

Neutral Citation Number: [2008] EWHC 2447 (Admin)

CO/10428/2007

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

Royal Courts of Justice  
Strand  
London WC2A 2LL

Wednesday, 24th September 2008

**B e f o r e:**

**HIS HONOUR JUDGE JARMAN QC**

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**Between:**

**THE QUEEN ON THE APPLICATION OF P**  
**Claimant**

v

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**  
**Defendant**

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**Miss C Bayati** (instructed by Dare Emmanuel) appeared on behalf of the **Claimant**  
**Miss S Broadfoot** (instructed by the Treasury Solicitor) appeared on behalf of the  
**Defendant**

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J U D G M E N T

1. JUDGE JARMAN QC: The claimant in this claim seeks to persuade the court that the decision of the Secretary of State for the Home Department to return her to Cyprus under the Dublin Regulation for consideration of her asylum claim is unlawful. By a decision dated 3rd April 2007, the defendant certified the claimant's asylum application under paragraphs 4 and 5(1) of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, et cetera) Act 2004 and proposed to remove the claimant to Cyprus. Cyprus has accepted that it is the responsible member state for considering the claimant's asylum claim.
2. The issue before me, it is agreed, is a very narrow one, although obviously a very important one. That is whether the certificate which the defendant has issued that there are no arguable grounds for a human rights claim can be said to be unlawful.
3. It is necessary for me to go into the facts in some detail, because one of the points taken on behalf of the defendant is that no Immigration Judge could give credit to the claimant, having regard to lies which it is admitted she has told to the authorities about her age and her history, and in particular events which she claims to have happened in Cyprus.
4. She came to the United Kingdom in February 2007 and claimed asylum. The Home Office conducted a screening interview of her in that month. The questions put to her were expressly not in relation to details about asylum claims. The defendant relies on some of the answers given in that screening interview. For example, she was asked whether she had had fingerprints taken by anyone in the United Kingdom or by anyone else anywhere. The reply recorded is that she had such fingerprints taken in Cameroon for an identity card. She was asked whether she had previously claimed asylum or been granted refugee status in other countries and she replied "No". When asked what her reason was for coming to the United Kingdom, she said that she was coming here after her father died. He was against female circumcision but her mother's family wanted that to take place and, in the words of the answer "gave me to a man who paid for my hand in marriage. My mother gave me 5000 francs to flee to her friends. Her friend had TB so a woman came and took me and sold me into prostitution. I was abused until a man helped me leave". Again, she was asked in that interview if she had been to or sought leave to enter any other country and she replied "No".
5. The case worker's summary of that interview was that the claimant stated she had left Cameroon because she was afraid of being killed and persecution and torture, because her parents are from different tribes and have different views about female circumcision. There were further questions on that day in relation to the use of other names, any claim in the United Kingdom for asylum or any other country, any fingerprints taken in any other country, and again the claimant answered in the negative.
6. A few days later she underwent an age assessment by Liverpool Social Services. It is important to record that the purpose of that assessment was, as its name suggests, to determine the age of the claimant. Under a heading "Physical Appearance and Demeanour" it was recorded that the claimant said that she had gone to another woman and to another house where there were many celebrities and she was told that she could

make lots of money. The woman told her to sit at one of the tables but she felt scared as men were coming around and touching her. She then realised that the woman was using her for prostitution and felt scared. It was recorded that at the beginning of the assessment she was visibly distressed and she cried and seemed shaken even before any question was asked.

7. The assessor recorded that the claimant came across as a confident person who was able to give detailed information and recollect events with precision; for example, dates, timescales and the chronology of events. It was recorded that the claimant gave the assessor the impression that the information provided had been rehearsed as she provided more information than she was asked to. At some point in the interview it was said that she tried to lead it by interrupting and not allowing the assessor a chance to ask her own question.
8. The following month the Home Office made a request to Belgium under the provisions of the Dublin II Regulation. A reply to that request is dated 14th March 2007. The date of birth of the claimant on that request was recorded as 5th November 1982. It was also recorded that Belgium had brought the claimant back to Lagos on 27th February 2006 and that the claimant had left Belgium without resistance. Accordingly, Belgium disclaimed responsibility. Then a request was made to Cyprus. The reply came on 3rd April 2007. It was recorded that the claimant had applied for asylum in Cyprus on 30th March 2006 with a date of birth of 1st November 1981. On 3rd April 2007 the Immigration and Nationality Directorate of the Home Office wrote to the claimant saying that Cyprus had accepted responsibility for examining her application for asylum. It was stated that the Secretary of State would normally decline to examine an asylum application substantively if there was a safe third country to which the applicant could be sent and it was recorded that there were no grounds for departing from that in the claimant's case.
9. That brought forward a letter from solicitors instructed on behalf of the claimant. The letter is dated 5th April 2007. It was stated that the basis of her asylum claim was because she had been used as what was called a "sex slave" in Cameroon. It was then stated that she had been made to travel with several men all over the world and was used as a sex slave in a number of different countries; some of them in Africa but also in Belgium, France, Turkey and Cyprus. It was stated that she was in Cyprus and attempted to claim asylum and that her fingerprints were taken, but she was informed to wait until she became an adult before she could claim asylum. From Cyprus, one of the men using her as a sex slave came from Russia and took her to Dublin and then back to Cameroon. It was submitted in that letter that removal to Cyprus was strongly resisted as Cyprus was a place where the claimant's life and liberty would be threatened by reason of her membership of a particular social group, that is having been used as a sex slave. Although no particular reference was made to Article 3 of the European Convention on Human Rights, it is clear, in my judgment, that a possible breach was alluded to in that letter.
10. The Border and Immigration Agency replied to that letter on 17th April 2007. That was a fairly short letter and, as Miss Broadfoot for the defendant submits, on the information then before the Executive Officer the fact that the letter was brief is not

surprising. Again, there was a finding that the claimant's life and liberty would not be threatened on her return to Cyprus. It was pointed out that Cyprus was a signatory to the European Convention on Human Rights and the 1951 Refugee Convention related to the status of refugees and other international treaties designed to protect the rights of individuals and provide a safe haven when necessary.

11. By letter dated 10th July 2007, a further letter was written by the same Executive Officer and on this occasion the letter was somewhat more detailed. The letter was in relation to the claimant's allegation that removing her to Cyprus under the Dublin Regulation would be a breach of her Article 3 rights under the European Convention. The question of her credibility was referred to very briefly in one line. It was said:

"The fact that your client failed to inform the BIA of her application in either Belgium or Cyprus undermines her credibility. It is also noted that your client claims to have entered Ireland where she could also have approached the authorities for protection."

The letter continued to refer to the conditions in Cyprus. Again, it was pointed out that Cyprus is an advanced European democracy where the rule of law applies. It was stated in paragraph 8 that the defendant had no reason to believe that Cyprus in any way condones unlawful acts and, when they are brought to the attention of the Cypriot authorities, stringent investigations take place and all necessary disciplinary action or criminal prosecutions are sought. The paragraph ends thus:

"The Secretary of State is satisfied that Cyprus takes its obligation towards asylum seekers very seriously and anyone seeking to perpetrate unlawful acts against asylum seekers is pursued and sufficient action is taken by the Cypriot courts."

12. The matter then came before Burton J, a claim for judicial review having been made. Permission was refused on 26th September 2007, the learned judge observing that the claim was wholly without merit. In particular, the claim form was wholly deficient in failing to address the history clearly set out in the acknowledgment of service.
13. About a month after that permission was refused, a report was compiled by a senior support worker with the POPPY Project, and the report was prepared by an outreach senior support worker. That project is the sole government funded project providing housing and support for women trafficked into the United Kingdom for forced prostitution. The project had been funded since March 2003 by the Office of Criminal Justice Reform to provide that service, and by the date of that letter they had received 743 referrals and had housed and supported 159 women. They had offered outreach support to a further 95 women all trafficked into prostitution.
14. The report sets out the assessment which that project and that officer carried out in respect of the claimant. Reference was made to trafficking in Cyprus, and reference was made to the United States Department of State's Annual Trafficking in Persons Report 2007. That report placed Cyprus on the Tier 2 Watch List. That meant that the Government of Cyprus did not fully comply with minimum standards for the

elimination of trafficking, but it was making significant efforts to do so. It was placed on the Tier 2 Watch List for the second consecutive year because it failed to pass advised anti-trafficking legislation and did not open a long promised trafficking shelter. The report pointed out that the Government of Cyprus had demonstrated limited improvements in its efforts to protect and assess victims but overall efforts remained inadequate. In addition, corruption remained a problem in both administrative regions of the country. During the year, the police investigated at least three police officers for possible traffic related corruption. The area administrated by Turkish citizens did not have a law that specifically prohibited trafficking in persons.

15. Reference has also been made to the UNHCR report on combatting human trafficking, and in particular to that part of the report which refers to Cyprus. It was recorded that in 2000 the law for the prevention of human trafficking and sexual exploitation was introduced, and that prohibits sexual exploitation and trafficking even with the victim's consent or knowledge and provides for punishment of up to 10 years' imprisonment. When an offence is committed against a minor, the punishment is increased to up to 20 years. It was pointed out that the law did not address internal or labour trafficking. The Protection of Witnesses Law 2001 provides assistance to witnesses in criminal proceedings. Victims of acts foreseen in the Law for the Prevention of Human Trafficking 2000 qualified for such assistance.
16. In going on to deal with response and prevention, the report pointed out that the law, which I have referred to, requires the Government to provide protection and support for trafficking victims by allowing them to remain in the country to press charges or by facilitating their return home, and by providing shelter, medical and psychiatric care. The law also provided for the appointment by the Council of Ministers of a guardian to assist victims of exploitation. It was noted that the Director of the Social Welfare Department was appointed as a guardian, but that position has been only formal and no programme has been prepared yet. Then reference was made to rooms for trafficking victims being available in Government subsidised housing and funds were being collected for the construction of a permanent shelter. It was noted that although the Government established the screening and referral process, it was yet to implement them.
17. On 28th February 2008, the same Executive Officer of the Border and Immigration Agency wrote to the claimant's solicitor. That letter was in regard to the refusal by Burton J for permission to bring a claim for judicial review, and also to the report of the POPPY Project in support of the claimant's application which had then been considered. Although the reports were noted to show concern as to whether the Cypriot authorities meet the minimum standards for the elimination of trafficking, it was further noted that the report stated that Cyprus was making significant efforts to do so. It was also noted that the report states that the Cypriot authorities were demonstrating a strong willingness to increase its efforts against human trafficking. Reference was made to the UNHCR's report, again which I have referred to. The letter concludes thus:

"For the above reasons, having considered the report from the POPPY project, the Border and Immigration Agency remains satisfied that your client's Article 3 ECHR rights will not be breached upon her return to

Cyprus and the 'clearly unfounded' certificate dated 10th July 2007 should be maintained. Further, the reasons set out in the Border and Immigration Agency's previous letter to you dated 10th July 2007 still stand and your client remains properly removable to Cyprus under the Dublin Regulation."

In light of that, amended grounds upon which judicial review was sought were filed with the court. On 16th April 2008 Sir George Newman, sitting as a Deputy High Court Judge, gave permission to pursue the claim.

18. For the sake of completeness, I should record that on 29th July 2008 the UK Border Agency wrote again to the claimant's solicitors saying that in order for the case to be fully considered it would be helpful if the claimant would give her consent to allow the Secretary of State to disclose her allegation that she had been a victim of human traffickers and any other appropriate information to the Cypriot authorities. Those solicitors asked for further confirmation of the specific nature of the disclosure and the reasons for the request. The reply was that the information requested was that regarding the claimant and her allegations, and the reason that the Secretary of State requested her consent to disclose this information was so that details surrounding the claimant could be verified and also to ensure that if she was returned to Cyprus the authorities there would make adequate arrangements to ensure that she was not at risk from traffickers. The solicitors replied that the claimant did not consent to the disclosure of such information. There is a handwritten note from her to her solicitors dated 20th August 2008 and received, I am told, by them on the 22nd saying that she did not give her consent to the Cypriot authorities because she was kidnapped in a Social Services house and the Government did nothing to find her or to stop the trafficking or sexual abuse. She did not think the Cypriot authorities could help her.
19. Those are the facts of the case. I was referred to a number of statutory provisions and also to a number of authorities. Paragraph 3 of Part 2 of Schedule 3 to the 2004 Act provides as follows:

"(1) This paragraph applies for the purpose of the determination by any person, tribunal or court whether a person who has made an asylum claim or human rights claim may be removed --

(a) from the United Kingdom, and

(b) to a State of which he is not a national or citizen.

(2) The state to which this part applies shall be treated, insofar as relevant to the question mentioned in subparagraph (1), as a place --

(a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, and

(b) from which a person will not be sent to another State in contravention of his Convention rights, and

- (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention."

The reference to Convention rights in paragraph 3(2)(b) is to the rights guaranteed by the European Convention on Human Rights and identified as Convention rights by section 1 of the Human Rights Act 1998.

20. Paragraph 5(4) of the Schedule provides the legislative basis for the clearly unfounded certificate. It provides that the defendant "shall certify a human rights claim to which this subparagraph applies unless satisfied that the claim is not clearly unfounded". Paragraph 5(5) further states that subparagraph (4) above "applies to a human rights claim if, or in so far as, it asserts a matter other than that specified in subparagraph (3)(b)".
21. I was then referred to a decision of the House of Lords in **R (Yogathas) v Secretary of State for the Home Department** [2003] 1 AC 920. In that case both applicants were Tamil citizens of Sri Lanka. The applicant in the first appeal arrived in Germany in March 1999 and applied for asylum but his claim was rejected. One of the issues in that case was whether differences in legal procedures were such as to put the first applicant at risk of return to a country of origin otherwise than in accordance with the third country's international asylum obligations. Lord Hutton at paragraph 74 said this:

"I consider that in a case where there is a challenge to a certificate under section 72(2)(a) the court must subject the decision of the Secretary of State to a rigorous examination, but the examination must be on the basis and against the background that, as I have earlier stated, the extent of the consideration which the Secretary of State will have given to the issue will have depended on the nature and details of the argument and the factual background presented to him by the applicant."

22. I was then referred to a decision of the Court of Appeal, **R (ZL and VL) v Secretary of State for the Home Department and the Lord Chancellor's Department** [2003] INLR 224. That concerned appellants who were Czech Roma who sought asylum immediately on arrival in the UK on 5th November 2002. Again, certification was carried out in that case prior to the promulgation of the enabling legislation, but after the giving of the Royal Assent. The question in that case was whether that invalidated the certificate. In the course of his judgment, the then Master of the Rolls, Lord Phillips, referred to the "clearly unfounded" test. At paragraph 56 the Master of the Rolls said this:

"The test is an objective one: it depends not on the Home Secretary's view but upon a criterion which a court can readily re-apply once it has the materials which the Home Secretary had. A claim is either clearly unfounded or it is not."

Then at paragraph 60 the Master of the Rolls continues:

"As we shall explain, an issue of credibility arose in this case in relation to ZL. The Secretary of State gave her the benefit of the doubt and his decision did not turn on credibility. Where an applicant's case does turn on an issue of credibility, the fact that the interviewer does not believe the applicant will not, of itself, justify a finding that the claim is clearly unfounded. In many immigration cases, findings on credibility have been reversed on appeal. Only where the interviewing officer is satisfied that nobody could believe the applicant's story will it be appropriate to certify the claim as clearly unfounded on the ground of lack of credibility alone."

23. I was referred to another House of Lords authority, **R (Bagdanavicius) v Secretary of State for the Home Department** [2005] 2 AC 668. The claimants there were a married couple from Lithuania. They arrived in the United Kingdom in December 2002 and they claimed that, because of the husband's Roma origins, they had been subject to persistent harassment and violence in Lithuania by people who were alleged members of the Lithuanian Mafia and that the police had done nothing to protect them. One of the issues there was whether there was a real risk of ill-treatment from non-state agents sufficient to avoid expulsion. Lord Brown at paragraph 7 said this:

"It has long been established, however, that Article 3 implies in addition an obligation on the part of the contracting state not to expel someone from its territory (whether by extradition, deportation or any other form of removal and for whatever reasons) where substantial grounds are shown for believing that upon such expulsion he will face a real risk of being subjected to treatment contrary to Article 3 in the receiving country . . .

Where, however, the risk emanates from non-state bodies, that is not so: any harm inflicted by non-state agents will not constitute Article 3 ill-treatment unless in addition the state has failed to provide reasonable protection. If someone is beaten up and seriously injured by a criminal gang, the member state will not be in breach of Article 3 unless it has failed in its positive duty to provide reasonable protection against such criminal acts."

24. Miss Broadfoot then referred me to an additional authority, **Horvath v Secretary of State for the Home Department** [2001] 1 AC 489, again an authority of the House of Lords. There the applicant was a Roma citizen of Slovakia and claimed asylum in the United Kingdom on the ground, amongst others, that he feared persecution in Slovakia by skinheads, against whom the Slovakian police failed to provide adequate protection for Roma. In the opinion of Lord Clyde at page 510, he said this:

"There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actings contrary to the purposes which the Convention requires to have protected. More importantly there must be an ability and a readiness to operate that machinery. But precisely where the line is drawn beyond that generality is necessarily a matter of the circumstances of each particular case . . . .

And in relation to the matter of unwillingness he pointed out that inefficiency and incompetence is not the same as unwillingness, that there may be various sound reasons why criminals may not be brought to justice, and that the corruption, sympathy or weakness of some individuals in the system of justice does not mean that the state is unwilling to afford protection. 'It will require cogent evidence that the state which is able to afford protection is unwilling to do so, especially in the case of a democracy'. The formulation does not claim to be exhaustive or comprehensive, but it seems to me to give helpful guidance."

Lord Clyde was there referring to guidance given by Stuart-Smith LJ in the Court of Appeal. That case concerned the Convention and Protocol relating to the status of refugees, but it is not in dispute that the same considerations apply where European Convention rights are in issue.

25. I turn now to the submissions made in this case. The short submission of Miss Bayati, who appears for the claimant, is that even though it may well be that the claimant told lies about her birth, whether she had had fingerprints taken in other countries, whether she claimed asylum in other countries, and even if the view could be taken that she deliberately set out to avoid saying that she had claimed asylum in Belgium and Cyprus, nevertheless it cannot be said that no Immigration Judge would accord her credibility. It was submitted that the claimant had not been interviewed by the state's authorities, other than the screening interview on assessments which I have referred to. It was also submitted that even though she did not reveal until late in the day what she now claims to have happened in Cyprus, namely that she was taken from local government care by people who took her into trafficking, that does not mean that no Immigration Judge could believe her account, extraordinary though that account is.
26. The second limb of the submission was that there were also grounds for stating that an Immigration Judge may possibly find that treatment by non-state agents in Cyprus, when coupled with failure of state agents, would not give sufficient protection. Miss Bayati referred to rule 339K of the Immigration Rules, which provide that if a claimant has suffered serious harm in the past, that provides a presumption that there may be a real risk of future harm unless there is strong evidence to the contrary. She submits that any Immigration Judge would be required to have regard to those matters.
27. Against that, Miss Broadfoot submits that the extraordinary nature of the claim now as to what happened in Cyprus, taken alongside the inconsistencies in the information provided by the claimant in this country which I have dealt with in some detail, is such as to make it impossible that an Immigration Judge would accord her credibility. The second limb of Miss Broadfoot's submission was that the clear impression was that she was clearly trying to hide the fact that she had claimed asylum in Belgium and Cyprus.
28. Furthermore, Miss Broadfoot submitted that whatever the reports of the United States Department and the UNHCR may say, that does not show that there is a failure on the part of the state to afford the protection which is required. She placed particular

emphasis on that part of Lord Clyde's opinion in the case of **Horvath** which I have referred to.

29. In my judgment, the claimant may well face very difficult obstacles to persuading an Immigration Judge of her overall credibility for the reasons submitted by Miss Broadfoot. However, I cannot exclude the possibility that an Immigration Judge may come to the conclusion, having assessed the claimant and her witnesses and the defendant's witnesses in detail, that the reason she hid the fact that she had made claims in Belgium and Cyprus was that, despite her account of what happened in Cyprus being true, she felt that such an account would not be believed here and accordingly did not reveal it.
30. On the second limb, I have given anxious consideration as to whether the evidence before the Secretary of State shows the sort of threat referred to by Lord Clyde. In the end, I am persuaded by Miss Bayati that it is arguable at least that the failure of the Cypriot government to implement protective procedures and procedures for the treatment of people claiming to have been involved in trafficking history does fall short of the sort of protection envisaged by Lord Clyde.
31. For those reasons, I am persuaded that the certificate of the Secretary of State cannot stand. It cannot be said that no Immigration Judge, on the information before the Secretary of State, would find the claimant's account of what occurred in Cyprus to be credible or that she is likely to have the necessary protection if she were to return. For all those reasons, I quash that decision.
32. Is there any further relief, Miss Bayati?
33. MISS BAYATI: My Lord, no, I think not.
34. MISS BROADFOOT: My Lord, just to be clear, your Lordship is only quashing the certificate that certifies that her human rights claim is clearly unfounded, your Lordship is not quashing the third country certificate because that is not challenged.
35. JUDGE JARMAN QC: No, I did not understand that was challenged.
36. MISS BAYATI: No, it was not.
37. MISS BROADFOOT: My Lord, I am instructed to formally ask for leave to appeal. My client, on reflection, wishes to consider your judgment in more detail.
38. JUDGE JARMAN QC: Yes, thank you, Miss Broadfoot. I am afraid I do not consider that there are realistic grounds for appeal and you will have to renew that application to the Court of Appeal if you are so instructed.
39. MISS BAYATI: My Lord, I have one application which is the matter of costs.
40. JUDGE JARMAN QC: Does your client have the benefit of public funding?
41. MISS BAYATI: She does indeed.

42. MISS BROADFOOT: My Lord, obviously I cannot oppose the issue of costs in principle, but I have a couple of submissions to make about it. The application for judicial review was lodged at a point when there was no merit in it at all, as Burton J stated. The reason why the landscape may have changed is as a result of the POPPY Project which was launched much later and well after three of the decisions in this case.
43. JUDGE JARMAN QC: But also because the reports came out. Certainly the United States report would have come out after the original decision.
44. MISS BROADFOOT: That is right, but there are US reports every year. As I understand it, the UNHCR report was earlier.
45. JUDGE JARMAN QC: The second consecutive year.
46. MISS BROADFOOT: Yes. So in my submission the claimant should only be entitled to their costs from a much later date, which we would say would be from the date of the amended grounds for judicial review. They appear at page 80 of that bundle. There is no date on it but, as I understand it, they were the grounds submitted shortly before the hearing at which permission was granted. That would be the first point about that.
47. JUDGE JARMAN QC: I think that was in response, was it not?
48. MISS BROADFOOT: To the letter of 28th February 2008. But that, of course, was in response to the POPPY Project report which was lodged after permission had been refused. The claimant had to apply for it to be reopened at a later date.
49. JUDGE JARMAN QC: You would be sending it back from 1st March of this year.
50. MISS BROADFOOT: Yes, my Lord. From 1st March 2008. The second point is that the Secretary of State currently has a costs order in her benefit, I think in the sum of £400. That is at page 51.
51. JUDGE JARMAN QC: This is because of the judgment of Burton J.
52. MISS BROADFOOT: That is right. All I ask in that respect -- and this is more of a technical point rather than a matter of principle, but I think the position is that your Lordship has to make an order that whatever the end sum of costs that the Secretary of State is assessed to have to pay, there is a set off.
53. JUDGE JARMAN QC: Yes.
54. MISS BROADFOOT: So I want to make sure that is included.
55. JUDGE JARMAN QC: Right.
56. MISS BAYATI: My Lord, the only point I would make is that, whilst the POPPY Project report was not submitted until October 2007, the issues were raised by the claimant's solicitors in response to the original certification of the asylum claim, in the

sense that the issue of trafficking was raised throughout, including Cyprus and Belgium. That was raised on 5th April.

57. JUDGE JARMAN QC: Yes, but it was raised in correspondence and the decision of Burton J, who is an experienced judge, was that as at 26th September the claim as formulated was totally without merit.
58. MISS BAYATI: My alternative submission is that we should be taking it from the position of the time of renewal, and the application was made for the matter to be reopened when the POPPY Project had been submitted to the Secretary of State.
59. JUDGE JARMAN QC: So you are accepting then that --
60. MISS BAYATI: The first submission would have been the matters were raised, but my second submission would be that the POPPY Project report was submitted in October. The application for the matter to be reopened was considered by King J on 20th February 2008, although the new application was in fact made in December 2007. The issue, in my submission, arose at that time, not the time of the amended grounds which post-dated the decision of February 2008.
61. As regards the costs order, the only comment I would make, my Lord, is that I am not sure what happened at the hearing of the permission application. Quite often the matter of costs, if an application is renewed for oral hearing, is then considered at the stage of the oral hearing.
62. JUDGE JARMAN QC: There is no order about it.
63. MISS BAYATI: There does not seem to be anything at all about it. I have no idea myself. This is just simply on the basis of what generally happens. If there is no order, there is no order.
64. JUDGE JARMAN QC: Thank you. Miss Broadfoot, I will hear you just on the December 2007 point. I am with you on the set-off. It is just a question of when.
65. MISS BROADFOOT: In relation to the December point, it is quite clear that had a judge had to hear and debate about that in December, the Secretary of State would say "You have just served this report. We have not had a chance to consider it and so we cannot take it into account". It was not really until there was a decision that --
66. JUDGE JARMAN QC: In February.
67. MISS BROADFOOT: In February that there were any grounds to challenge.
68. JUDGE JARMAN QC: We are narrowing the time.
69. MISS BROADFOOT: It is a question about what was done between those dates. It may be very little.
70. JUDGE JARMAN QC: Well, can you argue against 28th February then, Miss Bayati?

71. MISS BAYATI: My Lord, all I know on paper before me is that the renewal application was made in November 2007 and that even if there had been no decision from the Secretary of State at the time of the hearing in December, in my submission a judge would have been entitled to take that into account.
72. JUDGE JARMAN QC: It was obviously reasonable, was it not, to await the further consideration on the report? Resources are limited and these things take longer than ideal.
73. MISS BAYATI: I appreciate there may well have been very little done in the interim.
74. JUDGE JARMAN QC: As a matter of principle, I think 28th February is the correct date. I will order that the defendant pay the claimant's costs from 28th February 2008. That will have to be the subject of assessment. There will be a public funding assessment, and I will say that there should be a set-off in respect of the costs payable by the defendant of the sum of £400 ordered on 26th September 2007. Thank you. Is there anything else?
75. MISS BROADFOOT: My Lord, I think your Lordship needs to have permission to appeal refused in the order.
76. JUDGE JARMAN QC: Yes. Thank you. I am very grateful to both of you for your assistance.
77. MISS BROADFOOT: I am reminded to order a copy of the transcript. I suspect that will come in the usual way.
78. JUDGE JARMAN QC: Yes.