Neutral Citation Number: [2025] EWHC 922 (Admin)

Case No: AC-2024-LON-002808

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Tuesday, 15th April 2025

Before:
FORDHAM J

- -

Between:
THE KING (on the application of ALNOOR) **Claimant**
- and -
SECRETARY OF STATE FOR THE HOME DEPARTMENT **Defendant**

- -

- -

Emma Fitzsimons (instructed by Duncan Lewis) for the **Claimant**
Amanda Jones (instructed by GLD) for the **Defendant**

- -

Hearing date: 27.3.25
Draft judgment: 4.4.25

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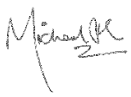
Approved Judgment



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FORDHAM J

This Judgment was handed down remotely at 10am on 15.4.25 by circulation to the parties or their representatives by email and by release to the National Archives.

FORDHAM J:

Introduction

1. This is a case about the lawfulness of a Negative Reasonable Grounds ("NRG") Decision in the context of human trafficking, a species of modern slavery. The NRG Decision was taken for the Home Secretary by an IECA decision-maker (see §4 below) on 20 May 2024. There is an issue about whether the judicial review claim has become "academic" by reason of the grant to the Claimant of refugee status (see §26 below). There is a question about what "anxious scrutiny" means (§27 below). There is a question about whether ongoing anonymity is justified as necessary (§52 below). And there is a question about payments on account of costs in legal aid cases (§55 below).

Instruments

2. Article 4 of the European Convention on Human Rights provides that no one shall be held in slavery or servitude; or required to perform forced or compulsory labour. Domestic legal effect is given to ECHR Article 4 by the Human Rights Act 1998. The Council of Europe Convention on Action against Trafficking in Human Beings ("ECAT") contains a series of state obligations. Domestic legal effect is given to these through Statutory Guidance issued under s.49 of the Modern Slavery Act 2015, which attracts duties of ECAT-compatible interpretation and public authority adherence: see R (MN) v SSHD [2020] EWCA Civ 1746 [2021] 1 WLR 1956 at §§84-85. ECHR Article 4 and ECAT address the twin evils of human trafficking and modern slavery: see MS (Pakistan) v SSHD [2020] UKSC 9 [2020] 1 WLR 1373 at §1. The legal consequence is that relevant agencies of the state owe express and implied "positive" obligations. In essence, these are: to prevent; to protect; to punish; to investigate; and to support.

Victim-Identification

3. An essential part of these legal schemes is the function of identifying whether an individual is a victim of human trafficking or any other form of modern slavery. Victim-identification is an express duty under ECAT Article 10: see MS §2. Victim-identification can be an integral part of an ECHR Article 4 positive obligation: see eg. R (TDT) v SSHD [2018] EWCA Civ 1395 at §18. Sometimes, legal protections arise where an individual is a "potential victim". Sometimes the ECHR Article 4 "credible suspicion" threshold test becomes an objective question for a court: TDT §76; Begum v SSHD SC/163/2019 [2023] HRLR 6 at §218. The present case is a victim-identification case. It arises by reference to ECAT Art 10, through the Statutory Guidance. Ms Fitzsimons for the Claimant and Ms Jones for the Home Secretary agree that this Court's function is one of reasonableness review, with "anxious scrutiny".

The National Referral Mechanism (NRM)

4. The victim-identification mechanism is the NRM. As Lady Hale explained in MS at §2:

> ***First responders, such as police officers or social workers, who suspect that a person may be a victim of trafficking refer the case to the Home Office, as the competent authority under the Convention, for investigation. Officials first decide whether there are reasonable grounds to believe that the person may be a victim. If there are, he or she is usually given a period of recovery and reflection during which money, practical assistance and if necessary, accommodation are provided. Not less than 45 days later (and nowadays usually much longer) the Home Office will***

> ***make a conclusive grounds decision as to whether the person is, on the balance of probabilities, a victim of trafficking.***

Decisions at the two stages – reasonable grounds and conclusive grounds – are made by decision-makers within the Home Office's Single Competent Authority and the Immigration Enforcement Competent Authority ("IECA"). The NRM Decision in this case was made by IECA decision-maker Naima Aziz on 20 May 2024. It was maintained by IECA decision-maker Lauren Westwell on 18 July 2024. Some redactions within disclosed documents placed before the Court did not comply with the principles in R (IAB) v SSHD [2024] EWCA Civ 66, but this was repaired and IECA has rightly acknowledged the need for future adherence.

Reconsideration

5. Under the Statutory Guidance (§14.216) an individual or their representative may request reconsideration of an NRG Decision, by making a reconsideration request "within one month", relying on "additional evidence" and/or "specific concerns" that the NRG Decision was not in line with the Statutory Guidance. The competent authority will then "review whether there are sufficient grounds to reconsider" (§14.217). Any "further evidence" must be provided with the reconsideration request. In "exceptional circumstances" there can be an extension of time (§14.223). Circumstances are only likely to be deemed exceptional if the information cannot yet be obtained or provided by the individual "for reasons beyond their control" (§14.228). A person "unable to provide the information within one month of the negative … decision … should contact the Competent Authority as early as possible" and request an "extension" with "reasons for not being able to meet the one-month deadline" and "a timeframe by which they expect to have obtained the relevant information" (§14.227).

Why the NRM Matters

6. I referred earlier to state agencies owing positive obligations: to prevent; to protect; to punish; to investigate; and to support. This is why victim-identification and the NRM is important. NRM victim-identification decisions are "very important for the putative victim", as "gateway decisions that relate to important rights": see MN §242. The present case is about support.

Support

7. The support available to adult victims of modern slavery – including victims of human trafficking – is described in chapters 8 and 15 of the Statutory Guidance. The mechanisms for delivering appropriate support include a Modern Slavery Victim Care Contract: see R (ETX) v SSHD [2025] EWHC 294 (Admin) at §§38-40. The Statutory Guidance poses and answers the question "why enter the NRM", explaining that "being recognised as a potential victim or victim may allow the individual to access support (§5.4). Appropriate support is identified through a needs-based assessment (§8.19). Ms Jones for the Home Secretary, very properly, acknowledged that there could in principle be a support benefit for the Claimant, were he to be recognised as a victim of human trafficking.

Overseas and Historic Cases

8. The Statutory Guidance says this (§§14.38-14.43):

> ***Assessing victims who were exploited overseas or historic claims.***
>
> ***14.38. While a victim must be physically in the UK in order to receive NRM related protection and assistance, the fact that a victim has been exploited outside of the UK does not preclude the decision maker from making a determination.***
>
> ***14.39. A person who says they have been a victim of modern slavery overseas should be assessed on the same basis as a person who states they have been a victim of modern slavery in the UK.***
>
> ***14.40. Although they may be far removed from their situation of modern slavery, they may still have been subjected to exploitation and may therefore be considered a victim of modern slavery. They may also still be traumatised by their experience even in historic cases.***
>
> ***14.41. Similarly, a person may have been exploited some time ago and the situation of exploitation now over. These scenarios are often referred to as historic claims as they might be referred to the NRM long after the exploitation has ended. The competent authorities should still make a determination on whether the person is a victim of modern slavery if the case is referred into the NRM as the NRM decisions are not an assessment of future harm but a finding of fact as to whether the individual is a victim of modern slavery.***
>
> ***14.42. The competent authorities must offer potential victims of historic claims the support and protection extended to victims of modern slavery while their modern slavery case is considered within the NRM.***
>
> ***14.43. With these cases the competent authorities must pass any details of the alleged trafficking or exploitation to the NRM Intelligence Hub so they can consider raising it with the authorities in the country where the offence was committed.***

The Claimant's Account

9. This case arises out of an account which the Claimant has given of what he says he experienced during 3 months (June to September 2021) in Libya, having fled Sudan (his country of origin) by land, via Chad. Here is how the account was summarised by Ms Aziz within the NRG Decision:

> ***Your exploitation started in Zuwara, Libya in June 2021, when you were twenty-seven years old. You were looking for work and an individual who you did not know approached you and offered you work on farm. You were promised pay in return for your labour at the olive farm. This individual acted friendly and trustworthy and offered to take you to the farm. You do not know the exploiter, but you think he was tall, he had a beard and long hair. He appeared to be in his 40s and was a Libyan national. You were told you would be working on the farm and were promised 40 Libyan Dinar. You were not informed of how many days in the week you would be working but were told it would be from 10:00am to 17:00pm. He then took you to the farm by taxi… Once you arrived at the olive farm, the exploiter imprisoned a group of four people, you included. You were kept in a building resembling a big shed that was situated on the farm. You and the other victims slept in this shed, which had bedding. You were provided food. You were not provided any toilet or washroom facilities. You could not leave because the exploiter guarded the farm. This individual forced you to work on a farm for 3-months, he would lead you to work on the farm daily and after work take you back and imprison you and would not let you return to the camp where you had been staying. Force was used against you to make you enter the building where you were locked in, you were also tortured. You worked 6-days in a week typically, from 10:00am to 17:00pm, harvesting olives. You left the situation in September 2021, when this individual let you go after the work was finished and drove you to the city of Zuwara. You then returned to the place you resided at.***

Meeting the Three Components

10. The definition of human trafficking of an adult has three components: see ECAT Article 4(a); Statutory Guidance at §2.4; MN at §233. They are [a] action [b] means and [c] for the purpose of exploitation. It was accepted in the NRG Decision that the Claimant's Account meets all three definitions. As Ms Aziz explained:

> ***Action - part [a]. In order to be considered to meet part [a] you must have been subjected to an act of transportation/ recruitment/ transfer/ harbouring/ receipt. You said in Zuwara, Libya in June 2021, you were looking for work and an individual you didn't know approached you and offered you work on a farm. You were promised pay in return for your labour at the olive farm. This individual acted friendly and trustworthy and offered to take you to the farm. You were promised 40 Libyan Dinar. You were not informed of how many days in the week you would be working but were told it would be from 10:00am to 17:00pm. He then took you to the farm by taxi. Once you arrived at the farm, the exploiter imprisoned a group of four people, you included. You could not leave because the exploiter guarded the farm and would take you to work and then bring you back and imprison you. This meets the definition based on your own account…***
>
> ***Means - part [b]. In order to be considered a victim of trafficking you must have been transported/ recruited/ transferred/ harboured/ received: "by means of threat or use of force or other form of coercion/ of abduction/ of fraud/ of deception/ of abuse of power/ of a position of vulnerability/ of giving or receiving payments or benefits to achieve the consent of a person having control over another person". You said this individual forced you to work. Force was used against you to make you enter the building and you were also tortured. This meets the definition based on your own account…***
>
> ***Purpose - part [c]. In applying part [c] consideration must be given to whether you were recruited/ transported/ transferred/ harboured/ received for the purpose of exploitation. The description of Forced Labour is contained in the Decision Annex attached to this letter. You said you worked on a farm for 3-months. You worked 6-days in a week typically, from 10:00am to 17:00pm, harvesting olives. You left the situation in September 2021, when this individual let you go after the work was finished and drove you to the city of Zuwara. You then returned to the place you resided at. This meets the definition based on your own account…***

Indicators of Modern Slavery

11. Within the Statutory Guidance at chapters 3 and 10 there are bullet-point lists of "indicators" of modern slavery. It is explained that First Responders are required to be familiar with these indicators (§3.2). Listed are general indicators of modern slavery (§§3.2-3.10); physical indicators (§3.16); mental health and psychological indicators (§3.17); situational and environmental indicators (§3.19); and indicators applicable specifically to forced labour (§10.4). The following listed indicators were convincingly identified by Ms Fitzsimons, uncontradicted by Ms Jones, as reflected within the Claimant's Account:

> ***General Indicators: Believe that they must work against their will; Be unable to leave their work environment; Show signs that their movements are being controlled; Feel that they cannot leave; Have false identity or travel documents (or none at all); Be found in or connected to a type of location likely to be used for exploiting people. Be subjected to violence or threats; Be forced, threatened or deceived into working in poor conditions; Be unable to negotiate working conditions; Receive little or no payment; Live in poor or substandard accommodations; Have acted on the basis of false promises.***
>
> ***Situational and Environmental Indicators: Acting as if coerced or controlled by another; Restriction of movement (noting that victims are not often 'locked up' but movement can be restricted) or being held in isolation; Abusive working and/or living conditions.***

> ***Indicators Applicable Specifically to Forced Labour: Live in groups in the same place where they work and leave those premises infrequently, if at all; Live in degraded, unsuitable places, such as in agricultural or industrial buildings; Have no access to their earnings; Have no labour contract; Be subject to security measures designed to keep them on the work premises; Be subjected to insults, abuse, threats or violence; Withholding wages (including deductions from wages); Abusive working and/or living conditions.***

The Claimant's solicitors were referring to the indicators in the Statutory Guidance when they said, in a letter of representations dated 15 May 2024, that from the Claimant's Account "it is clear that there are multiple trafficking indicators present".

Libya's Trafficking Profile

12. The NRG Decision recorded that modern slavery occurs in Libya, which is a country where individuals are subject to exploitation. Under a heading "Libya's Trafficking Profile", Ms Aziz quoted a passage from the US State Department's Special Case Report for Libya as part of its 2023 Trafficking in Persons Report. The passage quoted included the following:

> ***As reported over the past five years, human traffickers exploit domestic and foreign victims in Libya. Instability, conflict, and lack of government oversight and capacity in Libya continued to allow for human trafficking crimes to persist and be highly profitable for traffickers… IDPs, including both Libyans and foreigners, are vulnerable to both labor and sex trafficking.***

Elsewhere in the Special Report there are references to disparate groups committing human rights abuses including "forced labor"; to "criminal networks" and "private employers" having "exploited migrants" in "labor trafficking"; to "migrants in Libya" as being "extremely vulnerable to … labor trafficking, including those "transiting Libya en route to Europe"; to "holding … in inhumane conditions", "fraudulent recruitment", "withholding or non-payment of wages" and "physical abuse".

The Sequence of Events: Immigration

13. The Claimant arrived in the UK on 13 November 2022 on a small boat from Calais. He was detained and claimed asylum. His asylum screening interview was on 19 November 2022, conducted by interviewing officer Annette Holley. On 24 November 2022 he was released on bail. Migrant Help assisted him to make an application on Form ASF1 for asylum support (20 December 2022) and he was provided with accommodation as an asylum seeker. On 18 April 2023, the Home Office issued a first notice of intention ("the 2023 NOI") to treat his asylum claim as inadmissible and send him to a third country (Italy, France, or Rwanda). On 11 September 2023, the Claimant provided a witness statement in support of his asylum claim. The Home Office issued a detention notice (IS91R) on 2 May 2024, and he was detained from that date at Brook House immigration detention centre. On 15 May 2024 he had a detention induction interview at Brook House, conducted by Andre Botha, a member of the Home Office Detention Engagement Team. The same day (15 May 2024) he was served with a second Home Office notice of intention ("the 2024 NOI") to treat his asylum claim as inadmissible and send him to a third country (Italy, France, or Rwanda). On 24 May 2024, his solicitors made an application for bail. The Home Office responded with a Bail Summary (29 May 2024). The First-Tier Tribunal granted bail in principle at a hearing on 30 May 2024 and the Claimant was released on bail on 1 June 2024. He was invited on 22 July 2024 to a substantive asylum interview on 5 August 2024. On 9 August 2024 he was granted

asylum, it being accepted that he had a well-founded fear of persecution in Sudan. He has the rights of a recognised refugee in the UK.

The Sequence of Events: NRM

14. On 16 May 2024 at 13:34, Martinson Anson – a detention officer at Brook House and NRM First Responder – filled out a 6-page online referral form. The online referral form recorded that an in-person interview of the Claimant had been conducted by Mr Anson at Brook House (also on 16 May 2024). It recorded that other professionals involved were the Claimant's solicitors. Under a heading "evidence of modern slavery", the form contained a two-page record of the Claimant's account. No record of interview has been disclosed, which may indicate that Mr Anson was typing directly onto the form. Near the end of the online form, Mr Anson himself answered certain prompted questions.

15. Prior to that point, these three things had happened. (1) First, the Claimant's solicitors had made a request (9 May 2024 at 19:31) to NHS Healthcare at Brook House, that the Claimant be assessed under Rule 35(3) of the Detention Centre Rules. The solicitors email included this:

> ***He instructs that, while in Libya, he was tortured by traffickers, who forced him to work for them for approximately 3 months on an olive farm. He instructs that as well as being beaten, he was stabbed with a knife in the back of his leg, where there may be scars, when they forced him to enter a building. We intend to prepare a more detailed separate request for referral into the NRM in light of his reports of trafficking history; however, please inform us if you decide to refer him into the NRM in light of what is noted in this email.***

16. Secondly, Mr Botha had conducted the induction interview (15 May 2024 at 13:51), resulting in a 3-page Detention Induction Record. It included this (underlining connotes the Claimant's answers):

> ***I'm now going to ask two questions about your welfare. We understand that these issues might be difficult for you to talk about, but this information is important as it will help the immigration casework team and Healthcare to understand what support you may require in the centre. Any information you provide may be used as evidence during the progression of your case. 17. In your country of origin, on the way to the UK, or in the UK have you ever been subject to exploitation, for example being forced into prostitution, forced labour, or did you have reason to believe you were going to be exploited? Yes. I was forced to work for 3 months on a farm in Libya. 18. Have you ever been a victim of torture and / or sexual or gender-based violence? Yes – Torture.***

17. Thirdly, the Claimant's solicitors had written a 4-page letter to the Home Office (15 May 2024), urgently requesting an NRM Referral. They had by then seen the 2024 NOI. The letter explained that they had only been instructed on 4 May 2024, had taken initial instructions "which alerted us to the existence of trafficking indicators", but were "yet to obtain sufficient instructions from our client to prepare a full witness statement". A "summary of exploitation" in the solicitors' letter said this:

> ***Our client was recruited by Libyans who came to the camp at Zawara in which he was living, and who promised to pay in return for his labour on the olive farm. They acted friendly and trustworthy, and offered to take our client to the farm by taxi. He was recruited at the camp in this way, and was transported to the olive farm outside the city in a taxi, where he was harboured by being locked in buildings on the farm and not permitted to return to the camp where he had been staying… He was coercively and deceptively recruited at the camp with the promise of pay in return for his labour at the olive farm. His vulnerable status as a migrant who had fled violence in Chad was abused. At the farm, he was threatened with force, even seeing someone shot in***

> ***front of him for trying to escape, and had force actually used against him when he was forced to enter one of the buildings where he was kept locked to prevent him escaping.***

The letter continued, stating that "further time" would be needed before "sufficient trust is established for him to provide a full account of his experiences of exploitation"; that "the pattern of exploitation described by our client is consistent with what is known about the risk to migrants in Libya"; that the Claimant had "not yet had a proper opportunity to disclose a full account"; that "we are in the process of instructing Dr Aiden McQuade to assist with the competent authority in reaching a conclusion decision by producing an independent expert report"; that it was clear from the Claimant's account that "there are multiple trafficking indicators present"; and that an urgent NRM referral should be made. That is what Mr Anson did.

18. Following receipt of Mr Anson's online form (16 May 2024), Ms Aziz on 17 May 2024 (at 11:31) requested further information from Mr Anson. Mr Anson provided it later that day (at 18:29) and it was forwarded internally on 20 May 2024 (at 10:07). See further at §§21-23 below.

19. On 20 May 2024, an IECA decision-maker (Naima Aziz) issued the 8-page NRG Decision. See further at §§30-31 below. It was accompanied by the 8-page Decision Annex. The NRG Decision recorded that the "available information" which had been considered by Ms Aziz was as follows: (1) the asylum screening interview (19 November 2022); (2) the ASF1 (20 December 2022); (3) the Detention Induction Record (15 May 2024); (4) the Claimant's solicitors letter of submissions (15 May 2024); (5) the Online Referral Form (16 May 2024); (6) the Home Office Records (accessed 20 May 2024); and (7) Mr Anson's response (17 May 2024 at 18:29).

20. On 20 May 2024 at 11:23 and 14:44 the Claimant's solicitors wrote to Healthcare at Brook House, repeating earlier requests for rule 35(1) and (3) assessments, and for the Claimant's medical records. The same day (20 May 2024) the NRG Decision was received by the solicitors. On 21 May 2024 at 09:16 an email from the Home Office NRPC (National Returns Progression Command) to the Claimant's solicitors confirmed Mr Anson's referral. On 21 May 2024 at 12:06 the solicitors responded asking for clarification, having received the NRG Decision. On 22 May 2024 at 13:17 NRPC replied that the enquiry had been passed to the relevant team for review. Then there were the following: the bail application (24 May 2024), the Bail Summary (29 May 2024), the bail hearing (30 May 2024) and the grant of bail (1 June 2024). On 31 May 2024 at 12:24 the Claimant's solicitors wrote saying they needed disclosure of the seven items described in the NRG Decision (§19 above). There were then emails (10 June 2024, 25 June 2024, and 27 June 2024) about a new letter of authority from the Claimant, which when provided (27 June 2024) led to the documents being disclosed (28 June 2024). The solicitors queried redactions in the documents (28 June 2024) which the Home Office maintained (1 July 2024). On 15 July 2024, the Claimant's solicitors wrote a 29-page Letter Before Claim impugning the NRG Decision, supported by a 20-page Expert Report from Dr Aidan McQuade. On 18 July 2024, a 12-page Letter of Response was written by Ms Westwell, who is an authorised decision-maker at IECA. It responded to the letter before claim and explained that the NRG Decision was maintained and would not be reconsidered.

Ms Aziz's Request and Mr Anson's Response

21. I need to give some more detail about Ms Aziz's request (17 May 2024 at 11:31) and Mr Anson's response (17 May 2024 at 18:29, forwarded internally on 20 May 2024 at 10:07). This was an exchange which arose from the way Mr Anson had answered (denoted in capitals) these prompted questions on the online referral form. The quote is verbatim:

> ***Why are you making the referral? PV BELIEVES HE WAS EXPLOITED AS THE WERE MODERN SLAVERY INDICATORS…***
>
> ***Are there indicators or evidence that they could be acting dishonestly? YES. Detail the indicators or evidence that they could be acting dishonestly. NO EXPLOITATION RECORDED 19 NOVEMBER 2022. AFTER 2 YEARS, HE WAS NOW EXPLOITED. THESE HAVE NEVER BEEN TOLD TO NOBODY. I SUSPECT HE WAS EMPLOYED TO WORK ON THE FARM AND PAID.***

22. The final sentence was inexplicably redacted in the disclosed document before the Court, for which an apology was made at the hearing. Ms Aziz's request (17 May 2024 at 11:31) said this (the numbering in square brackets is mine):

> ***[i] On the NRM Referral Form itself you mentioned you referred the Potential Victim in because he claimed he was trafficked. Could you please explain whether you observed any indicators that the potential victim was trafficked, for example did you observe any indicators of modern slavery yourself, and if you did what the indicators were?***
>
> ***[ii] On the NRM Referral Form itself you also answered, 'yes' to the question 'Are there indicators or evidence that they could be acting dishonestly?'. You noted the following: NO EXPLOITATION RECORDED 19 NOVEMBER 2022. AFTER 2 YEARS, HE WAS NOW EXPLOITED. THESE HAVE NEVER BEEN TOLD TO NOBODY. I SUSPECT HE WAS EMPLOYED TO WORK ON THE FARM AND PAID. Is there any further information you wish to provide regarding your professional opinion.***

23. Mr Anson's response (17 May 2024 at 18:29) said this:

> ***I believe [the Claimant] to have accepted to work on the farm and get paid and as these farming works are normally season. [He] may not have been forced into working on the farm. [He] had to move on in search of another opportunity when the 3 months farming contract expired. [He] may have taken up farming work to gather some money to pay for his journey to the UK. I think story, which falls within the known pattern, was fabricated.***

Judicial Review

24. The claim for judicial review with which I am dealing was commenced on 19 August 2024. It was supported by witness statements from the Claimant's solicitor Nicholas Hughes (6 August 2024) and the Claimant (14 August 2024). Anonymity and reporting restrictions were ordered on 30 October 2024. Permission for judicial review was granted on 16 December 2024 after an oral renewal hearing on 12 December 2024. The twin targets for judicial review are the NRG Decision (20 May 2024) and the Letter of Response (18 July 2024). The central issue in the case is the reasonableness of the NRG Decision, applying anxious scrutiny.

The Grant of Asylum

25. I have referred to the grant of asylum on 9 August 2024. It post-dated both the NRG Decision and the Letter of Response. It meant three things. First, the Claimant was

believed on the material aspects of his asylum claim. He has been assessed as having a well-founded fear or persecution if returned to his country of origin, Sudan. On the true facts, he was a refugee all along. But an asylum decision-making process was required to establish the position and recognise the status. Secondly, the Claimant will not be returned to Sudan, which is the country where he has a well-founded fear of persecution. To do so would be a breach of the UK's domestic and international legal obligations, and of the Claimant's domestic and international law rights. Thirdly, the Claimant has the rights and entitlements in the UK that belong to a person with refugee status. For example, he has the right to work.

Does the Grant of Asylum make the Claim "Academic"?

26. Ms Jones says the answer to this question is "yes". The Claimant is not imperilled with removal to Sudan as his country of origin; nor with a human re-trafficking risk in Libya. There is nothing to "protect" him against if he is a victim of human trafficking in Libya. Nor is there any removal which a triggered "investigation" duty could inhibit cf. MS. The Claimant's representatives have failed to identify any specific concrete "support" benefit which victim-identification would be likely to bring. I am unable to accept that the claim is academic. I agree with the points about removal. But I do not accept the point about support. Ms Jones accepts that, if the Claimant had received a positive reasonable grounds decision, the grant of refugee status would not then become a basis to remove him from the NRM mechanism. The Statutory Guidance on historic overseas cases (§8 above) explains the freestanding importance of following through to a finding of fact. The practical utility of judicial review does not, in my judgment, turn on imposing on the Claimant or his lawyers an obligation prospectively to identify the concrete nature or availability of support. Ms Jones has accepted that there could, in principle, be a support benefit at the end of the process. It would be a consequence of a decision with a needs assessment. I have been given no basis for excluding it.

What is "Anxious Scrutiny"?

27. One of the issues in the Court of Appeal in MN was about what was called "anxious scrutiny": see MN §§240-246. A footnoted observation spoke of the phrase as having an "unhelpfully talismanic status" and a "continuing controversy about its precise effect" (fn.31). Ms Jones reminded me that in R (Yousef) v SSFCA [2016] UKSC 3 [2016] AC 1457 at §55, Lord Carnwath had lamented imprecision and hoped for "more structured guidance". The phrase "anxious scrutiny" has had a mixed welcome, but a durability of deployment. I was given the asylum case of JA (Afghanistan) v SSHD [2014] EWCA Civ 450 [2014] 1 WLR 4291 where (at §24) Moore-Bick LJ spoke of "the 'anxious scrutiny' which all claimants for asylum are entitled to expect". Two recent NRM judicial review judgments featuring "anxious scrutiny" are R (SM) v SSHD [2024] EWHC 1683 (Admin) at §29 and R (KM) v SSHD [2024] EWHC 2870 (Admin) at §§47ii, 51. Ms Fitzsimons and Ms Jones agree that "anxious scrutiny" is applicable, and they broadly agree as to what it means. I do not think what follows departs significantly from their helpful submissions. I am not addressing here the adjustment in review for procedural unfairness, where some cases call for the highest standards of fairness.

28. As I see it, what "anxious scrutiny" means really comes to this:

    i) Reasonableness review always involves a secondary judgment. It is not a substitutionary merits jurisdiction. It affords to the primary decision-maker an

essential latitude as to outcome, and as to evaluative decisions in arriving at that outcome. That includes general latitude as to what enquiry is appropriate, as to what matters are relevant, as to what matters are irrelevant, and as to what weight to attribute to relevant matters. The governing test is reasonableness, in which the constitutional fact of built-in latitude remains prominent. Decision letters will be read with appropriate benevolence. And, since the onus is on the claimant to show a public law error, the public authority gets the benefit of the doubt.

ii) There is an overlap between reasonableness and reasons. Unreasonableness can mean an outcome beyond the range of reasonable outcomes; and adequate reasons can mean clarity which eliminates genuine doubt as to what was decided and why. But unreasonableness can also mean a demonstrable flaw in the reasoning process (examples are where relevancies have been left out of account or where there is a serious logical error): see R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin) [2019] 1 WLR 1649 at §98. And adequate reasons can mean grappling with the principal controversial issues. This means rigour within the reasoning process at the same time informs both public law duties: the duty to act reasonably; and the duty to give legally adequate reasons.

iii) "Anxious scrutiny" means an adjusted reasonableness review. It retains all the virtues of secondary review (§28i above). It is particularly concerned with rigour in the decision-maker's reasoning process (§28ii above). It is generally triggered by considerations relating to the nature and impact of the decision under review. It means the reviewing court has to do more; and also, the reviewing court needs more. The idea of the reviewing court doing more has been expressed in this way: "the court … must consider the decision with particular care" (MN §244). The court will "adopt a heightened or more rigorous level of scrutiny" (SM §29). The idea of the reviewing court needing more recognises that "the starting point must be in the standard of reasoning required in the decision itself", where "a high quality of reasoning" and "a high standard of reasoning" (MN §242).

iv) The reviewing court may find in anxious scrutiny a narrowing of the primary decision-maker's latitude, whether as to what is within the range of reasonable outcomes, or as to what is reasonably sufficient enquiry, or as to what is legally relevant. There may be an adjustment for the benevolence with which a decision letter is to be read. There may be a tempering of the onus, which sees the claimant in substance getting the benefit of the doubt. In all this, the governing principle remains reasonableness.

v) This practical consequence of this closer scrutiny is illustrated by the identification of a "need for decisions to show by their reasoning that every factor which tells in favour of the applicant has been properly taken into account". That was endorsed and applied to NRM decisions in MN at §242 and fn.32. It is derived from the asylum case of R (YH) v SSHD [2010] EWCA Civ 116 [2010] 4 All ER 448 per Carnwath LJ at §24. The language is "every factor" not "every obviously reasonable factor"; and "properly taken into account" not "taken into account". It was "important in particular to establish" (MN §244).

vi) The origins of anxious scrutiny are linked to the Court's scrutiny of the reasoning process. R v SSHD, ex p Bugdaycay [1987] 1 AC 514 was the asylum reasonableness review case where Lord Bridge said that the "basis of the decision"

> in a right to life context would call for "the most anxious scrutiny" (531G). He also said that "within" the "limitations" of the court's power of reasonableness review, the court would "subject an administrative decision to the more rigorous examination, to ensure that it was in no way flawed, according to the gravity of the issue which the decision determines" (531G). Lord Templeman spoke of "a special responsibility [which] lies on the court in the examination of the decision-making process" (537H). In Bugdaycay, the claimant Mr Musisi succeeded because of concerns about previous breaches which were "very relevant" and the decisions "appear to have been made without taking that fact into account" (534A). The evidence disclosed that there "may have been" a "defect in the decision-making process" (537F) and the Court was "not satisfied that the Secretary of State took into account or adequately resolved" the doubts (538A-B).

29. I record, as Ms Fitzsimons and Ms Jones recognised, that I have made the points at §28ii and iii above in other cases: R (Carrigan) v Justice Secretary [2024] EWHC 1940 (Admin) [2024] 1 WLR 5188 at §§47(i)-(iii); and R (Alhasan) v Director of Legal Aid Casework [2024] EWHC 2031 (Admin) [2025] 1 WLR tbc at §44.

The NRG Decision

30. Ms Jones submits that the NRG Decision (20 May 2024) was approached by Ms Aziz with care and conscientiousness, acting at speed. I agree. Ms Aziz considered the referral form and made her request to Mr Anson. She identified the "available information" (§19 above). She identified the threshold question (reasonable grounds). She referred to the Statutory Guidance. She summarised the Claimant's Account (§9 above). She cited the USSD 2023 Special Case Report on Libya (§12 above). She identified the three components of human trafficking (action, means and purpose of exploitation) as each having been met on the Claimant's Account (§10 above). She asked herself whether the Claimant's account was "consistent", and found in the Claimant's favour on that point, recording:

> ***It is considered that the account is consistent.***

31. Notwithstanding these points and having regard to all the evidence and features of the case, the reasonable grounds test was found not to be satisfied. As to that, there are four key topics within the NRG Decision. First, the level of detail. Ms Aziz referred to a "limited" level of detail in the Claimant's account. She described this as unmitigated by any added level of vulnerability, such as physical or mental health. She reasoned that it was reasonable to expect a "good" level of detail in relation to the events being described. That was because the Claimant had been an adult (aged 27); the events described were relatively recent (June to September 2021); and they involved an extended period (3 months). Secondly, the absence of supporting evidence. Ms Aziz mentioned the lack of support from independent witnesses, travel records, police investigation, or an expert report. Thirdly, the timing of the claim. Ms Aziz said that the claim had not been raised in a timely manner. No exploitation had been reported when asked in the asylum screening interview (November 2022) or in the ASF1 (December 2022). She said that Home Office records showed that it was "after" being served with an NOI that the Claimant had "raised claims of exploitation". Fourthly, Mr Anson's information. Ms Aziz said that, in the online form and email response, Mr Anson "did not identify any indicators of modern slavery within [the Claimant's] account".

Analysis

32. I have said that the NRG Decision was approached with care and conscientiousness, acting at speed. It is a detailed decision document. It fairly summarises the Claimant's Account. It recognises points in the Claimant's favour, such as consistency of his account (§30 above). It proactively identifies Libya's trafficking profile. It positively accepts that the Claimant's Account meets the three components on human trafficking. It makes the well-directed points about no added level of vulnerability (such as physical or mental health); about the Claimant having been an adult (aged 27); about events being relatively recent (June to September 2021); and about events having taken place over an extended period (3 months).

33. Despite these virtues, I have concluded that some of the points made by Ms Fitzsimons present difficulties with the reasoning process which, taken together, mean the adverse decision cannot withstand reasonableness review with anxious scrutiny. There are four areas of difficulty, which correspond to the four key topics (§31 above). But I will take them in a different order.

34. First, I have not been able to understand the point made in the NRG Decision about Mr Anson and the absence of "any indicators" of modern slavery "within" the Claimant's "account". The NRG Decision says this (FR is Mr Anson, the First Responder):

> ***Consideration has been given to the information provided by the FR: On the NRM referral form the FR noted that they made the referral because of your belief that you were exploited.***
>
> ***Consideration has been given to the information provided by the FR in relation to indicators of modern slavery: On the NRM Referral Form, the First Responder has not identified any modern slavery indicators. They have subsequently been contacted by phone and email in order to see if they wish to provide further information regarding this. They replied on 20 May 2024 by email and did not identify any indicators of modern slavery within your account.***

35. This is a straightforward, adverse point about Mr Anson as the First Responder having identified no indicators of modern slavery within the Claimant's account. In my judgment, there are real difficulties with it. No document from Mr Anson says that "within" the Claimant's "account" there were no "indicators of modern slavery". The online form did not ask Mr Anson whether there were indicators of modern slavery within the account. Asked why he was making the referral, Mr Anson said: "PV BELIEVES HE WAS EXPLOITED AS THE WERE MODERN SLAVERY INDICATORS". I can see why Ms Aziz would find this language odd. It is. Something has gone wrong with the phrase "as the were". Mr Anson may have meant to type "as there were"; or "and there were"; or something else. He was not asked to explain what the undoubted typo was. If "as" was correct, and if it linked to the potential victim's belief, it is possible that what Mr Anson was recording was that the Claimant had himself used the phrase "modern slavery indicators". But the document does not say that, including when identifying indicators that the Claimant "could be acting dishonestly". In explaining the referral, Mr Anson was saying something about "modern slavery indicators". Ms Aziz asked Mr Anson her first question [i], but he only answered her second question [ii] (§§22-23 above). I note that elsewhere in the NRM Decision there is a reference to "the victim's account and any external indicators of modern slavery that led to the referral". I note that Ms Aziz's request asked what had been "observed". Pausing there, and standing back, there are on the face of the "account" recorded within Mr Anson's referral form, read with the Statutory Guidance, a host of "indicators" of modern slavery "within" that

"account" (see §11 above). Mr Anson himself said the account "falls within the known pattern" for human trafficking in Libya. Ms Aziz herself, later in the NRM Decision, recognised that the three components of human trafficking (§10 above) are each met on the Claimant's own "account" of his experiences in Libya. I have been unable to see how Mr Anson's information could reasonably be relied on as supporting an absence of "indicators of modern slavery within your account". If it was being accepted by Ms Aziz that there were indeed multiple "indicators of modern slavery within your account", then I do not see why this point about the First Responder's information was being made by her at all, relied on in this adverse decision. All of which means, in my judgment, that there is here a demonstrable flaw in the reasoning process.

36. Secondly, there are difficulties with the undoubtedly adverse point being made about the level of detail. The NRG Decision includes this:

> ***Consideration has been given to the guidance in relation to the level of detail it is reasonable to expect to be provided in support of an account of trafficking. It is considered you have provided a limited level of detail. You have provided detail of how you entered your claimed exploitation including the original agreement with your alleged exploiter, as well as the year of your exploitation, a time frame and the hours worked. You have also provided brief descriptions of your alleged exploiter and the conditions you were kept in. However, all further detail in relation to your claim is lacking.***

37. This is a straightforward, adverse point about the level of detail falling below what it was reasonable to expect. It is here that the well-directed points about no added level of vulnerability (such as physical or mental health); about the Claimant having been an adult (aged 27); about events being relatively recent (June to September 2021); and about events having taken place over an extended period (3 months). But I have had real difficulties with "all further detail in relation to your claim is lacking". Nowhere in the detailed NRG Decision is it explained – or illustrated – what is this further detail, which it would be reasonable to expect. It is acknowledged that "you have provided detail" of various aspects, and "brief descriptions" of other aspects. I am unable to tell whether "further detail" is a reference to a topic which is missing or a description which is brief. Later, the NRG Decision says:

> ***Consideration has been given to whether it is reasonable to expect further detail as listed above, and it is considered that it is reasonable. As you were an adult when you state that your exploitation occurred, it is relatively recent, and it occurred over several months it is reasonable to expect a good level of detail, which has not been provided.***

I was unable to find "listed above" any explanation or illustration of what would be, the sort of "good" detail, which is reasonably to be expected, and which was missing. It should be borne in mind that the First Responder Mr Anson believed that the Claimant had been at an olive farm for 3 months in 2021. And he did not for his part describe lack of detail as an indicator of dishonesty. Ms Aziz found in the account only "limited" and not "good" detail, applying a standard of reasonable expectation, but without in my judgment explaining or illustrating what she meant. All of which means, in my judgment, that there is here a second demonstrable flaw in the reasoning process.

38. I add this footnote. In maintaining the NRG Decision Ms Westwell describes the assessment of the inadequacy of the level of detail as having been correct. Ms Westwell adds, by way of reinforcement, this:

> ***On 16 May 2024, an NRM interview was conducted, and the Applicant was invited to provide as many or as few details regarding his claim of exploitation as he wished, resulting in the completion of an NRM Referral Form.***

Having searched with Counsel's assistance for where in the documents it says the Claimant "was invited to provide as many or as few details regarding his claim of exploitation as he wished", no support for this could be found. Ms Jones conceded that it was an error.

39. Thirdly, there are difficulties with points being made about the absence of supporting evidence. I have explained that there was no "listed above" regarding the "further detail" (see §37 above). By contrast, the NRG Decision does contain a thorough list of references to possible "supporting evidence". It identifies independent witnesses, travel records, police investigation, or an expert report. Ultimately, the NRG Decision said this:

> ***The decision maker should consider whether in all the circumstances, it is reasonable to expect supporting evidence or corroborating information in addition to information provided by the First Responder (which will include the victim's account and any external indicators of modern slavery that led to the referral). A decision maker's assessment of whether it is unreasonable to expect supporting evidence will include consideration of the circumstances of the referral, any information provided on the Referral Form, the type of exploitation, and the timing of a referral. However, in your case the limited amount of information contained within your NRM referral, and the lack of supporting evidence needs to be assessed against any potential mitigating factors that may explain the lack of detail. As explained earlier it is accepted that your alleged exploitation occurred abroad and this may therefore impact any supporting evidence, however there is no mitigation for the lack of detail provided within your account.***

40. So, Ms Aziz poses the question whether it is reasonable to expect supporting evidence or corroborating information. Ms Jones submits that Ms Aziz then answers that question by saying "no". I am unable to accept that submission. It would have been very easy to say, straightforwardly, that it was not reasonable to expect supporting evidence or corroborating information. Instead, what is said is that because the alleged exploitation occurred abroad "this may therefore impact any supporting evidence". This is being characterised as "mitigation". I have been unable to see how any supporting evidence could reasonably be expected and why that was not straightforwardly accepted in favour of the Claimant. I agree with Ms Fitzsimons that the question of supporting evidence is left hanging, with a potential impact and a present mitigation. Again, it should be borne in mind that the First Responder Mr Anson believed that the Claimant had been at an olive farm for 3 months in 2021. And he did not for his part describe lack of supporting evidence as an indicator of dishonesty. What supporting evidence would the Claimant – if he was telling the truth about what happened to him in Libya – be reasonably expected to have? If the answer is "none", then I have not understood why that would not be recorded in a decision. All of which means, in my judgment, that there is here a third demonstrable flaw in the reasoning process.

41. Fourthly, there are difficulties with the undoubtedly adverse point being made about the level of detail. The NRG Decision includes this:

> ***Consideration has been given to how your NRM Referral came to be made and the timing of your claim. Home Office (HO) records show that you entered the UK through clandestine means on a Rigid Hulled Inflatable Boat arriving from France in November 2022. You then claimed asylum and had your Asylum Screening Interview on 19 November 2022, where you were asked about any exploitation, and you noted you had not been exploited. HO records then show you were served a notice of intent for your removal to a safe third country, and it was after this was***

> ***served that you raised claims of exploitation. Therefore, it is considered that you did not raise your claim of exploitation in a timely manner.***

42. This is a straightforward, adverse point about timing. There are twin points. First, exploitation was not raised in the November 2022 screening interview. Secondly, exploitation was not raised until after service of a notice of intent. This is an important aspect of the case. Timing was the point being made by Mr Anson, in the online referral form, as an indicator of potential dishonesty (§21 above). In his response (17 May 2024 18:29), Mr Anson said: "I think [the] story, which falls within the known pattern, was fabricated".

43. In my judgment, there are real difficulties with the notice of intent narrative. I can well understand the striking temporal coincidence if a May 2024 notice attracts the response of an exploitation claim raised for the first time in May 2024. There was the 2024 NOI (on 15 May 2024). The solicitors' letter of representations seeking a referral came the same day. But the Home Office had been told in the letter that the solicitors had spoken to their client soon after he was detained on 2 May 2024. Their first encounter was on 4 May 2024. That was caseworker Dominic Chambers. The solicitors' letter of representations (15 May 2024) referred to that and described the taking of "initial instructions" as having "alerted us to the existence of trafficking indicators". All of this is reinforced by the solicitors' request to NHS Healthcare at Brook House for a rule 35(3) assessment (9 May 2024 at 19:31): see §15 above. But the point does not turn on whether this was seen or available from the "HO records" seen by or available to Ms Aziz. Ms Jones says Ms Aziz was simply referring, correctly, to the 2023 NOI (18 April 2023). But that was 13 months before the account being raised in May 2024. If that is what Ms Aziz meant – and the NRG Decision does not say – it is difficult to see how she saw any link between that NOI and the account at all. The 2023 NOI did not prompt the account of the experiences at the olive farm in Libya. The fact is that the Claimant was in detention (2 May 2024) and so had access to a lawyer. Instructions were taken. The account came out. Mr Anson's belief was that the "story" had been "fabricated" to fit with "the known pattern". I observe that there is no recorded concern that this was prompted by the caseworker Mr Chambers.

44. Which leads to another difficulty. I will set out again what the First Responder Mr Anson – who was concerned about timing – had said (17 May 2024 at 18:29):

> ***I believe [the Claimant] to have accepted to work on the farm and get paid and as these farming works are normally season. [He] may not have been forced into working on the farm. [He] had to move on in search of another opportunity when the 3 months farming contract expired. [He] may have taken up the farming work to gather some money to pay for his journey to the UK.***

Looking at what is said, it is a view consistent with the reasonable grounds threshold being met. To "believe" that this was paid work, and to "think" the story of exploitation was fabricated, is consistent with there being reasonable grounds. Mr Anson says the Claimant "may not have been forced into working on the farm". As DHCJ Helen Mountfield KC said in R (HAM) v SSHD [2015] EWHC 1725 (Admin) (in a part of her judgment undisturbed by [2016] EWCA Civ 565 at §2):

> ***It is worth noting that at this preliminary stage of enquiry, there could be both reasonable grounds upon which a reasonable person could believe that a person could be a victim of trafficking and reasonable grounds for believe that they might not be… In such circumstances, the question of whether there are "reasonable grounds" for suspecting that a person is a victim of trafficking must be answered in the affirmative. Provided there are reasonable grounds for***

> ***belief, then the question of whether there are also reasonable grounds for disbelief is irrelevant. The further question of whether the grounds for disbelief outweigh the grounds for belief is not one for determination at that stage: it is a matter which will fall for determination by a decision-maker making a Conclusive Grounds decision at a later date …***

45. It is right that the asylum screening interview records "No" (connoted in capitals here) alongside this question:

> ***By exploitation we mean things like being forced into prostitution or other forms of sexual exploitation, being forced to carry out work, or forced to commit a crime. Have you ever been exploited or reason to believe you were going to be exploited? NO.***

This is a relevant feature of the case. It concerned Mr Anson and Ms Aziz. This was not put to the Claimant by Mr Anson. It was a single question. It had a preamble. It rolled several things together. It was in an interview which was described as being "only [to] ask you for a brief outline of why you are claiming asylum today". The interview went on to cover the Claimant's journey to the UK. In that context, he disclosed a significant period in Libya, a red flag country. He was not being asked about those experiences. There was no follow up.

46. All of which means, in my judgment, that there is here a fourth demonstrable flaw in the reasoning process. I add this footnote. In maintaining the NRG Decision Ms Westwell describes the assessment of timing as having been correct. Ms Westwell adds, by way of reinforcement, this:

> ***the Applicant maintained that he had not been a victim of trafficking when questioned during both his Asylum Screening Interview dated 19 November 2022 and Asylum Support Application Form dated 20 December 2022.***

Having searched with Counsel's assistance for where in the ASF1 he was questioned about trafficking, Ms Jones conceded that it was an error. The ASF1 form asked about "torture, rape or other serious forms of psychological, physical or sexual violence". The Claimant disclosed "torture in prison Libya". The form did not return to the question of being forced to carry out work.

Conclusion

47. I have conducted a reasonableness review on a case-specific basis. I have identified four features which, in my judgment, are each demonstrable flaws in the reasoning process. They relate to each of the four key topics in the NRG Decision (§31 above). These are important aspects of the decision. They arise in the context of an account which was positively assessed to be "consistent", and in the context of a red-flag country, with multiple indicators of human trafficking within the account. They arise in the context of a modest threshold of reasonable grounds. They also arise in a context which calls for anxious scrutiny. They have both an individual, and a cumulative, effect. In Carnwath LJ's terms (§28v), the NRG Decision does not show by its reasoning that every factor which tells in favour of the Claimant has properly been taken into account. This was Ms Aziz's decision to take, not mine. She is the primary decision-maker. Not I. Ms Aziz was necessarily making a decision on the papers, at speed. Not in a court room after a day of listening to advocates. Hers and IECA's are the primacy of role, training, specialism, and institutional competence. Mine is a secondary review function. I have kept all of this well in mind. But the points which I have identified lead me to the firm conclusion that the

NRG Decision cannot, in the particular circumstances of this case, stand as reasonable. It must be quashed and the reasonable grounds decision retaken afresh.

The Letter of Response

48. Other arguments related directly to the Letter of Response and reconsideration (§5 above). Ms Jones accepted that Ms Westwell's letter of response cannot assist the Home Secretary, if the NRG Decision was unlawful. She does not submit that reconsideration – belatedly requested – stands as an unused alternative remedy, to justify refusing to grant judicial review. No separate issue arises. I am not going to try to address the legality of the position taken within the Letter of Response on the false and artificial premise of a reasonable NRG Decision. The Letter of Response maintains, repeats and endorses the NRG Decision. That includes on all of the key points which I have identified as vitiating the NRG Decision as unreasonable.

49. I record the following. There was a dispute about whether the Letter of Response embodied a decision at all, but Ms Jones ultimately accepted that the final part of the Letter of Response was an authorised decision-maker dealing with what she characterised as a "request" for reconsideration.

50. As to timing, it was common ground that what the Claimant's solicitors ought to have done was to write within the "one month" in the Statutory Guidance (§5 above), to request an extension of time. In my judgment, had they done so, no refusal to extend time could have been reasonable or fair. I have outlined the position (§20 above). Disclosure was awaited. The expert report was in the pipeline but not yet available. All of which was out of the Claimant's control. No such request was made. The one month time-frame was spelled out at the end of the NRG Decision, and in the Statutory Guidance. The Home Office Bail Summary recorded that no request had yet been received. On the other hand, the Home Office knew that the solicitors were instructing the expert; it knew that the solicitors were intending to challenge the NRG Decision; and it knew they were awaiting the disclosure. The Claimant's solicitors' letter of representations (15 May 2024) had stated that: "We are in the process of instructing Dr Aiden McQuade to assist with the Competent Authority in reaching a Conclusive decision by producing an independent expert report". The Home Office Bail Summary (29 May 2024) recorded the understanding that: "within the grounds for bail, [the Claimant]'s representatives have advised that [he] will be challenging the negative reasonable grounds decision by way of a reconsideration", albeit "a reconsideration request has not been submitted". The solicitors email of 31 May 2024 at 12:44 referred to the NRG Decision and requested immediate disclosure of the seven documents relied on in the NRG Decision. Those documents were known to be awaited – while the position regarding a letter of consent was ironed out – and the delays in that correspondence (10 days between 31 May 2024 and 10 June 2024; 15 days from 10 June 2024 to 25 June 2024) were on the Home Office side. The Expert Report was finalised on 9 July 2024 and the detailed letter before claim sent on 15 July 2024. Meanwhile, one month had expired on 20 June 2024, while disclosure of the documents was awaited. The letter of response was written by an authorised decision-maker. It considered the position in detail. It introduced a new and adverse topic: accounts about the Claimant being stabbed in the leg. And yet it declined to allow reliance on the Expert Report.

Materiality

51. Ms Jones submitted that relief should be refused. That is because, applying the statutory materiality test, it is highly likely that the outcome for the Claimant would not have been substantially different, had the conduct complained of not occurred. I have been unable to accept those submissions. That is not because of the absence of a witness statement. I respect, and would not criticise, the Home Secretary's decision not to seek to adduce a witness statement attempting to address the question of materiality. At least in the present case, the issue can be addressed objectively on the materials before the Court. The nature of the difficulties with the NRG Decision makes it quite impossible for me to say that it is highly likely that the outcome would have been substantially the same, absent the aspects of the decision which make it unreasonable. I am unpersuaded that the problems for the Claimant, perceived by Ms Westwell by reference to descriptions of stabbings in the leg, can satisfy the statutory materiality test when put alongside the nature of the reasonable grounds threshold and the other features of the case. Account could be taken of those matters on reconsideration. Account could also be taken of the expert report of Dr McQuade (9 July 2024), put forward with the Letter Before Claim (15 July 2024). As to that Report and having regard to the guidance in MN at §122, I find it impossible to say that there is impropriety or immateriality in what that Report contributes.

Anonymity

52. The final issue concerns anonymity. It is appropriate to revisit that issue at the end of a case. Well ahead of the substantive hearing I flagged up through my clerk that I would want to revisit this issue. I received submissions at the hearing and further submissions after it. Multiple points have been made and multiple arguments advanced. The Home Secretary makes no submissions on any case-specific order but opposes any anonymity on any basis which would apply in general to all refugees or all potential victims of trafficking. The derogations were originally sought (19 August 2024) on the basis that the Claimant has disclosed an account of exploitation "including in the UK", that protection was needed "to avoid the risk of harm and/or re-trafficking", to protect "sensitive personal data" including evidence about "physical and mental health". Anonymity was originally granted (30 October 2024) on the basis that the Claimant is an "asylum seeker" and "potential victim of human trafficking", disclosure of whose identity might place him or "his family" at "risk of harm".

53. The Claimant is not an asylum seeker. He is a refugee with a right not to be returned to Sudan. I cannot accept that being a refugee itself raises considerations of confidentiality justifying anonymity; nor that naming a refugee means the release of confidential information which they provided in support of an asylum application. As a precaution, I am prepared to make a specific direction that the records of the asylum screening interview and asylum interview may be obtained from the court records only by application on prior notice to the Claimant's solicitors. The Claimant is a potential victim of human trafficking. But there is no automatic right to anonymity in cases involving victims of human trafficking: see MN at §4. No such right has been shown to be supported by ECHR Article 4, ECAT or the Statutory Guidance. Ms Fitzsimons told me that statutory victim anonymity applied under the Sexual Offences (Amendment) Act 1992 ss.1(1) and 2(1)(db). On examination, that was unsustainable. The Claimant's account clearly describes the actions of Libyans in Libya. That means s.2(6)(7) of the Modern Slavery Act 2015 do not apply and there can be no statutory anonymity. I do not accept, inherently or in this particular case, that naming the Claimant exposes him to a

re-trafficking risk in the UK. I cannot accept that disclosing his identity publicly in these proceedings, by reference to "intensely personal information", would "breach his rights under Articles 4 and 8 ECHR". There is no "intensely personal information". There are no sensitive considerations regarding health. No "sensitive personal data", and no evidence about "physical and mental health", were ventilated at the hearing. None is mentioned in this judgment. There is no evidenced special vulnerability or potential imperilment as regards the Claimant. I was given no basis for considering that any third party, such as a family member, would be exposed to a risk of harm by naming the Claimant. Indeed, no information about any third party was ventilated at the hearing. None is included within this judgment. I have been unable to see a necessity for any derogation from open justice in this case. I will therefore, in handing down judgment and making the Order, lift the previous anonymity order and reporting restrictions.

Quashing Order

54. Having circulated this judgment as a confidential draft, I am able to deal here with the Order and consequential matters. My Order discharges of the anonymity and reporting restrictions. I make a quashing order in respect of the NRG Decision. There is disagreement as to whether a separate quashing order should be made in relation to the Letter of Response in which an authorised decision-maker dealt with request for reconsideration (§49 above). In my judgment, no separate quashing order is necessary or appropriate. The Home Secretary conceded that, if the NRG were unlawful, the Letter of Response could not assist (§48 above). The quashing of the NRG Decision means no lawful reasonable grounds decision has been made; still less maintained. The reasonable grounds decision will now need to be retaken, afresh, and on all relevant and available material.

Payment on Account of Costs

55. It is common ground that the appropriate costs order is that the Home Secretary pay the Claimant's costs, with a detailed assessment of the Claimant's publicly funded costs. It is common ground that there should be an order for payment on account of costs pursuant to CPR44.2(8). Ms Fitzsimons invites an order that the Home Secretary shall make a payment on account, within 28 days of being served with a schedule of costs, in the sum of 60% of the schedule. Ms Jones asks me to order that the Home Secretary shall make a payment on account to be determined after an opportunity to comment on the schedule. In R (LC) v SSHD [2023] EWHC 319 (Admin) (17.2.23) at §6 – cited by Ms Fitzsimons – I made the order she now seeks. I accepted evidenced representations that (a) legally aided parties do not file statements of costs because summary assessment is not available; (b) a claimant's representatives are under a professional duty not to bill for more than the work that has been done; and (c) the order was a standard form of order made in legally aided cases. In R (SO) v Thanet DC [2023] EWCA Civ 526 [2023] Costs LR 627 (16.5.23) – a legal aid case (§4) cited by Ms Jones – the Court of Appeal was concerned (at §18) about a "blank cheque" based on "whatever sums [the claimant's] lawyers choose to insert". The Court of Appeal made directions to ensure an opportunity, absent agreement, to contest the awaited schedule. In this case, I will order as follows:

> ***Pursuant to CPR r 44.2(8): (1) Within 28 days of being served with a schedule of costs, the Defendant shall make a payment in the sum of 60% of the schedule unless within 14 days of service she has filed and served notice of particularised objection. (2) If notice of particularised objection has been filed and served, the Claimant shall within 14 days file and serve any response,***

after which (absent agreement between the parties) the Court will decide on the papers whether to confirm or revise the amount (suitable for a Deputy High Court Judge).