Case No: CO/2902/2009

Neutral Citation Number: [2011] EWHC 110 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th January 2011

Before :

His Honour Judge Sycamore
(Sitting as a Deputy High Court Judge)

- -

Between :

THE QUEEN (ON THE APPLICATION OF A O)

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

- -
- -

David Jones and Louise Hooper (instructed by **Paragon Law Solicitors**) for the **Claimant**
Steven Kovats QC (instructed by **Treasury Solicitor**) for the **Defendant**

Hearing dates: 8th and 9th December 2010

- -

Judgment

HHJ Sycamore :

Introduction

1. A O ("the claimant") was born on 15th October 1991 and is a citizen of Iraq. He arrived in the United Kingdom in November 2008 as an unaccompanied minor and claimed asylum on 18th November 2008, asserting that he was a citizen of Iran.

2. The application before me is for judicial review by which the claimant challenged the failure of the defendant to determine his claim for asylum before 15th April 2009, when the claimant turned 17.5 years. Since then the claimant's asylum claim has been determined and was refused by the defendant on 8th July 2009. On 22nd October 2010 the First Tier Tribunal (Immigration and Asylum Chamber) dismissed the claimant's appeal against that decision, finding that, contrary to his assertion, he was a citizen of Iraq. On 29th October 2010 permission to appeal was refused. At the time of the hearing before me the claimant had a pending application to the Upper Tribunal (Immigration and Asylum Chamber) for permission to appeal.

3. The application for judicial review was issued on 24th March 2009 and gave details of the decision to be judicially reviewed in the following terms:

> "Refusal by the defendant to interview the claimant and to make a decision upon his asylum and human rights claim before the claimant turning [sic] 17.5 years. Date of decision 24/2/09."

4. The essence of the claimant's case is that, had the defendant determined the asylum claim before he turned 17.5 years, the defendant would have granted him discretionary leave until the age of 17.5 years. This would have enabled the claimant to have certain benefits, including an entitlement to work and to obtain various forms of assistance. The leave would have been automatically extended until the application (and any consequential appeal) had been decided or withdrawn. The claimant is now

19 years of age and, although it was conceded on his behalf that the subsequent course of events has made the original grounds academic, it was submitted that the court should nevertheless deal with the application on the basis of a number of broad submissions on behalf of the claimant, in terms:

(a) Whether the defendant has a policy for processing asylum claims of unaccompanied minors in a particular time frame or in a particular order of priority and if not was the failure to have such a policy unlawful generally or in the claimant's case;

(b) Whether the defendant had a legal obligation to determine the claimant's asylum claim within a reasonable time and whether the claimant had a legitimate expectation that the manner of processing the claim would be such that if refused asylum he would be granted discretionary leave to remain;

(c) Whether the defendant determined the claimant's asylum claim within a reasonable time;

(d) Whether the conduct of the defendant in this case lead to an abuse of process and/or power.

5. The claimant sought a declaratory order that he should be granted discretionary leave to remain, with damages.

Discretionary leave to remain -the Defendant's policy for those aged under 17.5 years

6. Before proceeding to analyse the history of the claimant's asylum claim and his application for judicial review it is necessary to consider the defendant's policy in respect of the grant of discretionary leave to remain to those aged under 17.5 years.

This can be found in the defendant's Asylum Policy Unit Notice 3/2007 (30th March 2007) which explained a change in the defendant's policy on the grant of discretionary leave to unaccompanied asylum seeking children ("UASC"). The relevant paragraphs read:-

> **"Background**
>
> 2. The general policy relating to children is that if they do not qualify for asylum or Humanitarian Protection (HP), or DL (discretionary leave) under the standard criteria, the (UKBA) will not seek to enforce removal if we are not satisfied that adequate reception and accommodation arrangements are in place in the proposed country of return.
>
> 3. Instead a period of DL will be granted…
>
> …
>
> **Changes to DL policy**
>
> 5. With effect from **1 April 2007** this policy is being amended. The purpose behind the change is to enable the (UKBA) to deal with any application to extend or to vary leave and any subsequent appeal prior to the young person turning 18, providing more clarity to the young person about their future.
>
> 6. For all decisions made on or after **1 April 2007** (where asylum/HP is being refused) DL must only be granted to 17.5 years (or for 3 years (or 12 months for certain countries) whichever is the shorter period of time).
>
> …
>
> **What to do with those approaching 17.5 years**
>
> 10. Young people who are approaching 17.5 years, if their asylum/Humanitarian Protection/standard DL applications are refused, should be granted DL up to 17.5 years. This may mean that some applicants are granted DL for a short period of time."

7. Thus the defendant has a policy of granting discretionary leave to some UASC whose claims for asylum have been rejected to protect them during their minority. It is clear that discretionary leave is granted only to minors for whom there are no adequate reception arrangements in their home countries. The policy change referred to at

paragraph 6 involved a restriction of the original policy by bringing forward the cut off point from age 18 years to age 17.5 years to facilitate completion of the appeal process by the time an applicant turned 18 so that he or she could then be returned to his or her home country. The revised policy is less generous than the earlier policy.

8. It was clear from the original grounds for judicial review that the claimant's challenge was to the effect that the defendant was acting unlawfully and unreasonably in not arranging to interview the claimant before he turned 17.5 years age in the knowledge that the claimant would thus lose his right to discretionary leave to remain.

The history of the claimant's asylum claim

9. I turn now to the history of the claimant's asylum claim. After making the application, with assistance from Social Services, on 18th November 2008 there was an initial screening interview on 1st December 2008 in which the claimant indicated that he was a citizen of Iran. On 28th January 2009 the claimant's statement of evidence form was completed. The original deadline for this was 31st December 2008 but the deadline was extended to 29th January 2009 at the request of the claimant's legal representatives. On 16th February 2009 the claimant's solicitor and the defendant agreed that the claimant would be interviewed on 16th April 2009. On 19th February 2009 the claimant's solicitors emailed the defendant requesting that the interview date be advanced. The relevant parts of the email read as follows:-

> "… We previously agreed for his Home Office interview date to take place on 16th April 2009. I would like to rearrange this as AO will be over 17.5 years of age at that time of his interview. If his asylum application is refused he will not be granted DLR.
>
> AO claimed asylum 18/11/2008. It is through no fault of his own that he has had to wait so long for a Home Office interview …".

10. By letter of 24th February 2009 the defendant declined to alter the interview date and on 6th March 2009 the defendant again, in a telephone conversation with the claimant's solicitors, confirmed that it was impossible to interview the claimant any earlier. In the event, the claimant was interviewed on 16th April 2009 and, as I have already observed, the defendant refused the claimant's asylum claim on 8th July 2009.

11. Following the telephone conversation on 6th March 2009, the claimant's solicitors sent a letter before action to the defendant and the application for judicial review was issued on 24th March 2009. On 27th March 2009 His Honour Judge Jarman QC, sitting as a Deputy High Court Judge, ordered that the defendant interview the claimant before 15th April 2009. It should be noted that no order was made requiring the defendant to make a decision on the claim before that time. On 3rd April 2009 the defendant applied to set aside the order of 27th March 2009 and on 8th April 2009 Lord Carlile of Berriew QC, sitting as a Deputy High Court Judge, set aside the order of 27th March 2009. On 24th July 2009 Mr Keith Lindblom QC, sitting as a Deputy High Court Judge, ordered an oral hearing of the application for permission. This was heard on 9th September 2009 by Mr Stuart Isaacs QC, sitting as a Deputy High Court Judge, who granted permission. The matter was listed before me for a substantive hearing, as I have already observed, on 8th and 9th December 2010.

12. Before I proceed to identify the legal framework, it is necessary for me to look at a note prepared on behalf of the defendant and dated 2nd July 2009 in response to the claimant's further grounds. It was accepted that in the defendant's grounds for setting aside the order of 27th March 2009 (2nd April 2009) it was asserted that applications for asylum by children were not, as such, given priority but that such applications were treated differently from applications by adults. In seeking to clarify what had

been said in the grounds for setting aside, it was said on the defendant's behalf that *"… In fact UASC claims are normally determined in a shorter timeframe than those of adults, notwithstanding the additional step of completing the SEF (statement of evidence form) …"*.

13. At the hearing before me it was accepted on behalf of the defendant that expert evidence obtained on behalf of the claimant from a Ms Franky Lever, who had analysed data provided by the defendant in relation to the processing of asylum claims for the period 1st November 2008 to 30th June 2009, demonstrated that the median time for determination of UASC claims was longer than that for the determination of adult claims. The defendant conceded that she was not previously aware of this. On the defendant's behalf, counsel submitted that the most likely explanation was due to a combination of two factors, namely the time taken for the submission of a statement of evidence form in all UASC claims and, secondly, the fact that interviews of UASC require the presence of an appropriate adult, it being the experience of the defendant that it often takes a considerable time to find a date convenient to all parties. The expert evidence also demonstrated that interviews for children were not booked in order of receipt of claim and that there was no evidence of any practice of prioritising UASC claims over adult claims.

14. It was unfortunate that this information was not known the defendant and that, on instructions to counsel, information provided in the note of 2nd July 2009 was inaccurate. Nevertheless, this claim has to be seen in the context of the applicable legal framework.

Legal framework

15. Section 21 of the UK Borders Act 2007 came into force on 6th January 2009 and provided, so far as relevant:-

> "(1) The Secretary of State shall issue a code of practice designed to ensure that in exercising functions in the United Kingdom the [UK Border Agency] takes appropriate steps to ensure that while children are in the United Kingdom they are safe from harm.
>
> (2) The [UKBA] shall—
>
> (a) have regard to the code of practice in the exercise of its functions, and
>
> (b) take appropriate steps to ensure that persons with whom it makes arrangements for the provision of services have regard to the code.
>
> …
>
> (5) …In this section…(b) "child" means an individual who is less than 18 years old."

16. The code of practice issued pursuant to section 21 "Keeping children safe from harm" also came into force on 6th January 2009, the same date as section 21. So far as relevant, the code of practice included the following:

> "…
>
> 1.5 The UKBA acknowledges the status and importance of the following: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the EU Reception Conditions Directive, the Council of Europe Convention on Action Against Trafficking in Human Beings, and the UN Convention on the Rights of the Child. The UKBA must fulfil the requirements of these instruments in relation to children whilst exercising its functions as expressed in UK domestic legislation and policies.
>
> …
>
> 1.7 The UKBA will seek to ensure that children … have their applications dealt with in a timely way that they can understand and that minimises the uncertainty that they may experience…

> 1.8 'Harm' means the ill-treatment or impairment of health or development of a child. 'Development' means physical, intellectual, emotional, social or behavioural development; 'health' means physical or mental health; and 'ill-treatment' includes sexual abuse and forms of ill-treatment which are not physical…. consistent with those used in the Children Act 1989 … wide to reinforce the emphasis on preventing an identifiable state of affairs continuing where this is plainly having an adverse effect on a child.
>
> 1.9 Consistent with its main functions, the UKBA will take positive steps to keep children safe from harm by [inter alia] ensuring that immigration procedures and situations are responsive to the needs of children and that time is made available for appropriate communication with children and families about immigration procedures.
>
> 1.10 Staff must approach their dealings with a child or a case involving a child with a view to being as responsive as possible to the needs of the children involved without overriding the purpose of their work.
>
> 2.6 This code is not a statement of the policy on unaccompanied asylum seeking children (UASC). However, the principles set out in the first section of this code about how to treat children apply similarly to those who are vulnerable due to the lack of a safeguarding adult in their life.
>
> 2.10 There should also be a recognition that children continue to develop. They cannot put on hold the stages of growth and personal development as social and cognitive individuals, until a potentially lengthy application process is resolved. Every effort must therefore be made to achieve timely decisions for them …".

17. Section 21 was repealed on 2nd November 2009 on which date section 59 of the Borders, Citizenship and Immigration Act 2009 came into effect. This section has no application to the claimant as he turned 18 years on 15th October 2009.

18. Directive 2003/9/EC lays downs minimum standards for the reception of asylum seekers. Article 17(1) provides that Member States shall take into account the specific situation of vulnerable persons such as, among others, minors and unaccompanied minors, and the national legislation implementing the provisions of Chapter II relating to material reception conditions and healthcare.

19. Article 18(1) of the Directive provides that the best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Article 19 deals with unaccompanied minors. There is nothing in Article 19 nor, indeed, in the rest of the Directive, which either imposes a timetable for the determination of asylum claims or allocates priorities between claimants. Article 17 deals with minimum standards on procedures in Member States for granting and in withdrawing refugee status and provides that the best interests of the child shall be a primary consideration when implementing Article 17 which deals with the appointment of representatives, the training of interviewers and age assessments.

20. Finally, Article 23(1) requires Member States to process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II (Articles 6 to 22). Article 23(2) provides:

> "Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.
>
> Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:
>
> (a) be informed of the delay; or
>
> (b) receive, upon his/her request, information on the time frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time frame."

21. The Immigration Rules (HC395 as amended) ("the Rules") provide procedures for determining asylum claims generally and specifically for children.

22. Paragraph 333A of the Rules replicates the provisions of Article 23(2) saying:-

> "The Secretary of State shall ensure that a decision is taken by him on each application for asylum as soon as possible, without prejudice to an adequate and complete examination.
>
> Where a decision on an application for asylum cannot be taken within six months of the date it was recorded, the Secretary of State shall either:
>
> (a) inform the applicant of the delay; or
>
> (b) if the applicant has made a specific written request for it, provide information on the timeframe within which the decision on his application is to be expected. The provision of such information shall not oblige the Secretary of State to take a decision within the stipulated time-frame."

23. Paragraphs 350-352ZB of the Rules come under the heading "Unaccompanied Children" and provide as follows:

> "350. Unaccompanied children may also apply for asylum and, in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases.
>
> 351….account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation…Close attention should be given to the welfare of the child at all times.
>
> 352. Any child over the age of 12 who has claimed asylum in his own right shall be interviewed about the substance of his claim unless the child is unfit or unable to be interviewed. When an interview takes place it shall be conducted in the presence of a parent, guardian, representative or another adult independent of the Secretary of State who has responsibility for the child. The interviewer shall have specialist training in the interviewing of children and have particular regard to the possibility that a child will feel inhibited or alarmed. The child shall be allowed to express himself in his own way and at his own speed. If he appears tired or distressed, the interview will be suspended. The interviewer should then consider whether it would be appropriate for the interview to be resumed the same day or on another day.
>
> 352ZA. The Secretary of State shall as soon as possible after an unaccompanied child makes an application for asylum take measures to ensure that a representative represents and/or assists the unaccompanied child …

> 352ZB. The decision on the application for asylum shall be taken by a person who is trained to deal with asylum claims from children."

24. I have already made reference to the defendant's Asylum Policy Unit Notice 3/2007 at paragraph 6 above.

25. Guidance for processing asylum applications from children is published by the defendant *"Processing Asylum Applications from Children"* (last updated November 2008). This document contains a timetable for processing asylum claims by UASC. It is of significance that whilst the body of the text sets out the processes to be applied, the timetable for interviews and decisions appears not in the body of the text but in a process map (flow chart) at the end of the document which specifies day 25 for the interview and day 31 to 35 for the "decision service event". The body of the document is silent as to time frames.

26. The defendant's November 2006 booklet "Claiming Asylum and Living in the UK: a Guide for Young People Arriving Alone" states at page 10:

> "**How long will it take to get a decision on my asylum claim**?
>
> The Home Office tries to make a decision on your asylum claim based on the information you have given them within two months of receiving your Statement of Evidence Form (SEF).
>
> Action point: The Home Office may not be able to process your claim within two months. If you haven't heard from the Home Office within 2 months keep in regular contact with your legal representative."

27. As I have already observed, the original grounds of claim are now academic as the asylum claim has been determined. There is no doubt that the claim was issued in order to try to obtain a decision from the defendant on the claimant's asylum claim before 15th April 2009 but, as already observed, the order for interim relief granted by His Honour Judge Jarman QC was set aside by Lord Carlile of Berriew QC on 8th

April 2009. The claimant is now over 17.5 years and therefore cannot come within the defendant's policy of granting discretionary leave to UASC.

28. In considering the questions now raised on behalf of the claimant identified at paragraph 4 above it is necessary to consider the following.

29. First, was the defendant under a legal obligation to determine the claimant's asylum claim within any particular timeframe or in any particular order of priority? Second, had the defendant a legal obligation to determine the claimant's asylum claim within a reasonable time and did the claimant have a reasonable expectation that if refused asylum he would be granted discretionary leave to remain? Third, did the defendant determine the claimant's asylum claim within a reasonable time?

The First Issue

30. The analysis of the relevant EU Directives and domestic statutory provisions above shows that there is nothing which requires the defendant to determine the claim of a UASC within any particular timeframe. The Immigration Rules are, in essence, statements of the Secretary of State as to how she will exercise her discretion under the Immigration Acts. As Lord Brown said in *Mahad v Entry Clearance Officer* [2009] UKSC 16 [2010] 1 WLR 48 at paragraph 10:

> "The Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy. …. the court's task is to discover from the words used in the Rules what the Secretary of State must be taken to have intended."

Those rules imposed no timetable for the determination of asylum claims.

31. As is apparent from the analysis above, the only document which contains any timeframe is the process map chart at the end of the Processing Asylum Applications from Children and this, in my judgment, cannot be said to be any more than a target for caseworkers. The body of the document itself does not deal with any timeframe for determining claims and does not make any reference to the process map.

32. It is clear that the defendant's policy, amended in April 2007, of granting discretionary relief to certain categories of unaccompanied minors whose asylum claims have been rejected is intended to protect such minors during their minority. Such leave is granted only to minors for whom there are no adequate reception arrangements in their home countries. It is clear that the policy is to ensure that UASC whose claims have failed are returned to their own countries as soon as it is safe for them to do so. There is nothing in this policy which places any obligation upon the defendant to determine such asylum claims before the UASC turns 17.5 years.

33. The language adopted in the 2006 booklet "Claiming Asylum and Living in the UK: a Guide for Young People Arriving Alone" makes it clear that there is a target timetable which may not be achievable in any particular case. A file note of 6th March 2009, prepared by the claimant's solicitors, records the approach adopted by the defendant's caseworker: *"…no mandatory duty to conduct substantive interview by day 25 but they do try to do so where at all possible… to arrange the interview based upon date asylum application was received…if they interviewed our client our [sic] sooner this would be unfair to other applicants who claimed asylum before our client…"*. As I have observed in paragraph 13 above, the analysis by Ms Lever demonstrated that not all applicants were interviewed in the order of receipt of claim.

34. The claimant relies on paragraph 350 of the Rules to support his contention that there is an obligation upon the defendant to give priority to the claimant's claim. As already observed, rule 350 provides: *"Unaccompanied children may also apply for asylum and, in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases"*. The claimant contends that "priority" in this context should be given its ordinary meaning, that is to say the right of precedence over others. In my judgment the term has to be seen in the context of the complete phrase "particular priority and care" rather then in isolation. To conclude otherwise would mean, for example, that every UASC claim must be determined before any non – UASC claim regardless of when the claims were submitted.

35. That the defendant gives special importance to UASC claims is apparent from the relevant section of the Rules. It is clear from an analysis of all of the rules within that section, that the need for priority is a factor but not the only factor. In particular,

(a) Account is to be taken of the applicant's maturity, with more weight given to objective rather than subjective indications (paragraph 351);

(b) Close attention should be given to the welfare of the child at all times (paragraph 351);

(c) Those over 12 will be interviewed in the presence of an appropriate adult by an interviewer with specialist training in the interviewing of children who will have particular regard to the child's possible fears, state of mind and mode of expression at own speed and with provision for breaks where necessary (paragraph 352);

(d) The defendant will, as soon as possible, ensure that the child has a representative to assist him in his claim. This will almost certainly be someone from the local authority's children's services department (paragraph 352ZA); and

(e) The decision on the claim will be taken by a person who is trained to deal with asylum claims from children (paragraph 352ZB).

36. I have already indicated that at paragraph 32 that there is nothing in the EU directives or domestic statutory provisions which requires the defendant to determine claims within a particular time frame. I am satisfied that there is nothing in the defendant's asylum policy instructions or other guidance documents which indicates that claims by UASC are to be handled in any particular order of priority and that, as such, notwithstanding the agreed findings of Ms Lever, the defendant did not and does not have either a legal or policy obligation to determine such a claim within a particular timeframe or in a particular order of priority. There is no obligation to have such a policy.

The Second Issue

37. It is clear that a decision-maker has a duty to determine an application duly made within a reasonable time. What constitutes a reasonable time will depend upon the facts of the individual case and the context of the wider decision-making process, including pressures on other scarce public resources. It is clear from the authorities that the courts will interfere only if the decision maker has acted unreasonably or erred in law. That this principle applies to asylum claims is apparent from a number of authorities, see for example *R(S) v Home Secretary* [2007] IAR 781 and *R (FH et al) v Home Secretary* [2007] EWHC 1571 (Admin).

38. As I have observed at paragraph 13 above, the defendant has advanced an explanation as to why UASC claims take longer to determine than those for adults. The existence of those practices, in my judgment demonstrates that the defendant does comply with the requirements of paragraph 350 of the Rules. It is necessary to look at the combined requirements of "particular priority and care", not priority in isolation. There was an obligation to determine the claim within a reasonable time frame and the processes adopted by the defendant in dealing with applications from UASC were consistent with that obligation.

39. It cannot be said that the claimant had any legitimate expectation that his application would be dealt with in two months, that is to say before he passed 17.5 years, and that if refused asylum, he would be granted discretionary leave to remain. It is clear that he originally agreed to the interview date of 16th April 2009 and only sought for that to be changed when he realised the consequences of this for the grant of discretionary leave to remain. The leaflet referred to at paragraph 26 above makes it clear that the target of two months from receipt of the statement of evidence form to a decision is no more than aspirational. The use of the word "tries" denotes no more than this. The Rules (see paragraphs 22 and 23 above) make clear that there is no timetable. The high point of the claimant's submission is the process map chart at the end of the Process Guidance (see paragraphs 25 and 31 above) which, as I have already observed, is no more than a target for caseworkers and does not invoke any representation that an application will be processed within a finite period.

40. As already discussed at paragraphs 6 to 8 above, the defendant's policy of granting discretionary leave to remain to certain UASC whose asylum claims have been rejected is to protect them during their minority and to ensure that the appeal process

is completed by the time an applicant turns 18 years so that arrangements can be made for return to home country as soon as it is safe to do so. This does not place any obligation on the defendant to take steps to ensure that a claim is determined before a UASC turns 17.5 years. That is not the purpose of the discretionary leave policy.

The Third Issue

41. In short, the timetable was that the claimant made his application for asylum on 18th November 2008. His statement of evidence form was submitted on the 28th January 2009, one month beyond the due date, after the defendant agreed to an extension. It was submitted on the claimant's behalf that the defendant was at a later stage on notice that the delay was causing foreseeable harm to the claimant. On the 18th March 2009 the claimant's solicitors had drawn the attention of the defendant to a letter from the claimant's support worker in which it was said *" the immigration difficulties in his case are having a very direct effect on AO and his emotional well-being above everything else and this in turn is affecting his behaviour, relationship and his responses to the people around him"*. The interview in fact took place on the 16th April 2009, less than month later, after the order of the 27th March 2009 had been set aside. Further letters were submitted to the defendant after the interview but before the decision about the impact of the delay on the claimant. No such evidence had been presented when the interview date was agreed in February 2009 or when the two requests were made for the interview date to be advanced on the 19th February 2009 and 6th March 2009. The decision refusing asylum was made on the 8th July 2009. In my judgment, by any objective assessment, the claim was determined within a reasonable time.

42. Although in closing submissions to me it was advanced on the claimant's behalf that his complaint was not about the denial of discretionary leave but rather about the delay on the part of the defendant in processing his claim, the reality is, in my judgment, that the claimant's complaint is based on the fact that he has not been granted discretionary leave rather than on the asylum process itself. The claimant's initial agreement to the interview of 16th April 2009 is particularly relevant. This was rescinded only when the claimant realised the consequence of this agreement in terms of the grant of discretionary leave. This is clear from the email sent by the claimant's solicitors to the defendant (see paragraph 9 above). Similarly the letter before action of 18th March 2009 sets out in unambiguous terms the nature of the proposed challenge and the relief to be sought:

> **"** …**Matter complained of**…our offices consider that it is unreasonable and unfair not to interview our client and grant Discretionary Leave to Remain prior to his turning 17.5 years of age… …**Details of action that the Defendant is expected to take**…To proceed to interview our client immediately and process his claim before he turns 17.5 years of age on 15 April 2009…".

The claimant, who is now 19 years, finds himself in the same position as any other adult failed asylum seeker.

43. As I have already observed in paragraph 4 above, the original grounds for these proceedings are now academic. For all of the reasons given in this judgment, it cannot be said that the defendant acted unlawfully or irrationally. There was no abuse of process or power. In those circumstances, I refuse the application for judicial review and the relief claimed.