasonable time. Mr. Barron S.C. accordingly submitted that the time limit in the case of subsidiary protection applications thus serves an important purpose which differentiates it from the case of asylum applications.

23. In this context it should be noted that the reasoning of the Court of Justice in *HN* proved decisive so far as the High Court was concerned. In HN the Court of Justice had stressed that our bifurcated system of international did not, in principle, infringe EU law. This finding was, however, subject to two conditions, namely, that it must be possible "to submit the application for refugee status and the application for subsidiary protection at the same time" and, second, that the entire procedure did not mean that the application for subsidiary protection was "considered only after an unreasonable length of time."

24. In rejecting the contention that the principle of equivalence had been breached, MacEochaidh J. emphasised the fact that in the light of the Court of Justice's judgment in *HN* in May 2014 it was clear that an applicant had the right to apply for subsidiary protection at the same time as an application for asylum:

> "In light of the judgment in *H.N.* it is clear that it is open to an applicant for international protection to make an application for subsidiary protection either at the same time as their application for asylum or they may wait for the conclusion of the asylum process before making their application for subsidiary protection within fifteen working days thereafter, should they so wish. Their application for subsidiary protection will not be considered until the asylum process has been completed and the asylum application is rejected. Therefore it cannot be said that they have been subject to a less favourable regime than an applicant for asylum. In short, the periods in which application for asylum and subsidiary protection must be made are the same save that, at the election of the applicant, application for subsidiary protection may be postponed for fifteen working days following notification of a negative asylum decision. The gravamen of the applicant's complaint is that there is a difference between the time limit for application for asylum and the time limit for application for subsidiary protection which results in a shorter period for subsidiary protections applications. There is no such difference. The applicant treats applications for asylum and subsidiary protection as if they were entirely separate processes each with separate rules as to when the applications may be made. This is a misconception. Asylum and subsidiary protection are complimentary and linked forms of protection for persons who say they fear harm. The time limits are also linked. I reject the contention that the rules provide a shorter time to apply for subsidiary protection. An applicant cannot choose between one or the other. Application for asylum must be made followed by application for subsidiary protection if needed. As I said earlier, if anything, this is not a shorter period; it is longer."

25. It must be recalled, however, that at the time when Ms. Danqua made her asylum application in 2010 it was not understood or appreciated that EU law required the possibility that applicants could apply for subsidiary protection at the same time as their application for asylum. Indeed, such is clear from the facts of *HN* itself, for the Minister had refused to consider his application for subsidiary protection stating – as the Court of Justice put it (at para. 20) – "under Irish law, the basis for making an application for subsidiary protection was that the person applying had been refused refugee status." There is nothing at all to suggest that Ms. Danqua had been informed by the Minister that she could have submitted her subsidiary protection application at the same time as the asylum application and, indeed, it is not even clear that, in view of what had actually happened in *HN*, such an application for subsidiary protection would even have been entertained by the Minister prior to the determination of the asylum application itself.

26. In practice, therefore, the position at the time when Ms. Danqua first applied for asylum in 2010 was that there was a 15 day limitation period applied to subsidiary protection applications which ran from the date the Minister communicated with the applicant in the immediate aftermath of the refusal of the asylum application. This limitation period was, as we have noted, administratively imposed and was not contained in statute. In response to questions put by the Court in oral argument, Mr. Barron S.C., accepted that this 15 day time limit was subject to exceptions and that the Minister had in the past accepted late applications on an *ad hoc* case by case basis.

Whether the principle of equivalence is engaged in the present case
27. In assessing the broader question of whether the principle of equivalence is engaged in the present case, a number of individual aspects of this overall claim also require to be addressed. First, is the comparison between claims based on asylum and subsidiary protection sufficiently similar for this purpose? Second, if it is, can it be said the claim to asylum rests exclusively on EU law or can it be regarded as a "mixed" question of EU and national law? Third, does it suffice for the purposes of the principle of equivalence that the comparator is itself partly based on domestic law but also partly derived from EU law. We can address these questions in turn.

Are applications for asylum and subsidiary protection sufficiently close comparators?
28. Subject to any final determination of the Court of Justice to the contrary, we are of the view that applications for asylum on the one hand for subsidiary protection on the other are sufficiently close comparators so far as this dimension of the principle of equivalence is concerned. Not only are asylum and subsidiary protection twin and complementary features of the international protection system, but it is clear from Article 2 and Article 18 of Directive 2004/83/EC ("the Qualification Directive") that an applicant is entitled to subsidiary protection if substantial grounds have been shown for believing that, if returned to his country of origin, he would face a real risk of suffering serious harm and is unable or, owing to such risk, unwilling to avail himself of the protection of that country.

29. It is clear from the judgment of Fennelly J. in *TD v. Minister for Justice* [2014] IESC 22 that in cases of this kind:

> "Regard must be had to the essential nature of the subject-matter of the claim. The Court should look at the substance of the rule whose compatibility is under scrutiny to see whether it is discriminatory."

30. Viewed from that perspective, it would be difficult to deny that the essential nature of the subject-matter of the claims of asylum and subsidiary protection is sufficiently similar for this purpose. The entire object of these applications is broadly similar, namely, to secure one or other form of international protection, even if these forms of protection are different, both in terms of the underlying criteria and the effect of the grant of protection.

31. It may be noted that in a case presenting quite similar questions, *FA (Iraq) v. Home Secretary* [2011] UKSC 22, [2011] 4 All E.R. 503, the UK Supreme Court considered that given the uncertainties surrounding the question of the similarity of the comparator that a reference under Article 267 TFEU was required on this very question. (It should be stated that it is understood that this case was subsequently settled, so that the proposed reference to the Court of Justice was ultimately withdrawn.)

32. While this Court is of the view that as asylum and subsidiary protection procedures overlap and that they are, in principle, appropriate comparators for this purpose, this is nonetheless a matter which on which guidance might usefully be given by the Court of Justice. We propose to return briefly to this question at the conclusion of this judgment.

Are applications for asylum exclusively based on EU law?
33. It is clear that whereas most applications for asylum are now governed by EU law, Member States nonetheless retain their own jurisdiction to grant asylum in appropriate cases. This is made expressly clear by Article 3 of the Qualification Directive itself. This was further confirmed by the decision of the Court of Justice in Case C-57/09 and Case C-101/09 *Bundesrepublik Deutschland v. B und D* [2010] E.C.R. I-000, para. 121 where the Court stated that Article 3 of the Qualification Directive:

> "…..must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to Article 12(2) of the Directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive."

34. While in practice, however, the vast majority of asylum claims are dealt with under the Qualification Directive regime, the fact remains that it remains at least theoretically possible for Member States to grant asylum in accordance with their own national law. To that extent, therefore, the claim to asylum is partly derived from EU law and partly derived from national law.

Does it suffice that the comparator is partly derived from EU law?
35. The traditional position had, of course, been that the principle only came into play where the comparator had been with domestic law remedies. This point was well expressed by Advocate General Léger in Case C-326/96 *Levez v T. H. Jennings (Harlow Pools) Ltd* [1998] ECR I-7835. One of the questions which had been referred to the Court of Justice by the (UK) Employment Appeals Tribunal sought guidance on how the expression "similar domestic actions" should be interpreted in the field of equal pay legislation. Advocate General Léger described the aim of the principle of equivalence in para 26 of his opinion:

> "The aim of this principle is that domestic law remedies should safeguard Community law 'without discrimination' that is to say, exercise of a Community right before the national courts must not be subject to conditions which are more strict (for example, in terms of limitation periods, conditions for recovering undue payment, rules of evidence) than those governing the exercise of similar rights derived wholly from domestic law."

36. In the more recent case-law the phrase "derived wholly from national law" (and other similar phrases such as "similar but purely national disputes": see Joined Cases 205 to 215/82 *Deutsche Milchkontor GmbH* [1983] E.C.R. 2633, para. 19 found in the earlier case-law) has not, as such, been used in the more recent case-law. This omission may (or may not) prove to be juristically significant. The decision in Case C-298/06 *Impact* [2008] E.C.R. I-2483 provides a good representative example of the contemporary case-law where the Court of Justice stated (at para. 46):

> "On that basis, as is apparent from well-established case-law, the detailed procedural rules governing actions for safeguarding an individual's rights under Community law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness)….."

37. In *Impact,* therefore, the reference was to "similar" domestic actions and not to "wholly" domestic actions. The real issue, however, is whether the comparator must derive from a wholly domestic legal source. Alternatively, would it suffice that – as here - the comparator is from a "mixed" source of EU law and domestic law?

38. As Lord Kerr acknowledged in his judgment in **FA (Iraq),** this issue is not straightforward. At one level a comparator derived a mixed source of this kind might be thought to be inapt, since the entire object of the rules as to equivalence and effectiveness is to prevent the litigant relying on rights *deriving from EU law* from being placed at a disadvantage in respect of rights *deriving from domestic law*. This might be thought to be especially true in the present case, where, to all practical intents and purposes, the comparator in question (namely asylum applications) in practice derives exclusively from EU law. It must also be recalled that the right

to asylum and to subsidiary protection both derive from the same source, namely, the Qualification Directive, even if the recitals to that Directive also makes clear that the right to refugee status under EU law is declaratory of a pre-existing right created by the 1951 Geneva Convention.

39. On the other hand, it could scarcely be correct that an otherwise appropriate comparator was to be dis-applied for this purpose because in some respects the right in question did not wholly derive from domestic law and retained some – possibly even in some cases exiguous – elements of EU law. It must also be recalled that the right to refugee status was, up to 1996, a right which was granted by the Government in the exercise of its own purely sovereign powers under Article 28.2 of the Constitution and, subsequently, by virtue of legislation enacted by the Oireachtas, namely, the Refugee Act 1996 ("the 1996 Act"), which legislation sought to give effect in Irish law to the requirements of the Geneva Convention. Thus, the right to refugee status originally derived from a purely domestic source, even if it is now in practice almost exclusively governed by EU law.

40. It is also easy to overlook in this context the fact that the right to apply for asylum is provided for in ss. 2 and 3 of the 1996 Act and that these were the legal provisions which were actually applied by the Tribunal in the present case to determine Ms. Danqua's asylum application. The 1996 Act (as amended) has not been replaced and it must be regarded as a domestic effectuation of the obligations subsequently imposed by the Qualification Directive 2004. The question thus arises as to whether the 1996 Act ceased to be eligible as a comparator for this purpose by virtue of the fact that the right to asylum in the case of third country nationals was subsequently re-stated by the provisions of the Qualification Directive.

41. This was the general background to the UK Supreme Court's decision in *FA (Iraq).* In that case the English Court of Appeal had ruled that the principle of equivalence required that a right of appeal against an international protection decision be recognised since the lack of an appeal (for which the relevant legislation had not provided) would mean that this claim, based as it was on EU law, was being subjected to rules which were less favourable than those which applied to the asylum claim, such a claim being based on national law. The British Home Secretary appealed that decision to the UK Supreme Court on the ground that the mooted comparators (the asylum claim and the humanitarian protection claims) both have their origin in the Qualification Directive and were therefore are rooted in EU law.

42. In his judgment Lord Kerr discussed many of the questions with which we also have had to grapple in the present case. He concluded ([2011] 4 All E.R. 503, 516):

> "It is not a matter of dispute that the asylum claim is based on provisions that were enacted on foot of the United Kingdom's obligations under the Qualification Directive. True it is that they mirror requirements set out in the Refugee Convention and that this may have been the original source of many of the provisions of the Qualification Directive. But this does not answer the essential question of whether the claim to refugee status can qualify as a valid comparator either because it can be described as having a 'mixed' source, *i.e.,* it is based on both EU and domestic law or because the Refugee Convention is the original source of the relevant claim to refugee status and its provisions shaped those contained in the Qualification Directive. Again, it does not appear that these questions have been addressed directly in the case law of the Court of Justice and for that reason also a reference is required."

43. As we have already noted, it appears that the proceedings in *FA (Iraq)* were ultimately compromised, so that the Article 267 TFEU reference did not proceed. As, however, the issues of EU law presented here are substantially similar in principle to those which were at issue in *FA (Iraq),* it seems to us appropriate that this Court should make a reference pursuant to Article 267 TFEU to the Court of Justice. We consider that this step is required at this juncture, because should it transpire that the 15 day administrative time limit which the Minister imposed in respect of the application for subsidiary protection is indeed contrary to EU law as breaching the equivalence principle, the second question (namely, the reasonableness of the Minister's decision to refuse to extend time) simply does not arise, as there no would no longer be any formal time limit.

Conclusions

44. This Court has accordingly decided, for the reasons stated, to adjourn the present appeal pending a reference to the Court of Justice of the European Union pursuant to Article 267 TFEU on the following questions:

45. First, can an application for asylum, which is governed by domestic legislation which reflects a Member State's obligations under the Qualification Directive, be regarded as an appropriate comparator in respect of an application for subsidiary protection for the purposes of the principle of equivalence?

46. Second, if the answer to the first question is in the affirmative, is it relevant for this purpose that the time limit imposed in respect of applications for subsidiary protection

> (i) has been imposed simply administratively and
>
> (ii) that the time limit serves important interests of ensuring that applications for international protection are dealt within a reasonable time?

47. The Court would also invite the parties to make such further submissions in respect of these draft questions as they consider appropriate.