

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 April 2012

Before :

PHILIP MOTT Q.C.
Sitting as a Deputy High Court Judge

Between :

THE QUEEN	<u>Claimant</u>
(on the application of "Y")	
- and -	
SECRETARY OF STATE FOR	<u>Defendant</u>
THE HOME DEPARTMENT	

Eric Fripp and Althea Radford (instructed by Messrs Wilson LLP) for the Claimant
Dr Christopher Staker (instructed by Treasury Solicitor) for the Defendant

Hearing dates: 18th & 20th April 2012

Judgment

Phillip Mott Q.C. :

Introduction

1. This is a challenge to a decision of the Defendant on 14th December 2009 that the Claimant was not a Victim of Trafficking, which decision confirmed and amplified an earlier decision of 31st July 2009. Permission was granted by Nicola Davies J on amended or additional grounds on 4th March 2011.
2. Other issues arise in respect of the immigration status of the Claimant "Y", her husband "M", and their child "C". These, which relate to asylum, the risks involved in returning her to China, her and her family's Article 8 rights, and M's application for leave to remain in the UK, do not arise in these proceedings. There are other mechanisms for deciding those issues, and some have been stayed pending this decision.

Factual Background

3. The factual background can largely be taken from the section headed "Case Summary" in the decision letter of 14th December 2009. Mr Fripp, for the Claimant,

expressly accepted that he had no material complaint about the accuracy or completeness of this, which is itself taken from information provided by the Claimant herself. I summarise the relevant parts as follows, with some additions from the other material which for present purposes is uncontested:

- a) The Claimant was then a 20 year old (born 12th November 1988) from China. Her father had been involved in prohibited activities and had left for the UK in 2003. For about a year she kept in contact with him, but from then there was no further contact.
 - b) About 6 months later she decided to leave China to escape the authorities and her father's creditors. She asked the priest at her church for help and he contacted the Snakeheads through a friend. She paid 2,000 or 1,000 RMB as an administration fee, and was told that the total cost of bringing her to the UK would be about 250,000 RMB. She told them that the balance would be paid by her father on arrival in the UK, not disclosing that she had lost contact with him.
 - c) She left China on 1st July 2005 and flew to Sweden. There she was arrested for using a false document and claimed asylum, but after two nights she ran away and rejoined the Snakehead who had been accompanying her. They left Sweden by train, and had to climb a mountain. At this time she was sexually abused by the Snakehead leader. She then went by boat to another country, was passed over to a new Snakehead agent, and went with him on an overnight train journey to an unknown country, believed to be in Europe.
 - d) She stayed in this unknown country for a year and a half, locked up with 30-40 other people, both men and women. During this time she was raped about twice a month by three Snakehead men. She became pregnant by one of them and was forced to take pills to procure an abortion. She was told that if she refused sex she would be sold instead of being taken to the UK. When she did not comply she was beaten.
 - e) In January 2007 she was brought to the UK concealed in the bottom of a lorry, and was taken to a house in a village somewhere in the country. When she was unable to contact her father and provide the funds required, she was locked in a small room by a new Snakehead contact. In that house there were four Snakeheads, she was made to do the housework and was raped by two or three of the Snakeheads. Others who travelled to the UK with her were released when they found their relatives and paid their dues.
 - f) After a further 6 or 7 months an arrangement was made with M whereby he paid some money to the Snakeheads and they released her to him. She moved in with him in July or August 2007. He treated her kindly and in due course they became boyfriend and girlfriend, embarking on a consensual sexual relationship. She became pregnant by him and their child C was born on 29th August 2008. They are very happy together.
4. An assessment dated 12th November 2008 by Leigh Ivens of the Poppy Project concluded that:

“There are strong indications that [Y] has been a victim of trafficking. [Y] was sexually exploited and raped on her journey to the UK and for 7 months on arrival ... The relationship between her and her boyfriend does not appear to have been exploitative and there does not seem to be any ongoing link between her boyfriend and the people who brought her to the UK. They have a baby together and [Y] says that they are happy together. As a result of our ongoing assessment, although [Y] does show strong indications of being a victim of trafficking, she does not fully meet our criteria set out by the Office for Criminal Justice Reform (OCJR). Therefore, the Poppy Project will not be able to continue to support her.”

The criteria set out by the OCJR were not made available to me and I therefore draw no adverse conclusions from the fact that the Poppy Project declined to offer continued support.

5. M made a statement on 17th November 2008 indicating that he had not bought the Claimant, but only paid an introductory fee. The Claimant herself confirmed that she was not sold to him and had her freedom to come and go as she pleased.
6. A report from Klara Skrivankova, of Anti-Slavery International, dated 15th June 2009, deals largely with the dangers which the Claimant might face if removed from the UK and made to return to China, whether with or without M. Those are matters which do not arise on this application, because they do not affect the decision about whether she was the victim of trafficking. Nevertheless, at paragraph 14 of the report she says:

“The fact that [Y] was able to enter into a non-violent, loving relationship with [M] is very important. [Y] has formed a family unit with [M], they have a son together, she is happy, especially about the fact she has been able to form a complete family that she never had before. This is very significant and gives her a high chance to fully recover from the traumatic experience of trafficking, regain control over her life and live a normal life. Many victims of trafficking will never be able to overcome the trauma and will remain vulnerable to further exploitation, including trafficking.”

Ms Skrivankova states further that the Claimant’s story is “consistent with many other cases of trafficking I have encountered throughout my career”.

7. The Claimant was interviewed on 15th July 2009, and in general confirmed the account set out above. I have considered that interview, but insofar as it adds anything significant, I have incorporated it into the narrative above.
8. Finally, there is a Country Expert Report from Dr Jackie Sheehan dated 29th October 2010. This of course post-dates both decision letters so could not have been taken into account by the decision maker. I have however read this and taken it into account. To a large extent it also deals with the risks on return, which do not arise for consideration in this application, but it does include some comments on the process by

which the Claimant arrived in the UK. In paragraph 33 Dr Sheehan notes that “*her case does not clearly fit the legal definition of trafficking for sexual exploitation*”, but nevertheless she finds “*strong indications of trafficking in [Y]’s account*” and expresses the view that the “*tendency to treat clients of people-smugglers and victims of trafficking from China as two completely separate categories greatly overstates the real difference between them*”.

9. A key feature of this case is that there is no significant factual dispute. There has been no rejection of the Claimant’s account of what happened as not credible. The differences between the parties are differences as to the inferences to be drawn, both about what the Claimant understood and expected, and more particularly about the purpose of her being transported and kept by the Snakeheads in various countries. In essence, the key difference is as to the legal categorisation, i.e. whether it amounts to trafficking, rather than as to the factual background.
10. The decision letter of 14th December 2009, like the preceding letter of 31st July 2009, concluded that the Claimant was not considered to be a victim of trafficking for the purposes of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”). This decision was based on two alternative conclusions. First, the relevant actions were not carried out by the Snakeheads “for the purpose of exploitation”; and even if they were, she had had ample time for reflection and recovery, had moved on with her life, and was no longer a victim of trafficking within the terms of the Convention.

The Convention on Action against Trafficking in Human Beings

11. This was signed by the UK on 23rd March 2007, and ratified on 17th December 2008. It came into force as an international treaty in the UK on 1st April 2009. However, it was never incorporated directly into domestic law.
12. The purposes of the Convention, set out in Article 1(1), are threefold. They are:
 - a) *to prevent and combat trafficking in human beings, while guaranteeing gender equality;*
 - b) *to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;*
 - c) *to promote international cooperation on action against trafficking in human beings.*
13. “Trafficking in human beings” is defined in Article 4(a). It involves three things:
 - a) Action – “*the recruitment, transportation, transfer, harbouring or receipt of persons*”;
 - b) Means – “*by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of*

vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”;

- c) Purpose – *“for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.*
14. The second limb, that of means, does not need to be established if the person involved is a child (Article 4(c)), as this Claimant was at the start of her journey and until November 2006.
15. Article 4(e) defines “victim” as *“any natural person who is subject to trafficking in human beings as defined in this article”.*
16. Article 10 deals with the process of identifying victims. By paragraph (2), if the competent authorities in a party to the Convention *“have reasonable grounds to believe that a person has been victim of trafficking in human beings”* they must *“ensure that that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2”.*
17. Article 12 deals with assistance to victims. Paragraphs 1 requires each party to *“adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery”.* It sets out a number of minimum measures which need not be set out in full here.
18. Article 13 requires a recovery and reflection period of at least 30 days *“when there are reasonable grounds to believe that the person concerned is a victim”.* The purpose of this period is for the person to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. Although my attention was rightly drawn to that Article, the period of at least 30 days had long since passed by the time of the relevant decision here.
19. Article 14 requires a party to the Convention to *“issue a renewable residence permit to victims, in one or other of the two following situations or in both:*
 - a) *the competent authority considers that their stay is necessary owing to their personal situation;*
 - b) *the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.”*
20. With the Convention there is an Explanatory Report. Among the significant passages of that Report are the following:
 - a) Paragraph 77 – *“trafficking means much more than mere organised movement of persons for profit”.* The critical additional factors that distinguish trafficking

from migrant smuggling are the means used and that it is for the purpose of exploitation.

- b) Paragraph 154, in relation to Article 12 – *“The protection and help which the refuges provide is aimed at enabling victims to take charge of their own lives again”*.
- c) Paragraph 173, in relation to Article 13 – *“One of the purposes of this period is to allow victims to recover and escape the influence of traffickers. Victims recovery implies, for example, healing of the wounds and recovery from the physical assault which they have suffered. That also implies that they have recovered a minimum of psychological stability”*.
- d) Paragraph 183, in relation to Article 14 – *“for a victim to be granted a residence permit ... the victim’s personal circumstances must be such that it would be unreasonable to compel them to leave the national territory ...”*.
- e) Paragraph 187 – *“The Convention leaves the length of the residence permit to the Parties’ discretion, though the Parties must set a length compatible with the provision’s purpose”*.

The Asylum Process Guidance issued by the Defendant

- 21. The Guidance on Victims of Trafficking in force at the time of the decision in December 2009 refers expressly in its Introduction to the Convention. Throughout the Guidance it is clear that the intention is to adopt and apply the Convention, not to set out a domestic framework which may or may not accord with the Convention.
- 22. The domestic implementation involves a two stage decision-making process. First there is to be a Reasonable Grounds Decision, as to whether a person is accepted as a potential victim of trafficking. Thereafter there will be a Conclusive Decision. According to the nature of those two decisions, various outcomes will follow.
- 23. The section headed “Guidance to CAs on considering cases involving victims of trafficking” starts with the Convention definition. Within that section is a heading “Smuggling or trafficking”, which starts:

“The purpose of human smuggling is to move a person across a border illegally, and is regarded as a violation of state sovereignty. The purpose of human trafficking is to exploit a human being for gain or other benefits and is regarded as a violation of that person’s freedom and integrity.”

It also makes the point that the distinction between smuggling and trafficking can be blurred, and circumstances can change en route.

- 24. The section dealing with the Reasonable Grounds to Believe test makes it clear that this *“has a low threshold and is lower than the threshold required for prima facie evidence”*. The test that should be applied is whether the statement “I suspect but cannot prove” would be true and whether a reasonable person would be of the opinion

that, having regard to the information in the mind of the decision maker, there were reasonable grounds to suspect the individual concerned had been trafficked.

25. I should note here again that the factual background is not in issue. There is no question of credibility in general. It is the inference to be drawn about the purpose of the relevant actions which is disputed.
26. On 21st July 2009, just before the first decision letter, the Defendant issued Supplementary Guidance for deciding if an individual is eligible for the provisions of the Convention. Again it is clear that the Defendant was adopting the Convention and seeking to apply it domestically as a matter of policy.
27. One of the issues addressed in the Supplementary Guidance was how to determine whether a person “is” a victim. The following are particular relevant:
 - a) Paragraph 8 – *“The Convention and explanatory report are vague as to the application of timeframes and the geographical location of the constituent elements of trafficking when considering eligibility”. “Therefore as the primary aim of the Convention is to offer protection to victims it may be appropriate to consider if the elements of human trafficking continue to apply at the time that the person presents themselves to you or at the time that the referral is made”.*
 - b) Paragraph 9 – *“it may be reasonable to conclude that where a person’s circumstances do not require protection or assistance at the time of that assessment the person is unlikely to be a victim for the purposes of the Convention”.*
 - c) Paragraph 10 – *“it is relevant to consider whether:*
 - i) *the person was under the influence (either directly or indirectly) of traffickers at the point at which they came to your attention;*
 - ii) *the person requires a period to recover from the influence of traffickers;*
 - iii) *the person has suffered physical or emotional wounds from the trafficking experience and requires time to recover;*
 - iv) *the person requires a period of time in which to decide whether to co-operate with the authorities in respect of a trafficking related criminal investigation.”*
 - d) Paragraph 15 – *“The individual may have been trafficked into the UK at some point in the past. However, the person managed to escape the trafficking situation. Some members of his or her family may have come to join him or her and they may have made a new life for themselves. Consider*
 - *Has the person been free from traffickers for a significant period of time at the point of referral?*

- *Has the person established a safe family life since escaping his/her exploitation?*
 - *Had the person managed to support himself/herself during that period independent of the trafficker(s)?*
 - *Has the person brought himself/herself to the authorities’ attention for reasons unconnected to the alleged trafficking conduct – for instance when s/he was no longer self-sufficient?*
- e) Paragraph 18 – *“It is entirely possible to accept that someone has been a victim of the crime of human trafficking but at the time their case is considered decide that their specific circumstances do not engage the Convention obligations. A negative decision in such cases would not be denying that someone was or had been a victim of crime simply that at the time of assessment they did not meet the Convention criteria or need the protection that it can afford”.*
28. It is quite clear that this consideration of current circumstances and need for protection and assistance is intended to apply at the Reasonable Grounds stage, as well as at the Conclusive Decision stage.
29. The decision of 14th December 2009 is headed “Trafficking Reasonable Grounds Consideration Minute”.

The Issues

30. Mr Fripp, for the Claimant, suggests four questions as follows:
- a) Is the Court able to consider the VoT definition under the Trafficking Convention, or if this “contrary to fundamental principles of constitutional law” as argued in the Defendant’s Detailed Grounds?
 - b) What are the basic standards which must be satisfied by an individual to qualify as a VoT? Most particularly what standard of proof is appropriate as regards the elements of the VoT definition and how are the requirements at article 4(a) that specified action be “by means of” particular matters and “for the purpose of exploitation” minimally established?
 - c) Has the Claimant met the standards required for qualification as a VoT?
 - d) If the answer to question iii, above, is “yes”, then has the Claimant nonetheless ceased to be a VoT through passage of time and/or change of circumstances?
31. In the course of argument these questions were developed. They are, with respect, too formalistic to provide an answer to what is a very fact-sensitive decision. In essence only two broad issues now arise in relation to the disputed decision, as follows:
- a) Was any of the transportation or harbouring of the Claimant “for the purpose of exploitation”, or was it for the purpose of people smuggling with exploitation occurring on an opportunistic basis incidental to that? Put more

precisely, was the decision that the relevant actions were not for the purpose of exploitation irrational or Wednesbury unreasonable?

- b) Was the Defendant at the Reasonable Grounds stage entitled to look at the Claimant's current circumstances and to decide whether she was still, in December 2009, a victim of trafficking entitled to Convention protection and assistance even assuming that she once was such a victim? If she was, there is no challenge to the reasonableness of the decision that the Claimant no longer qualified for such protection or assistance. Nor does the Claimant argue that the domestic Guidance prohibits consideration of this question at the Reasonable Grounds stage. On the contrary, it positively requires such consideration. The Claimant's submission is starkly that it is contrary to the Convention to consider this before the Conclusive Decision stage. The issue therefore is, first, whether the Court can look behind the Defendant's Guidance to the terms of the Convention and, if there is a conflict, apply the Convention in preference to the Guidance; and secondly, if the Court can do so, is there in fact any force in the Claimant's submission?

For the purpose of exploitation?

32. It is clear that the Claimant believed the purpose of her involvement with the Snakeheads was for her to be smuggled into the UK. The actions which involved her being moved from country to country are all consistent with this. When pressed in argument, Mr Fripp had some difficulty in identifying the crucial features of fact which made the conclusion that she was not a victim of trafficking irrational. In the end, with some assistance, it came to a consideration of the two periods of 18 months in an unknown European country and 7 months in the UK after arrival. In each of these periods the Claimant was in fact sexually exploited, and was made to do housework.
33. Dr Staker, for the Defendant, counters by pointing to the fact that there was never any commercial exploitation of the Claimant for sexual or labour services. The incidence of rape was unforgivable and traumatic, but it was limited to demands by her minders about twice a month. Her sexual services were never offered commercially. The group being held during the 18 month period was mixed in gender, the only uniting feature being that they all wished to be smuggled into the UK. There were 30-40 in all, yet the lorry shipments were limited to 8 at a time. All this, he argues, is consistent with difficulty in finding ways to get the migrants into the UK, and does not suggest that the purpose of keeping the group was for exploitation.
34. As to the shorter period after arrival in the UK, Dr Staker submits that they needed to keep the Claimant to obtain the balance of the contract money. Others who paid were released at once. The Claimant herself was released once M arrived and concluded his negotiations. There was no attempt to sell the Claimant into prostitution, nor has there been any attempt to pursue her for the purpose of re-trafficking.
35. As to the period in the unknown foreign country, I consider it just about open to a decision maker to conclude that the sexual and other exploitation was not the purpose of the harbouring, and therefore the Claimant was not then a victim of trafficking. The problem about the decision of 14th December 2009 is that it does not say this. There is no analytical consideration of this period at all, only of the three stages of the journey

from China to the UK which of course are consistent with people-smuggling. A decision maker must explain the reasons for the decision and be seen to address the issues. This decision did not do so. To that extent its conclusion is open to challenge in this court and cannot be justified.

36. As to the period in the UK, the position is even more difficult. Not only is there no express consideration of that period in the decision letter, but in my judgment any such consideration must have concluded, properly applying the low threshold of the Reasonable Grounds test, that there was a period of trafficking involved. Within a month of arrival it must have been clear that the Claimant had lied when she said that her father would pay on arrival, and that she had in fact lost contact with him. The prospect of getting any money must have seemed very remote. Yet she was detained (“harboured” in the terms of the Convention definition) for a further six months during which she was forced to submit to sex and to work in the house without pay. The smuggling process had by then ended and the only reasonable conclusion is that the Snakeheads decided to use her by way of punishment or payment in kind. That means that she was being kept for the purpose of exploitation, and that is trafficking. The decision to the contrary cannot be supported.
37. For these reasons, I conclude that the part of the decision which concludes that the Claimant was not subject to trafficking at any time is irrational.

Still a victim at the time of decision?

38. At the hearing I understood Mr Fripp to concede that, if the Defendant was entitled to consider whether the Claimant was in need of the protection and assistance of the Convention at the time of the decision in December 2009, the conclusion that she was not in such need could not be challenged. Since I circulated this judgment in draft form Mr Fripp has sought to restate his concession in very different terms. I have therefore made my own assessment of the evidence.
39. The Claimant had by December 2009 been free of the Snakeheads for over two years, there was no suggestion that they had objected to her going or tried to pursue her, she had an established and loving relationship with M, they had a child together and a happy family, there was no basis for the Poppy Project to be involved (however that should be interpreted), and she was likely to make a full recovery from her experiences according to all the expert evidence. It was in my judgment an almost inevitable conclusion that she no longer qualified for Convention assistance, whatever other immigration claims she might have.
40. Dr Staker, for reasons which are set out at length in his skeleton argument, and supported by a wealth of authority, submits that the Court cannot look behind the departmental guidance to the terms of an international treaty not incorporated into domestic law. He does accept, however, that where the UK Government announces that its policy is to give effect to its obligations under the treaty, that may have consequences in domestic administrative law. In such a case, he concedes, failure to apply the provisions of the treaty may give rise to a successful judicial review claim, not because the treaty has any direct effect, but because the Government has then failed to apply its own published policy.

41. Mr Fripp accepts this concession and expressly does not seek to go further than that. In these circumstances it is not necessary for me to deal with the academic point raised. I shall assume that Dr Staker is right in the limits of his concession, and look to see whether the Defendant has in effect adopted the Convention so as to incorporate it in her published policy.
42. The answer to this, it seems to me, is overwhelmingly clear. Everything in both the Guidance and the Supplementary Guidance points to the Defendant adopting the Convention and purporting to apply it domestically. Even in the Supplementary Guidance, although it says that the Convention is vague as to timeframes, there is no suggestion of a departure from the spirit or the letter of the Convention. On the contrary, the Supplementary Guidance seeks to derive the answer from the aim and policy of the Convention and to be true to that.
43. I note that the Court of Appeal in AA (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 23 proceeded on the assumption (though in that case it seems not to have been challenged in argument) that the domestic Guidance had adopted the Convention, and therefore the Court could look directly at the Convention in deciding whether the Defendant had followed her published policy.
44. The difficulty for Mr Fripp here is in showing that the Convention bars the conclusion that victim status (in the sense of being someone entitled to the protection and assistance of the Convention) may cease, or that it prevents a consideration of whether that status subsists at the Reasonable Grounds stage.
45. The language of the Convention is not entirely consistent. Article 4(e) defines a victim as someone who is subject to trafficking. Article 10(2) refers to a person who has been victim of trafficking. The assistance required by Article 12 is “to assist victims in their physical, psychological and social recovery”. The recovery and reflection period required by Article 13 is triggered when there are reasonable grounds to believe that the person is a victim. Article 14 requires the issue of residence permits to victims which are to be renewable.
46. Those differences in tense are explicable by the different consequences flowing from the status of present or past victim in those Articles. The key, in my judgment, is not in the tense used but in the concept that, after the recovery and reflection period, the assistance and protection is not absolute or never-ending, but is limited to the need to assist victims in their physical, psychological and social recovery and must be tailored to their personal situation. The Convention clearly envisages that victim status, in the sense of someone requiring that assistance and protection, may be time-limited, but that the time will vary from case to case.
47. As to the stages of the process, the Convention first lays down a preliminary requirement for a minimum recovery and reflection period of 30 days under Article 13. That period had long since expired since the Claimant left the Snakeheads, and also since she first came to the notice of the UK authorities. It is not relevant to this application.
48. Once that period had elapsed, the Convention continues to impose a requirement by Article 10 that if the competent authorities have reasonable grounds to believe the Claimant has been a victim of trafficking they must ensure that she is not removed

from the territory until the identification process as victim of a trafficking offence has been completed. That does not arise directly on this application, as there is no question of removal yet. It may have significance at a later stage, but I have not heard argument on that.

49. Beyond this requirement, Article 10 also imposes on the competent authorities who have reasonable grounds to believe that the Claimant has been a victim of trafficking a duty to ensure that she receives the assistance provided for in Article 12. They cannot know what particular measures are required to assist her without considering the extent of her physical, psychological or social recovery. Similarly, the requirement to issue a renewable residence permit under Article 14 depends on an assessment of the Claimant’s personal situation.
50. The effect of this in my judgment is that the Convention, far from prohibiting the consideration of current circumstances at the Reasonable Grounds stage, implicitly requires that consideration to take place in order to comply with the duties under Articles 12 and 14.
51. For these reasons I conclude that, even looking directly at the Convention, there is no proper basis for challenging the conclusion in paragraphs 29 to 31 of the decision of 14th December 2009 that the Claimant was at that date no longer a victim of trafficking within the terms of the Convention.

Conclusion

52. It may be debateable whether the conclusion that the Claimant “has been” a victim of trafficking, but no longer “is” a victim, has any significance now or is merely academic. That may depend on whether any other consequences flow from such a finding in domestic procedures. If it is purely academic, judicial review should not be granted, for the usual reasons. If there is still some practical effect, the Claimant is entitled to an order in her favour.
53. I will receive written submissions on the form of order, and any consequential orders, and decide them on paper unless it appears to me having read them that a further oral hearing is required.