Case No: C5/2011/1092, 1943, 1699, 1215, 2119, 2411, 2417, 2439
Neutral Citation Number: [2012] EWCA Civ 1014
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER), FIRST TIER
REF: AA/13345/2010

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/07/2012

Before :

LORD JUSTICE MAURICE KAY,
Vice President of the Court of Appeal, Civil Division
LORD JUSTICE HOOPER
and
LORD JUSTICE MOORE-BICK

- -

Between :

KA (AFGHANISTAN) & ORS	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

Mr Raza Husain QC and **Mr Becket Bedford** (instructed by **Sultan Lloyd Solicitors**) for **KA**
Mr Raza Husain QC and **Ms Sonali Naik (**instructed by **Sutovic and Hartigan Solicitors)** for **SU**
Mr Beckett Bedford (instructed by **Sultan Lloyd Solicitors)** for **AK, EU, AR, QA, FU**
Ms Joanna Dodson QC and **Mr Anas Khan (**instructed by **Thompson & Co Solicitors)** for **SA**
Mr Jonathan Hall and Mr Nicholas Chapman (instructed by **Treasury Solicitor**) for the **Respondent**

Hearing dates : 27, 28 March 2012

- -

Judgment

Lord Justice Maurice Kay :

1. These appeals have been heard together because they raise a number of generic legal and factual issues and provide the Court with the opportunity to consider some difficult problems in the round before determining the individual cases. The appellants are young men from Afghanistan who arrived in this country as unaccompanied minors, aged 15 or 16, and claimed asylum. In each case the Secretary of State refused the asylum application but, pursuant to her policy on unaccompanied minors, granted discretionary leave to remain (DLR) until the age of 17½. Shortly before reaching that age, each appellant made an application for asylum or humanitarian protection which was refused. Each appealed unsuccessfully to the First-Tier Tribunal (FTT), which, except in the cases of SA and QA, determined the appeal before the appellant had attained the age of 18. Subsequent appeals to the Upper Tribunal (UT) were heard and dismissed after the appellants had attained their majority. In each case, the UT approached the assessment of risk on return on the basis of the facts as at the time of the hearing before it, including the fact of the appellant's recently attained majority. When granting permission to appeal to this Court in some of the cases, Laws LJ said that this gave rise to the question whether an appellant in these circumstances "should retain the advantages (in immigration terms) of his minority".

2. At least since *Ravichandran v Secretary of State for the Home Department* [1996] Imm AR 97 the general rule has been that the specialist tribunals dealing with asylum appeals consider them on the basis of the facts and circumstances prevailing at the time of the hearing. If the facts and circumstances have changed between the determination in the FTT and the hearing in the UT, it is the changed facts and circumstances which have to be addressed. The question posed by Laws LJ in the present cases requires consideration of whether there is something about them which takes them outside the *Ravichandran* principle.

3. The centrepiece of the case for the appellants is to be found in Council Directive 2003/9/EC of 27 January 2003 (the Reception Directive), Article 19.3 of which provides:

> "Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety."

4. I shall refer to the duty set out in the first sentence as "the duty to endeavour to trace". It was transposed into domestic law by the Asylum Seekers (Reception Conditions) Regulations 2005, regulation 6 of which provides:

> "(1) So as to protect an unaccompanied minor's best interests, the Secretary of State shall endeavour to trace the

> members of a minor's family as soon as possible after the minor makes his claim for asylum.
>
> (2) In cases where there may be a threat to the life or integrity of the minor or minor's close family, the Secretary of State shall take care to ensure that the collection, processing and circulation of information concerning the minor or his close family is undertaken on a confidential basis so as not to jeopardise his or her safety."

It is not suggested that this was anything other than a faithful transposition.

5. The appellants' factual case is that between 2006 and 2010 the Secretary of State failed to discharge, indeed effectively ignored, the duty to endeavour to trace and thereby undermined the appellants' prospects of making good their asylum claims. The omission is described by Mr Raza Husain QC as "an egregious error of law". The submission is that if the duty had been discharged it would or might have confirmed the appellants' assertions of a lack of family support in Afghanistan which can be a powerful indicator of the well-foundedness of an asylum claim.

6. Although the UT was considering these cases after the eighteenth birthdays of the appellants and, therefore, at a time when the duty to endeavour to trace no longer applied, the next step in the appellants' legal argument is that the historic illegality continues to be relevant because there is a line of authority in which (and I quote Mr Husain's skeleton argument)

> "the courts have recognised that it is appropriate to require historic errors of the kind present here to be remedied. The fundamental point is that the Secretary of State has the power to grant a remedy and her historic errors are at least a mandatory relevant consideration in the exercise of that power."

7. For this purpose, it does not matter that the appellants are now over 18 because "there is no temporal bright line across which the risks to and the needs of the child suddenly disappear". The line of authority which is said to support this analysis includes *R (Rashid) v Secretary of State for the Home Department* [2005] INLR 550; *AA (Afghanistan) v Secretary of State for the Home Department* [2007] EWCA Civ 12; *R (S) v Secretary of State for the Home Department* [2007] EWCA Civ 546; and *SL (Vietnam) v Secretary of State for the Home Department* [2010] EWCA Civ 225.

8. Although these submissions, which I have described as the centrepiece of the appellants' case, raise an important issue, it is not the only issue raised on their behalf. In particular, it is also submitted that both the Secretary of State and the FTT failed to have regard to the best interests of the appellants as children pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009. It is appropriate to reach some conclusions about the legal principles relating to the consequences of any breach (none being admitted by the Secretary of State) of the duty to endeavour to trace and the duty under section 55 before addressing the facts of the appellants' cases, to which the Court will return on a future occasion (except in the case of SA).

The *Rashid/S* line of authority

9. In *Rashid* the Secretary of State, in considering an asylum application, had omitted to have regard to a policy which would or might have benefited the applicant. Over a year later, the applicant's solicitors drew the omission to the attention of the Secretary of State but by the time the application was reconsidered by the Secretary of State the policy had ceased to exist because of a change of circumstances. On the applicant's claim for judicial review of the reiterated refusal on reconsideration, Davis J and thereafter the Court of Appeal held that the applicant had been a victim of unfairness such as to amount to an abuse of power. Pill LJ said (at paragraph 36):

> "I agree … that the degree of unfairness was such as to amount to an abuse of power requiring the intervention of the court. The persistence of the conduct [*viz* failure to have regard to the policy], and lack of explanation for it, contribute to that conclusion. This was far from a single error in an obscure field."

10. May LJ (at paragraph 41) and Dyson LJ (at paragraph 56) agreed. There was no allegation of bad faith on the part of the Secretary of State. As to remedy, the Court of Appeal concluded that, while it should not declare an entitlement to refugee status, which would be inappropriate in the light of changed circumstances in Iraq, it was appropriate to grant a declaration "the effect of which would be expected to be a grant of indefinite leave to remain" (per Pill LJ at paragraph 39). In so doing, the Court rejected a submission on behalf of the Secretary of State that *Ravichandran* was fatal to the claim because, at the time of the hearing, the prevailing circumstances in Iraq no longer necessitated protection.

11. *AA (Afghanistan)* is of interest because an error of an adjudicator and the ensuing passage of time meant that the appellant had lost the potential benefit of the current policy on unaccompanied minors. He had lost "the advantage of an independent judicial consideration of [the merits] as they stood at the time" (per Keene LJ, at paragraph 22). Although the appellant was no longer a minor, "the loss of potential advantages (procedural or substantive) is a factor which should be taken into account by the Secretary of State" (per Waller LJ, at paragraph 60). Notwithstanding judicial scepticism about the strength of the original claim, the Court granted relief in the form of a direction under section 87 of the Nationality, Immigration and Asylum Act 2002 requiring the Secretary of State to consider whether, in the light of the judgments of the Court, and of any further representations made by the appellant within 21 days, a period of leave to remain should be granted and, if so, for how long.

12. *R (S) v Secretary of State for the Home Department* contains a rigorous analysis of *Rashid* by Carnwath LJ. There the application for asylum was made at a time when the applicant would have benefited from a policy which would have resulted in his being granted four years' exceptional leave to remain which ordinarily would have led eventually to a grant of indefinite leave to remain. In the event, his application was not considered for some four years because of an agreement between the Home Office and the Treasury to put a large number of claims on hold. By the time it was considered, the beneficial policy had been withdrawn. Carnwath LJ expressed reservation about the reasoning (but not the result) in *Rashid* on the ground that "it seeks to transform 'abuse of power' into a magic ingredient, able to achieve remedial

results which other forms of illegality cannot match" (at paragraph 39). The following passages are also in point:

> "41. I also have doubts about the weight put by the judgments upon the Department's conduct. The court's proper sphere is illegality, not maladministration. If the earlier decisions were unlawful, it matters little whether that was a result of bad faith, bad luck or sheer muddle.
>
> It is the unlawfulness, not the cause of it, which justifies the court's intervention and provides the basis for the remedy …
>
> 45 … As I read [Pill LJ's] judgment, the steps in his reasoning … can be broken down as follows:
>
> (i) Serious administrative errors by the Secretary of State at the earlier stage had resulted in 'conspicuous unfairness amounting to an abuse', and thus illegality.
>
> (ii) The court should 'give such relief as it properly can'.
>
> (iii) Although the applicant was no longer entitled to refugee status as such, the Secretary of State had a 'residual power' to grant indefinite leave.
>
> (iv) The grant of indefinite leave would provide a remedy for the unfairness.
>
> (v) There were no countervailing considerations of public interest.
>
> (vi) Accordingly, 'the appropriate response in the circumstances' would be for the court to declare that ILR should be granted.
>
> 46. … the court itself had no power to grant ILR. Nor, on a conventional basis, did it have the power to direct the Secretary of State to grant ILR. The power and the discretion rested with the Secretary of State. It was not open to the court to assume that function … However, it was open to the court to determine that a legally material factor in the exercise of that discretion was the correction of injustice …
>
> 47. On that analysis of *Rashid*, the court's intervention was directed at the appropriate target and involved no conflict with *Ravichandran*. It respected the principle that the Secretary of State's decision should be made on the basis

> of present circumstances. But it recognised that those circumstances might include the present need to remedy injustice caused by past illegality."

13. I have set out that analysis at some length because, in my judgment, it is correct. *S* and other authorities were further considered by Jackson LJ in *SL (Vietnam) v Secretary of State for the Home Department* [2010] 1WLR 651. His synthesis of them (at paragraph 33) was:

> "(i) A decision may be unlawful if it is reached in disregard of a relevant policy.
>
> (ii) Past prejudice suffered in consequence of such a decision may be a relevant factor to take into account, even when that policy has ceased to be applicable."

SL was ultimately concerned with deportation rather than asylum although the "past prejudice" had taken the form of failure to have regard to a beneficial policy in the context of an asylum claim. The remedy was therefore directed at reconsideration of the decision to deport in the light of the need to correct injustice caused by the previous unlawful failure to apply the policy in relation to the asylum claim, albeit that asylum was no longer an issue.

Applying the *Rashid* / *S* line of authority to the present context

14. The first question in the present case is whether the Secretary of State failed to discharge the duty to endeavour to trace. Her case is that she did not and that it was discharged by, for example, informing the minor of the tracing facilities of the Red Cross. It will eventually be necessary to examine each of the cases in detail but I have no hesitation in saying that, if that was all that was done, it would not discharge the duty to endeavour to trace. This conclusion is supported by *DS (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 305, in which Pill LJ said (at paragraphs 46-47):

> "I readily acknowledge the difficulties which may arise on the making of enquiries … In the present case, however, the Secretary of State did nothing at all to assist with tracing family members or to enquire about reception arrangements on return and the court has been invited to uphold that inactivity … What should be done will vary from case to case. Inactivity, combined with the failure to bring to the attention of the Tribunal the instruments cited in this judgment, was not, in my view, a permissible option.
>
> The Secretary of State seeks to defeat the claim by reason of the appellant's failure to cooperate with the Red Cross. Tracing work by the ICRC would almost certainly have been assisted by a contribution from the Secretary of State, based on information available to her. The lack of cooperation does not relieve the Secretary of State of her duties … the duty cannot be ignored."

Lloyd LJ added (at paragraph 68):

> "In fact, no attempt to trace was made by UKBA in the present case. All that was done was to draw to the attention of the appellant or his foster-carer the facilities of the Red Cross, with a view to his attempting to trace his relatives through that agency. There is a question as to whether the use made of these facilities by or on behalf of the appellant was appropriate, but nothing was done pursuant to regulation 6."

15. In *DS*, the minor in question was still a minor at the time when his case was considered by the Court of Appeal and so the ultimate issues in the present cases did not arise. Mr Jonathan Hall submits that the reason why the Secretary of State merely informs the minor of the facilities of the Red Cross is because the Red Cross does not take references from government departments but only undertakes tracing enquiries made after request by or on behalf of the minor himself. Nevertheless, regulation 6 imposes a positive duty on the Secretary of State and, in my judgment, it is not discharged by simply informing the minor of the facilities of the Red Cross. Moreover, although there is no statutory prescription of the steps that need to be taken in discharge of the duty, regulation 6(2) suggests that they include "the collection, processing and circulation of information concerning the minor or his close family". It does not limit the obligation to that.

16. The case for the appellants is that the duty to endeavour to trace simply was not complied with between 2006 and 2010; that this was not just a haphazard coincidence in the present cases; and that the irresistible inference is that it was deliberate and systemic. Indeed, it seems that in *DS (Afghanistan)*, the submission on behalf of the Secretary of State, which was rejected by this Court, was that she was "entitled to do nothing by way of tracing inquiries" (paragraph 44). In the present case, that has morphed into a submission which I can caricature as an entitlement to do next to nothing which I find equally unsustainable. The inference that I draw from the history prior to *DS (Afghanistan)* is that the Secretary of State failed to discharge the duty in relation to unaccompanied minors from Afghanistan because she adopted the policy of granting them leave to remain until they reached the age of seventeen and a half, whereafter any further application would be considered on its merits. By that time, of course, the duty to endeavour to trace would be close to expiration because of the imminence of majority.

17. Having accepted that there was a systemic breach of the duty to endeavour to trace, I now have to consider whether that may trigger the *Rashid/S* principle. It is a complicated question and not simply a matter of the systemic breach entitling these appellants, without more ado, to the allowing of their appeals with remittal to the Secretary of State to consider grants of leave to remain, which is the primary relief sought. Nor does it admit of the simplistic analysis that the appellants were over 18 when their cases came before the FTT or the UT and, as a consequence and in accordance with the *Ravichandran* principle, the breach had become irrelevant to the requisite consideration of their cases by reference to the circumstances prevailing at the time of the hearings. When the *Rashid/S* principle applies, it modifies the strict application of *Ravichandran*.

18. At this point, it is appropriate to refer to what I may call "the eighteenth birthday point". Although the duty to endeavour to trace does not endure beyond the date when an applicant reaches that age, it cannot be the case that the assessment of risk on return is subject to such a bright line rule. The relevance of this relates to the definition of a "particular social group" for asylum purposes. In *DS*, Lloyd LJ considered *LQ (Age:immutable characteristic) Afghanistan* [2008] UKAIT 00005 in which the AIT held that "for these purposes age is immutable", in the sense that, although one's age is constantly changing, one is powerless to change it oneself. Lloyd LJ said (at paragraph 54):

> "that leaves a degree of uncertainty as to the definition of a particular social group. Does membership cease on the day of the person's eighteenth birthday? It is not easy to see that risks of the relevant kind to who as a child would continue until the eve of that birthday, and cease at once the next day."

Given that the kinds of risk in issue include the forced recruitment or the sexual exploitation of vulnerable young males, persecution is not respectful of birthdays – apparent or assumed age is more important than chronological age. Indeed, as submissions developed there seemed to be a degree of common ground derived from the observation of Lloyd LJ.

The issue at the heart of these cases

19. When considering the return of an unaccompanied minor or vulnerable young person to Afghanistan, a decision-maker (whether the Secretary of State or the FTT or UT) will be concerned with assessing the extent to which the reception arrangements and family support and involvement will reduce or eliminate the risk. In *HK (Afghanistan) v Secretary of State for the Home Department* [2012] EWCA Civ 315, Elias LJ said (at paragraph 10):

> "The central issue which the Upper Tribunal had to determine … was whether on the evidence it could properly conclude that these children had family in Afghanistan who were willing and able to receive and protect them."

20. Two of the three appellants in *HK* were still minors when the case came before the Court of Appeal. The UT had held, as per its headnote:

> "Where a child has close relatives in Afghanistan who have assisted him in leaving the country, any assertion that such family members are uncontactable or are unable to meet the child in Kabul and care for him on return, should be supported by credible evidence of efforts to contact those family members and their inability to meet and care for the child in the event of return."

21. That formulation hints at the polarised suppositions which underlie cases such as this. On the one hand, it is submitted on behalf of applicants that the failure of the Secretary of State to discharge her duty to endeavour to trace has or may have deprived them of access to the best evidence with which to prove their case, namely

that the Secretary of State has used her best endeavours and considerable resources in trying to find close relatives in Afghanistan but has failed. On the other hand, the Secretary of State is concerned that children whose close relatives have had the resources and ability to facilitate their travel to this country will or may be deliberately obstructive by withholding information which, if communicated, would enable the Secretary of State to locate a potentially protective family in Afghanistan which would or might justify refusal of the child's application.

22. In *HK* it was submitted on behalf of the Secretary of State that the duty to endeavour to trace is quite distinct from the processing of an asylum application. Elias LJ (with whom Pill and Rimer LJJ agreed) said (at paragraph 40)

> "… the regulation 6 duty is in terms said to arise as soon as an asylum application is lodged and it is plainly intimately connected with the determination of that application. This suggests that it should be treated as a necessary element in the determination of an asylum application."

However, he went on to conclude that failure to discharge the duty to endeavour to trace does not lead axiomatically to a successful outcome for the child's application on appeal. It is necessary for there to be a careful consideration of the facts of each individual case.

23. *HK* also illustrates the relationship between the failure to discharge the duty to endeavour to trace and section 55 of the Borders, Citizenship and Immigration Act 2009 which provides that the Secretary of State must make arrangements for ensuring that her functions in relation to immigration, asylum or nationality

> "are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom." (Section 55(1)(a))

In *HK*, the UT had not addressed section 55 and, for that reason, the Secretary of State conceded that the cases should be remitted. (The issue in this Court was whether the appellants should receive a favourable outcome without the need for remittal). Elias LJ said (at paragraph 47):

> "… even if the Upper Tribunal had had regard to the section 55 duty, it would have been entitled to conclude that it was not in a position properly to give effect to that duty without the information (or lack of it) resulting from the Secretary of State's tracing inquiries."

In *HK*, as previously in *DS*, the disposal took the form of remittal. One of the remitted cases in *HK* concerned an appellant who had turned 18.

The emerging principles

24. Certain principles emerge from the authorities, particularly *DS* and *HK*:

1) The duty to endeavour to trace is not discharged by merely informing a child of the facilities of the Red Cross.

2) A failure to discharge the duty may be relevant to judicial consideration of an asylum or humanitarian protection claim.

3) Such a failure may also be relevant to a consideration of the section 55 duty.

The factual matrix

25. Although we are not yet in a position to deal with the cases of these individual appellants (save for SA), it is important to emphasise that, when the principles to which I have referred come to be applied to individual cases, much will turn on their specific facts. There is a hypothetical spectrum. At one end is an applicant who gives a credible and cooperative account of having no surviving family in Afghanistan or of having lost touch with surviving family members and having failed, notwithstanding his best endeavours, to re-establish contact. It seems to me that, even if he has reached the age of 18 by the time his appeal is considered by the tribunal, he may, depending on the totality of the established facts, have the basis of a successful appeal by availing himself of the *Rashid*/*S* principle and/or section 55 by reference to the failure of the Secretary of State to discharge the duty to endeavour to trace. In such a case *Ravichandran* would not be an insurmountable obstacle. At the other end of the spectrum is an applicant whose claim to have no surviving family in Afghanistan is disbelieved and in respect of whom it is found that he has been uncooperative so as to frustrate any attempt to trace his family. In such a case, again depending on the totality of established facts, he may have put himself beyond the bite of the protective and corrective principle. This would not be because the law seeks to punish him for his mendacity but because he has failed to prove the risk on return and because there would be no causative link between the Secretary of State's breach of duty and his claim to protection. Whereas, in the first case, the applicant may have lost the opportunity of corroborating his evidence about the absence of support in Afghanistan by reference to a negative result from the properly discharged duty to endeavour to trace, in the second case he can establish no such disadvantage. At this stage, when we have not heard oral submissions on the facts of their cases, it is inappropriate to say where on the spectrum each of these appellants lies.

26. It is important to emphasise that the preceding paragraph uses the language of <u>established</u> facts and the need to <u>establish</u> disadvantage. Whether one is considering asylum, humanitarian protection or corrective relief, there is a burden of proof on an applicant not just to establish the failure to discharge the duty to endeavour to trace but also that he is entitled to what he is seeking. A past lack of cooperation on the part of the application may not always defeat his claim – it did not in *DS* or *HK* – but it may lead to the drawing of an adverse inference. As Elias LJ said in *HK* (at paragraph 35):

> "I do not suggest that it would in all cases be appropriate to draw an adverse inference that the child would be safely received merely from the failure of the child to try to make contact with his or her family. It will depend on a range of factors which would include the circumstances in which the child came to the UK, the age of the child and whether he or she has been encouraged to make contact. But in my judgment it is in principle an inference which it is legitimate for a court to draw where the evidence justifies it and it is not an improper

> inference for the Upper Tribunal to make on the evidence before it."

Indeed, Elias LJ considered (at paragraph 51) that, on remittal, an adverse inference was in principle open to the UT on the evidence of a lack of cooperation in that case. Even in the context of a clear breach of the duty to endeavour to trace, a tribunal will retain a certain robustness in assessing the evidence of a young person who has demonstrated a deep-rooted resistance to being returned to his country of origin.

The Children Act 1989 (as amended)

27. In her skeleton argument, Ms Joanna Dodson QC advanced an elaborate submission that an applicant between the ages of 18 and 21 might also be able to navigate his way round the fact that he is no longer a child by reference to sections 23A – 23C of the Children Act 1989 which were inserted by the Children (Leaving Care) Act 2000. Counsel for the other appellants adopted the submission without developing it. In the event, we heard no oral argument upon it. It is based on an applicant having the status of a "former relevant child" within the meaning of section 23C(1)(b). The submission had not been advanced in the FTT or the UT in any of the eight appeals and it is not the basis upon which SA's appeal is being allowed. Nor has any appellant established a full factual picture against which it could be assessed. I do not consider it appropriate to say any more about it.

SA's appeal

28. In his skeleton argument, Mr Hall conceded that SA's appeal should be allowed and we so ordered on the first morning of the hearing. SA had succeeded in establishing his right to humanitarian protection before the FTT. Although the Secretary of State's appeal to the UT succeeded, the Secretary of State now accepts that there had been no legal error in the determination of the FTT, which had concluded that SA would be exposed to an enhanced risk of indiscriminate violence in the light of "an assessment of the current conditions in Kabul and a proper appreciation of the circumstances peculiar to this appellant" (FTT, paragraph 20). We agree that the appropriate course is to set aside the decision of the UT and restore the decision of the FTT. This has no implications, one way or the other, for the issues with which I have been concerned in this judgment upon which, in the event, Ms Dodson made no submissions.

Conclusion

29. As regards the other seven appellants, I have endeavoured to map out the principles by which these appeals should be determined. It is always difficult to write a judgment detached from the facts of the particular cases under consideration but, if my Lords agree with my approach, it will now be necessary to determine the seven remaining appeals at a further hearing. I would direct that within fourteen days after judgments are handed down in this case, the seven remaining appellants should each inform the Secretary of State and the Court whether they intend to pursue their appeals. This should be done in the form of short supplementary skeleton arguments setting out how, in each case, the appeal is now put. Within fourteen days after the receipt of the appellants' supplementary skeletons, the Secretary of State should respond in a single supplementary skeleton argument, setting out her case in relation to the seven remaining appeals. It may be that some at least of the appeals can be

disposed of, one way or the other, by consent. Any not so disposed of should be relisted for hearing in the Michaelmas Term.

Lord Justice Hooper:

30. I agree.

Lord Justice Moore-Bick:

31. I also agree.